

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.04.2016

CORAM:

THE HONOURABLE MRS.JUSTICE S.VIMALA

CRP (NPD) No.2860 of 2013

and

M.P.No.1 of 2013

Smt.Kalliammal

....

Petitioner/2nd Defendant/
Petitioner

.Vs.

Sri Kanniappan Finance,
Rep by its partner,
V.Thiyagarajan,
No.888, Park Road, Erode Town.

....

Respondent/Plaintiff/
Respondent

Prayer : Revision Petition is filed under Article 227 of the Constitution of India, against the Fair and Final Order in I.A.No.614 of 2011 in O.S.No.427 of 2007 on the file of 2nd Additional Sub Court, Coimbatore dated 27.07.2012.

For Petitioner : Mrs.S.Jeevitha Ramani
For Respondent : Mr.R.Bharath Kumar

ORDER

This Civil Revision Petition has been filed by the first defendant (mistakenly described as second defendant), in the suit in O.S.No.563 of 2003.

2. The respondent herein, who is a financial institution filed a suit before the learned Subordinate Judge, Erode in O.S.No.563 of 2003, seeking recovery of a sum of Rs.4,33,644.40/-, based upon the registered mortgage deed.

2.1. During the pendency of the suit, the first defendant Kaliasammal was set exparte. Hence, she filed an application in I.A.614 of 2007, seeking to condone the delay of 698 days in filing the application to set aside the exparte decree. That application was dismissed by the Court below on 27.07.2012. Challenging the same, this revision petition has been filed by the first defendant.

3. It is contended by the learned counsel for the respondent that the lower Court, while dismissing the application to condone the delay in filing the set aside application, has taken cognizance that the first defendant had knowledge regarding passing of exparte decree on 01.07.2009 i.e. the date on which she received notice from the plaintiff and finding no justification to file the application to set aside the exparte decree after the lapse of 698 days, the lower Court has rightly dismissed the same. In other words, the contention is that the lower Court was not satisfied with the reasons stated for the delay and hence, rightly dismissed it.

4. The learned counsel for the revision petitioner would submit that the petitioner is a old lady aged about 75 years and mainly because of her old age, she was not able to understand the legal consequences of her negligence and the failing memory should be taken into account and the lower Court is expected to take lenient view of the matter having regard to the physical and mental state of the elderly people.

5. True that some concession has to be given having regard to the problems associated with old age, but, at the same time, the concession should not make the litigant more negligent and some caution should be given to them so that they are vigilant at all times. The learned counsel for the revision petitioner submitted that they are prepared to abide by any condition imposed by this Court for early disposal of the case including deposit of portion of decreetal amount.

6. Having regard to the submissions made on both sides, the application to condone the delay would stand allowed subject to the revision petitioner depositing a sum of Rs.3,00,000/- to the credit of the trial Court, as a pre-condition for condonation of delay. The counsel agreed for deposit of the amount.

7. The learned counsel for the respondent sought permission of this Court for withdrawal of the amount. This request cannot be complied

with as the issue between the parties is pending adjudication and withdrawal by either party would be subject to the result of the litigation.

8. This Court is inclined to allow the application to condone the delay in filing the application to set aside the exparte decree and also to set aside exparte decree, subject to the condition that the First defendant/revision petitioner shall deposit a sum of Rs. 3,00,000/- to the credit of the trial Court, within a period of one month from the date of receipt of a copy of this order.

9. On such deposit being made, the trial Court shall dispose of the suit, within a period of two months thereafter.

10. Accordingly, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

06.04.2016

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Note: Issue order copy on 06.04.2016

To

The Second Additional Sub Court, Coimbatore.

S.VIMALA, J.

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