



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

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CRP (MD) .No.485 of 2016 and CMP(MD) .No.2096 of 2016

Mohan : Revision Petitioner / defendant

Vs.

Rajan : Respondent / plaintiff

Prayer: The Civil Revision Petition is filed under Section 115 of CPC against the fair and decreetal order dated 08.12.2015 made in I.A.No.469 of 2013 in O.S.No.111 of 2010 on the file of learned Subordinate Judge, Kuzhithurai, Kanyakumari District.

For Petitioner

: Mr. A. Robinson

ORDER

The Civil Revision Petition is filed against the fair and decreetal order, dated 08.12.2015 made in I.A.No.469 of 2013 in O.S.No.111 of 2010 on the file of learned Subordinate Judge, Kuzhithurai, Kanyakumari District.

2. The revision petitioner is the defendant. The respondent is the plaintiff.

3. The respondent / plaintiff filed a suit in O.S.No. 111 of 2010, on the file of on the file of learned Subordinate Judge, Kuzhithurai, Kanyakumari District, for specific performance of agreement of sale. According to the petitioner, he was taking treatment as in-patient at Attrur Aalban Hospital, from 20.11.2010 to 20.06.2011 and suit summons were not served on the petitioner. He did not have the knowledge of the date of hearing. Subsequently, he came to know that he was set ex-parte in the suit, only when the notice in the Execution Petition has been received by him. Immediately, he filed an application in I.A.No.469 of 2013 for condoning the delay of 75 days in filing an application to set aside the ex parte decree. The respondent filed a counter affidavit and stated that after ex parte decree, he has filed an Execution Petition and the petitioner has entered appearance, through counsel and contested the Execution Petition. After conclusion of execution of sale deed, the petitioner has come out with an application for setting aside the exparte decree and prayed for dismissal of Execution Petition.



4. The learned Judge after considering the facts and materials on record found out that the petitioner was not taking treatment as inpatient from 20.11.2010 to 20.06.2011. The petitioner after filing an application to condone the delay of 75 days in filing an application to set aside the ex parte decree, he failed to rectify the defects pointed out by the Court for more than 1 year and 9 months. He rectified the defects and represented the same only after execution of sale deed as per the decree and after being participated in the execution proceedings. The learned Judge took note of the fact that summons sent by the Court was affixed as he was not found in the house, the summons sent by post was returned un served as unclaimed. Only by paper publication, the summons were served on the petitioner and dismissed the application to condone the delay in filing application to set aside the ex parte decree.

5. Against the said order of dismissal, the present Civil Revision Petition is filed.

6. The learned counsel appearing for the petitioner submitted that the learned Judge ought not to have shut down the defense of the petitioner at the threshold. Number of days is not a criteria, sufficient reason is the criteria for condoning the delay. The registration of sale deed will not be the reason for dismissal of an application filed for setting aside the exparte order and in this regard he relied on the judgment reported in **2011(1) LW 53 (P. Subramanian (died) and others Vs. S. Viswam)**.

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

8. From the materials it is seen that the petitioner filed application to set aside the ex parte decree along with application to condone the delay. The said application was returned by this Court for rectifying certain defects. The petitioner did not represent the same in time. He participated in execution proceedings. After completion of execution proceedings only, the petitioner represented the same after one year 9 months. This attitude of the petitioner shows that his intention is not bonafide.. Further the petitioner has not given any valid and sufficient reason for not representing the application for condoning the delay after rectifying the defect pointed out by the Court. The learned Judge considered all these materials in proper perspective and has given valid and cogent reasons for dismissing the Interlocutory Application. Further, the learned Judge has exercised his power conferred on him properly and there is no irregularity or illegality warranting interference by this Court.

<https://hcservices.ecourts.gov.in/> The result, the Civil revision petition is dismissed confirming the impugned order dated 08.12.2015 made in I.A.No.469



of 2013 in O.S.No.111 of 2010 on the file of learned Subordinate Judge, Kuzhithurai, Kanyakumari District. No costs. Consequently, connected Miscellaneous Petition is closed.

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/True Copy/

Sd/
Assistant Registrar

Sub Assistant Registrar

To

The learned Subordinate Judge, Kuzhithurai,
Kanyakumari District.

+1cc to Mr. A.Robinson, Advocate SR.No.11804

CN/AN-MP/4.4.2016/3P-3C

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