

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2017

CORAM

The Hon'ble Mr.Justice K.K.Sasidharan

C.R.P.(PD)No.3100 of 2013

and

M.P.No.1 of 2013

A.K.S.Manian

..Petitioner

Vs.

1. Vadivel
 2. Tamilselvi
 3. Minor Gokularaj
 4. Minor Pratap
 5. Minor Kamaraj
- (minors 3 to 5 are rep. by their father/next friend first petitioner).

... Respondents

Prayer

Civil Revision Petition, filed under Article 227 of the Constitution of India, against the order, dated 21.12.2012, made in I.A.No.9 of 2011, in O.S.No.190 of 2009, on the file of the II Additional District Judge, Salem.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondents : No appearance

ORDER

The petitioner filed a suit for specific performance. The suit was decreed. Thereafter, the respondents filed application to set aside the *ex parte* decree along with an application to condone the delay of 240 days. The learned trial Judge allowed the said application, notwithstanding the objection raised by the petitioner. Feeling aggrieved, the unsuccessful respondent in I.A.No.9 of 2011 in O.S.No.190 of 2009, is before this Court.

2. The learned counsel appearing on behalf of the petitioner contended that, sufficient opportunity was given to the respondents to contest the matter. The respondents failed to file written statement, and that was the reason for passing *ex parte* decree by the trial Court.

3. None appeared on behalf of the respondents.

4. The suit in O.S.No.190 of 2009, was filed by the petitioner for specific performance. The trial Court was expected to decide as to whether the petitioner has come to the Court with clean hands, and he was ready and

willing to perform his part of the contract. The learned trial Judge simply passed *an ex parte* decree on account of the non appearance of the respondents. In fact, it was a default decree granted by the learned trial Judge.

5. The respondents filed Application, in I.A.No.9 of 2011, to condone the delay of 240 days in filing the Application to set aside the *ex parte* decree. The respondents, in the said application, stated that, there were talks of settlement with the petitioner. The petitioner dragged the matter, and in that process, time expired for filing the application to set aside the *ex parte* decree. The learned trial Judge found merits in the reasons and accordingly, the delay was condoned. It is not for this Court to re-appreciate the reasons given by the learned trial Judge for the purpose of taking a different view in the matter. Even otherwise, the decree, in question, is a simple default decree. I am, therefore, of the view that the petitioner has not made out a case for interfering in the order passed by the trial Court.

6. In the upshot, I dismiss the Civil Revision Petition.

7. The learned II Additional District Judge, Salem, is directed to dispose of the suit in O.S.No.190 of 2009, as expeditiously as possible, and, in any case, within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

28.04.2017

sd

Index : Yes/No

To

The II Additional District Judge, Salem.

K.K.Sasidharan,J.,

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28.04.2017

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