



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.07.2016

CORAM

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P. (MD) No.1416 of 2016

and

C.M.P. (MD) No.6933 of 2016

Jeya Ganesan

.. Petitioner/Petitioner/Respondent

Vs.

Kanagaraja

... Respondent/Respondent/ Appellant

Prayer: Petition filed under Section 115 of Civil Procedure Code, to set aside the fair order and decretal order dated 10.09.2013 passed in I.A.No.213 of 2012 in A.S.No.31 of 2009 on the file of the Principal District Court, Tirunelveli and thereby allow the same.

For Petitioner : M/s.F.X.Eugene

For Respondent : Mr.D.Rameshkumar

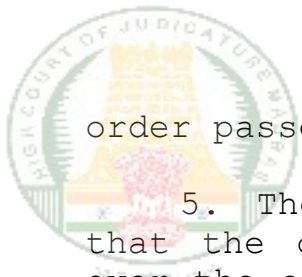
ORDER

This Revision is directed against the order passed by the Principal District Court, Tirunelveli in I.A.No.213 of 2012 in A.S. No.31 of 2009, dated 10.09.2013.

2. The respondent, as plaintiff filed a suit in O.S.No.63 of 2004 before the Subordinate Court, Sankarankoil, against the petitioner for specific performance based on the agreement of sale dated 12.06.2003. The suit came to be dismissed, after contest on 28.04.2008. Aggrieved over the Judgment and Decree, the respondent preferred an appeal before the Principal District Court, Tirunelveli in A.S.No.31 of 2009.

3. The learned Appellate Judge reversed the finding of the Trial Court and allowed the appeal on 30.10.2010, granted alternative relief of recovery of the advance amount.

4. Based on the decree, the respondent filed an Execution Petition in E.P.No.20 of 2012. After receiving the notice in the Execution Petition, the petitioner filed an application in I.A.No.213 of 2012 in the appeal before the Appellate Court, seeking condonation of delay of 655 days to set aside the ex-parte



order passed against him.

5. The Appellate Court dismissed the application observing that the delay was not explained by the petitioner. Aggrieved over the order, the petitioner has filed the present Revision with delay of 548 days.

6. The learned counsel for the petitioner would submit that the respondent is a money lender and he has filed the suit, based on the documents executed by the petitioner as security and the petitioner has also changed his liability in the written statement and therefore, he should be given opportunity to contest the case.

7. Per contra, the learned counsel for the respondent would submit that the petitioner has received notice in the appeal and after engaging an Advocate, he remained ex-parte; that the petitioner is not vigilant in defending his case and this Revision itself is filed with an enormous delay of 548 days and that the petitioner has not explained the delay and therefore, the Revision has to be dismissed.

8. It is seen from the records that the Trial Court dismissed the suit on 28.04.2008. Aggrieved by the Judgment and decree, the appeal was preferred by the respondent. The petitioner received notice and after engaging an Advocate, he did not take part. The Appellate Court having no other option, decided the appeal, however granted alternative relief of recovery of the advance amount. In the affidavit filed in support of the condonation of delay petition, the petitioner has averred that he was suffering from Jaundice from 21.07.2012 to 12.09.2012. The petitioner received the notice in the Execution Petition on 10.07.2012, but the application for condonation of delay came to be filed after lapse of two months. The Trial Court has rightly dismissed the petition holding that the petitioner has not shown sufficient cause for condonation of delay.

9. Considering the above facts, I do not find any reason to interfere with the order impugned. In fine, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar



To

The Principal District Court,
Tirunelveli.

+1cc to Mr.F.X.Eugene Advocate Sr.No. 38097

+1cc to Mr.D.Rameshkumar Advocate Sr.No. 38095

JAM/01.11.16/sks-rr/3p-4c

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