

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.2847 of 2007
and
M.P.No.1 of 2007**

S.Arumugam

.. Petitioner

Vs.

M/s.Sivam Financier
Rep. By its Partner,
T.K.Sivaraj

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 18.10.2006 made in I.A.No.252 of 2006 in O.S.No.364 of 1998, on the file of the Sub-Court, Tiruppur and prays to set aside the same.

For Petitioner : M/s.D.Chitra Maragatham

For Respondent : Mr.V.P.Sengottuvel

ORDER

The unsuccessful defendant in O.S.No.364 of 1998 before the Sub-Court, Tiruppur is the revision petitioner. The respondent/ plaintiff herein has filed a suit against the revision petitioner in

O.S.No.364 of 1998 before the learned Sub-Court, Tiruppur for specific performance or with the alternative directing the defendant to repay the sale advance amount of Rs.1,30,460/- with interest. In the said suit, the revision petitioner was set aside ex-parte and the ex-parte decree was passed against the revision petitioner on 05.10.2004.

2.To set aside the ex-parte decree, the revision petitioner has filed an application in I.A.No.252 of 2006 with a delay of 213 days in seeking to set aside the ex-parte decree. The revision petitioner has averred in the affidavit filed in support of condone delay application that he was suffered with Jaundice from the Month of September 2004 to April 2005. After recovery from the Jaundice, he contacted his Advocate through his son, but his advocate informed him that he misplaced the suit bundle. The revision petitioner's lower court counsel was out of station from 19.04.2005 to 07.05.2005. In the meantime the revision petitioner received notice in the execution proceedings. Thereafter, only he came to know that an ex-parte decree was passed against him in the said suit.

3.Thereafter, he filed an application to set aside the ex-parte decree with a delay of 213 days on 05.06.2005. The revision

petitioner stated that the delay is neither willful nor wanton, but the same is beyond his control and without his knowledge. Hence, he prayed to condone the delay of 213 days in seeking to set aside ex-parte decree.

4.Per contra, the respondent herein filed counter affidavit and contended that after ex-parte decree, the respondent herein filed execution petition in E.P.No.118 of 2005 and the revision petitioner was remained ex-parte in the execution petition. Though the revision petitioner filed set aside petition on 05.06.2005, he has not taken steps to get the same numbered. Hence he prayed for dismissal of the Section 5 application.

5.The lower Court upon hearing the arguments on either side, was pleased to dismiss the Section 5 of the limitation application filed by the revision petitioner by order and decree dated 18.10.2006, on the ground that the reason assigned by the revision petitioner is not acceptable. Further the revision petitioner had been regularly appeared in O.S.No.538 of 1998 before the same court. Therefore the revision petitioner should know the position of O.S.No.252 of 2006. Therefore the trial court held that no sympathy could be shown to the revision petitioner.

6.I heard M/s.D.Chitra Maragatham, learned counsel appearing for the petitioner and Mr.V.P.Sengottuvel, learned counsel appearing for the respondent and perused all the materials available on record.

7.This Court has considered the rival submission on either side. The respondent herein filed a suit for specific performance. In the said suit an ex-parte decree was passed against the revision petitioner. Though the averment made by the revision petitioner is not substantiated and insufficient for condone delay, the interest of justice required and in order to give one more opportunity to the revision petitioner to contest the case and get a contested verdict. At the same time, the suffering caused to the respondent herein could be compensated by way of adequate cost. In this case though the delay is only 213 days, as rightly held by the trial court that the revision petitioner had been regularly appearing in other suit in O.S.No.538 of 1998 before the same Court, but, failed to know about the result of the present suit is deliberate one. However, as discussed above, to meet the ends of Justice, I find it reasonable to allow the civil revision petition by imposing cost of Rs.1,000/- to be paid by the revision petitioner to the counsel for the respondent.

8.Considering both sides arguments, I am inclined to pass the

following orders:

(a) this Civil Revision Petition is allowed by setting aside the order dated 18.10.2006 made in I.A.No.252 of 2006 in O.S.No.364 of 1998, on condition that the petitioner shall pay a sum of Rs.1,000/- as costs to the learned counsel appearing for the respondent before the trial Court within a period of fifteen days from the date of receipt of a copy of this order;

(b) further, on production of the payment receipt, the trial Court is directed to consider the set aside application, by giving notice to both parties;

(c) on passing order in the set aside petition, the trial Court is directed to dispose of the suit in O.S.No.364 of 1998, within a period of three months thereafter. In this regard, both parties are directed to co-operate for early disposal of suit.

9.In the result, the Civil Revision Petition is allowed with costs. Consequently, connected miscellaneous petition is closed.

05.01.2017

Note:Issue order copy on 30.06.2017.

Index:Yes

Internet:Yes

vs

M.V.MURALIDARAN, J.

VS

To

The Sub-Court,
Tiruppur.

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