



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 21.12.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(MD)Nos.2280 of 2016 & 1434 of 2011 (NPD)

and

C.M.P.(MD) No.10502 of 2016 & M.P.(MD)No.1 of 2011

Sunthathevar, S/o.Ayyavu Thevar

.. Petitioner
in both the C.R.Ps.

Vs.

1.S.Subrmaniam

.. 1st Respondent
in C.R.P.(MD)No.2280/2016 &
Sole Respondent in
C.R.P.(MD)No.1434/2011

2.Santhosam, W/o.Kaliraj
3.Saravanan, S/o.Kaliraj
4.Loganathan, S/o.Kaliraj

.. Respondents 2 to 4
in C.R.P.(MD)No.2280/2016

Prayer in C.R.P.(MD)No.2280 of 2016: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the order dated 09.08.2016, made in E.P.No.84 of 2010 in O.S.No.142 of 2008 on the file of the District Munsif Court, Uthamapalayam, Theni District.

Prayer in C.R.P.(MD)No.1434 of 2011: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair and decretal order dated 21.04.2011, made in I.A.No.623 of 2010 in O.S.No.142 of 2008 on the file of the District Munsif Court, Uthamapalayam, Theni District.

For Petitioner : Mr.G.Gomathisankar
in C.R.P.(MD)No.2280/2016

For Petitioner : Mr.V.S.Balamurugan
in C.R.P.(MD)No.1434/2011

For R1
in C.R.P.(MD)No.2280/2016 &
For Respondent
in C.R.P.(MD)No.1434/2011 : Mr.Rajpal Singh

For R2 to R4 : Mr.C.Sivanathamurthi
in C.R.P.(MD)No.2280/2016

**COMMON ORDER**

These Civil Revision Petitions have been filed to set aside order dated 09.08.2016, made in E.P.No.84 of 2010 in O.S.No.142 of 2008 and fair and decretal order, dated 21.04.2011, made in I.A.No.623 of 2010 in O.S.No.142 of 2008, on the file of the District Munsif Court, Uthamapalayam, Theni District.

2. Since the issue involved in both the Civil Revision Petitions are one and the same, they are heard together and disposed of by this common order.

3. Facts of the case:-

(i) The petitioner in both the civil revision petitions is the first defendant in the suit in O.S.No.142 of 2008 on the file of the District Munsif Court, Uthamapalayam. The first respondent - S.Subramaniam filed the said suit for possession of the suit property from the petitioner. The petitioner filed written statement. The Trial has commenced on 05.08.2009. The respondent was examined in-chief and the suit was posted for cross-examination by the petitioner's counsel. The petitioner took number of adjournments for cross-examining the respondent. On 09.03.2010, the counsel for the petitioner reported no instructions. Therefore, an ex-parte decree was passed on the said date.

(ii) The first respondent filed E.P.No.84 of 2010 for delivery of possession. The petitioner filed a petition to set aside the ex-parte decree, dated 09.03.2010, along with I.A.No.623 of 2010, for condoning the delay of 175 days in setting aside the ex-parte decree.

(iii) According to the petitioner, his Advocate informed him about the trial of the suit, but he did not receive any communication, as his daughter was admitted in the hospital, for delivery of child. He came to know about the ex-parte decree only when the notice was served on him in the execution proceedings. Immediately, he filed the said I.A.

(iv) The first respondent filed counter affidavit and opposed the said application. The first respondent submitted that the petitioner's counsel took number of adjournments for cross-examining the first respondent and finally, it was posted to 09.03.2010 and on that date, he reported no instructions and therefore, ex-parte decree was passed on the same day.

(v) The petitioner received notice in the E.P. on 24.08.2010 and appeared for hearing in the E.P. on 20.09.2010, but filed the said I.A. only on 04.10.2010. The petitioner has not given sufficient reason for condoning the delay. The first respondent is a Senior Citizen, aged about 81 years and the petitioner is enjoying the suit property by cultivating the same.

(vi) The learned District Munsif considered the averments of the petitioner's affidavit and the counter affidavit and dismissed the I.A., holding that the reason given by the petitioner is not sufficient to condone the delay.



4. Against the said dismissal order dated 21.04.2011, the petitioner has filed C.R.P.(MD)No.1434 of 2011.

C.R.P.(MD)No.1434 of 2011:

5. The learned counsel for the petitioner herein submitted that the petitioner is cultivating the land and therefore, he must be given an opportunity to defend the suit. The learned District Munsif ought to have considered the application filed under Section 5 of the Limitation Act in a liberal manner. The learned District Munsif having found that the reason given by the petitioner is genuine one, erred in dismissing the said I.A.

6. The learned counsel for the first respondent submitted that the petitioner has not furnished any details as to when his daughter was admitted in the hospital for delivery and when she was discharged from the hospital. The petitioner has not filed the petition to set aside the *ex-parte* decree and to condone the delay in filing the petition to set aside the *ex-parte* decree immediately. On receipt of the notice in the E.P. on 24.08.2010 and even after appearing in the E.P. on 20.09.2010, he filed I.A.No.623 of 2010 only on 04.10.2010. The learned District Munsif considered all the materials on record in proper perspective and dismissed the application by giving cogent and valid reasons.

7. I have heard the learned counsel for the petitioner and the respondents and perused the materials available on record.

8. The respondent filed the suit for possession of the suit property. The trial has commenced on 05.08.2009 and the suit was adjourned on number of occasions for cross-examination on behalf of the petitioner. On 09.03.2010, the counsel for the petitioner reported no instructions and therefore, *ex-parte* decree was passed on the same date. The respondent filed E.P.No.84 of 2010 to execute the said decree. The petitioner received notice in the E.P. on 24.08.2010 and appeared before the Execution Court on 20.09.2010, but he has filed the application only on 04.10.2010 to condone the delay in setting aside the *ex-parte* decree. The petitioner has not furnished any details for not contacting his Advocate and giving instructions for cross-examination of the first respondent from 05.08.2009. The petitioner has not taken any steps to find out the stage of the suit from his Advocate. Even after receiving the notice in the execution proceedings on 24.08.2010 and appeared on 20.09.2010 before the Execution Court, the petitioner has filed the application only on 04.10.2010, for setting aside the *ex-parte* decree along with a petition to condone the delay and he has not explained any reason for not filing the application to set aside the *ex-parte* decree, even though he received notice on 24.08.2010.

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9. In this context, it is relevant to refer the judgment of this Court reported in 2009 (5) CTC 48 [Shanmugam Vs.



Chokkalingam], wherein at paragraph 14, it has been held as follows:

"14. He had also alleged that he was negligently silent and therefore, he could not take steps to set aside the *ex parte* decree immediately. Nothing was available in the affidavit towards the reasons for such negligence. Therefore, it could be construed as an inaction coupled with negligence on the part of the petitioner. The attitude of the petitioner in not filing the Petition to set aside the *ex parte* decree immediately after the receipt of the notice in the EP would also make that inaction coupled with negligence as wilful and that would also go to show that the petitioner has not placed the truth before the Court. Apart from that, he had not explained the delay in taking steps to set aside the *ex parte* decree from the date of receipt of the notice in the execution proceedings till he files the Petition to set aside the *ex parte* decree on 9.6.2007. "

10. The learned District Munsif has considered all these facts in proper perspective and dismissed the application. There is no error or illegality in the said order warranting interference by this Court.

11. In the result, Civil Revision Petition(MD)No.1434 of 2011 is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

C.R.P. (MD)No.2280/2016:

12. The petitioner has filed the civil revision petition challenging the order dated 09.08.2016 passed in E.P.No.84 of 2010 in O.S.No.142 of 2008, recording the delivery of the suit property and terminating the E.P.

13. According to the learned counsel for the petitioner, the petitioner has filed C.R.P.(MD)No.1434 of 2011 challenging the order dismissing I.A.No.623 of 2010 to condone the delay in filing the petition to set aside the *ex-parte* decree and this Court granted interim stay, while the C.R.P. was pending and the learned District Munsif in a hurried manner, ordered delivery of possession and recorded the delivery on 15.07.2016 and closed the E.P. on 09.08.2016. The learned District Munsif erred in ordering delivery recording the delivery of possession and terminating the E.P.

14. The learned counsel for the respondent submitted that initially the stay was granted for a period of four weeks on 26.07.2011 and subsequently, it was not extended. From 13.08.2010 to 09.08.2016 the E.P. was adjourned and the petitioner took number of adjournments for production of stay order. Therefore, the learned District Munsif rightly ordered delivery of possession and the respondent has taken possession on 15.07.2016. The said ~~Services.com.sg~~ ~~gov.in/reserved~~ on 09.08.2016 and E.P. was terminated on the same date.



15. I have heard the learned counsel for the parties and perused the materials available on record.

16. From the materials on record, it is seen that this Court ordered notice of motion on 26.07.2011 in C.R.P.(MD)No.1434 of 2011 and interim stay was granted for four weeks. There is nothing on record to show that interim stay granted by this Court was subsequently extended. The petitioner was given ample opportunity by the Execution Court to produce the stay order. The petitioner did not produce any order. The said E.P. was pending from 13.08.2010 to 09.08.2016. As the petitioner failed to produce any stay order from 13.08.2010, the learned District Munsif rightly ordered delivery and after recording the delivery, he terminated the E.P. In the circumstances, there is no illegality or irregularity in the said order warranting interference by this Court.

17. In the result, Civil Revision Petition(MD)No.2280 of 2016 is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar

To
The District Munsif,
Uthamapalayam,
Theni District.

Copy to

The Record Keeper,
V.R.Section
(for returning records if any)

+1cc to Mr.Sivanathamurthi, Advocate, SR.No:82471
+1cc to Mr.G.Gomathi Sankar, Advocate, SR.No:82515

smn2
AES/RR-ME/SAR2/27.01.2017/5p/5c

Common order in

C.R.P. (MD) Nos.2280 of 2016 &
1434 of 2011 (NPD)
and
C.M.P. (MD) No.10502 of 2016 &
in M.P. (MD) No.1 of 2011
21.12.2016