

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.07.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.2568 of 2012
and
M.P.No.1 of 2012**

G.Rajalakshmi .. Petitioner

Vs.

S.Loganathan .. Respondent

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the fair and decretal order of I.A.No.200 of 2008 in O.S.No.628 of 2003, on the file of the First Additional Subordinate Court, Salem, dated 18.03.2011 is illegal.

For Petitioner : Mr.T.M.Ramalingam

For Respondent : Mr.S.Ramasundaram

ORDER

The petitioner has filed this Civil Revision Petition to set aside the fair and decretal order dated 18.03.2011 in I.A.No.200 of 2008 in O.S.No.628 of 2003 on the file of the I Additional Sub Judge, Salem.

2.The defendant is the revision petitioner and the respondent herein as plaintiff has filed the suit for specific performance and permanent injunction against the revision petitioner herein in O.S.No.628 of 2003 on file of I Additional Sub Judge, Salem.

3.The case of the revision petitioner is that the respondent herein is an unknown person to him and he had no transaction whatsoever. However, the respondent, who is the henchman of one Gopal has come up with the above suit on the basis of a forged sale agreement which came to be illegally printed on the blank stamp papers issued to the said Gopal by this revision petitioner for a security purpose for a hand loan raised to the tune of Rs.25,000/- by the revision petitioner from the said Gopal. Further the parental deeds of the suit schedule property, besides blank stamp papers signed by the revision petitioner were handed over to the said Gopal as a security. The said loan was availed by the revision petitioner at the rate of 3% interest per month. Accordingly the revision petitioner has paid the interest amount for 27 months regularly to the said Gopal. However, due to some financial crisis the revision petitioner herein was unable to pay the interest in time for the subsequent months. Therefore there arose a difference of opinion between the revision petitioner and the

said Gopal, out of which the blank stamp papers came to be fabricated as if the respondent as purchaser and the revision petitioner as vendor has entered into a sale agreement dated 01.02.2000, with respect to suit schedule property. Based upon the same the said suit for specific performance was filed by the respondent herein on 21.10.2003.

4. On receipt of summon in the said suit, the revision petitioner herein engaged one Mr.K.Raja as his counsel to defend the suit. The Vakalath was filed by the said counsel on 14.03.2003. Thereafter the said suit stood posted for filing written statement by the revision petitioner herein. In the meanwhile since there was a negotiation made and the respondent herein consented to receive the loan amount and thereby promised to withdraw the suit. The same was reported by the revision petitioner to his counsel and it was informed that the revision petitioner herein is not prepared to file the written statement. Whereas on the basis of the intimation given by the revision petitioner, the revision petitioner's counsel has reported "No instruction before trial Court", in turn the respondent herein has allowed his suit to be dismissed for non prosecution. Hence the suit was dismissed for default on 27.12.2004. Thereafter the revision petitioner herein has started to make payments to the said Gopal by way of interest.

However, in the year 2006, due to some inabilities there was a delay in payment of interest. Being so, to the revision petitioner's shock and surprise he received a notice from the trial Court in REP No.170 of 2006, calling upon the revision petitioner to appear before the Court on 13.10.2006. Accordingly the revision petitioner appeared before the trial Court on 13.10.2006, however, since the Court remained closed on that day, the revision petitioner was informed that he would be issued with a fresh notice in some another day.

5. In the mean time when the revision petitioner offered to repay the loan amount, the same was refused by said Gopal and further he proclaimed that the trial Court has executed the sale deed in his favour in the light of the decree made in the above suit for specific performance. Only thereafter the revision petitioner came to know that by playing fraud upon the trial Court, the respondent/plaintiff has restored his suit without even any notice to the revision petitioner. Further the revision petitioner found that he suffered an ex-parte decree dated 04.04.2005 in the above suit. It was further noticed by the revision petitioner that on the strength of the above ex-parte decree, a sale deed also was executed in favour of the respondent by the trial Court. Thereupon the revision petitioner has filed an

application to set aside the ex-parte decree passed against him. Since the petition was filed belatedly beyond the limitation period of 30 days from the date of decree, but within 30 days from the date of knowledge, the revision petitioner's application was supported by an Interlocutory Application in I.A.No.200 of 2008 under Section 5 of the Limitation Act, to condone the delay of 1022 days in filing the petition to set aside the ex-parte decree. However, the trial Court without proper appreciation of the above said facts, but has erroneously dismissed the revision petitioner's application to condone the delay of 1022 days in filing the petition to set aside the ex-parte decree. The said dismissal order is impugned herein.

6.Per contra, the learned counsel for the respondent submitted that the delay caused in filing the said petition to condone the delay in filing the petition to set aside ex-parte decree is not bonafide and the same can be ascertained from the fact that though the petitioner's counsel has filed Vakalath as early as on 14.12.2004, but has not chosen to file the written statement, whereas the ex-parte decree came to be passed only on 04.04.2005. Further there is an inordinate delay of 3 years and the reason stated by the petitioner herein is an utter false. That apart there is no reasonable cause or sufficient reason

put forth by the petitioner herein. Further the petition at this point of time is not maintainable, since already in pursuance of the decree a sale deed was executed by the Trial Court and further the Execution Petition in REP was closed as early as on 06.09.2007. Furthermore the revision petitioner's conduct of non appearance, even after the receipt of the notice in the above REP is not acceptable and hence his petition to condone the delay of 1022 days was rightly rejected by the Trial Court.

7.I heard Mr.T.M.Ramalingam, learned counsel appearing for the petitioner and Mr.S.Ramasundaram, learned counsel appearing for the respondent and perused all the materials available on record.

8.On perusal of the typed set of papers, it is revealed that the Vakalath on behalf of the revision petitioner was filed on 14.12.2004, thereafter there was no written statement filed by the revision petitioner herein and finally an ex-parte decree was passed against the revision petitioner on 04.04.2005. It is also seen that in pursuance of the decree, a sale deed was executed by the Trial Court and the Execution Petition in E.P.No.170 of 2006 was closed on 06.09.2007. Further the revision petitioner has not chosen to appear in the

execution proceedings, despite receipt of the notice in the above execution proceedings in REP.No.170 of 2006. The revision petitioner vide para 6 of the affidavit filed in support of his condone delay petition has admitted the receipt of the notice in the execution petition in the year 2006 itself.

9. Therefore it is obvious to note that the revision petitioner has got knowledge of the Execution proceedings in the year 2006 itself, on receipt of notice in the E.P., the Court calling upon the revision petitioner to appear on 13.10.2006. However, the revision petitioner has come up with the above petition to condone the delay of 1022 days in seeking to set aside the ex-parte decree only in the year 2008, claiming that he got knowledge of the ex-parte decree only in the year 2008. It is needless to say for this Court that the contention of the revision petitioner is untrue on the face of record.

10. It is pertinent to note here that it is settled principle of law that unless otherwise there are sufficient and bonafide reasons behind the delay caused in filing such application beyond the prescribed limitation, the same cannot be allowed as matter of routine or mechanically. But in the case on hand the revision petitioner has

neither filed the petition in time in the year 2006 on coming to know about the ex-parte decree nor given any satisfactory explanation for the delay at his end in preferring the interlocutory application for three years i.e till 2008. Hence the delay cannot be condoned mechanically. There is no reason to interfere with the order of the learned Sub-Judge and the same is hereby confirmed.

11.In the result, the Civil Revision Petition is dismissed by confirming the order passed in I.A.No.200 of 2008 in O.S.No.628 of 2003 dated 18.03.2011, on the file of the I Additional Sub Judge, Salem. No costs. Consequently, connected miscellaneous petition is closed.

27.07.2017

Internet:Yes
Index:Yes

vs

To

The First Additional Subordinate Court,
Salem.

M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
CRP(NPD)No.2568 of 2012
and
M.P.No.1 of 2012

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