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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 20.06.2017

CORAM :

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

C.R.P (NPD) (MD) No.141 of 2017

and

C.M.P (MD) Nos.465 and 3213 of 2017

K.Jayaprakash

... Petitioner/ Petitioner/ 5th Defendant

vs.

Karthikeyan

... Respondent/ Respondent/ Plaintiff

rep by its Power Agent

J.N.Govarthanan

Petition filed under Section 115 of the Civil Procedure Code, against the fair and decretal order dated 23.12.2016 made in I.A.No.336 of 2016 in O.S.No.723 of 2010 on the file of the Principal Sub Court, Madurai.

For Petitioners : Mr.K.Guhan
For Respondent : Mr.T.R.Jeyapalam

O R D E R

The revision petitioner herein is the 5th defendant in the suit filed for recovery of possession by the respondent herein. Originally, the suit was filed against the parents of this petitioner who were arrayed as defendants 1 and 2. Pending suit, they died and as their legal heir, the revision petitioner was brought on record. When the case was posed for filing written statement, the revision petitioner has not filed written statement. Hence, he was set ex parte on 13.10.2015 and thereafter, ex parte evidence was recorded and decree was passed on 25.11.2015.

2.The revision petitioner has filed an application to set aside the ex parte decree with delay of 52 days. He has filed I.A.No.336/2016 under Section 5 of the Limitation Act to condone the delay of 54 days in filing the application under Order 9 Rule 13 which was numbered as I.A.No.337/2016. The Trial Court after hearing the revision petitioner and the respondent dismissed the Section 5 application. Consequentially, the application filed under Order 9 Rule 13 CPC was also dismissed.

3.Aggrieved by that, the present revision petition is filed on the ground that the learned Sub Judge ought to have considered the I.A and allowed the same in the interest of justice to give opportunity to the defendant to contest the matter on merits. Without affording adequate and sufficient opportunity to the



petitioner, ex parte decree has been passed. The reason for remaining ex parte and the delay not been properly appreciated by the Court below.

4. Heard the counsel for the revision petitioner and the respondent. Perused the impugned order.

5. The affidavit filed in support of Section 5 application indicates that on 25.11.2015, the revision petitioner was suffering from viral fever and was under treatment. Therefore, he was not able to attend the Court and instruct the counsel. He came to know about the ex parte decree belatedly from his counsel. Hence, he filed petition to set aside the ex parte decree with delay condonation petition.

6. The Trial Court has vividly narrated the conduct of the petitioner and the chequered history of the litigation. Specifically, the Trial Court has pointed out that after impleading the petitioner as legal representative of the deceased defendants 1 and 2, opportunity was given to him to file written statement on 28.08.2014. From 28.08.2014 to 13.10.2015 for nearly 14 months, 11 adjournments were granted to this revision petitioner to file written statement. Despite giving adequate opportunity, he has not filed written statement. Hence, he was set ex parte on 13.10.2015. The ex parte decree was passed after 1½ months on 25.11.2015 after recording evidence let in by the plaintiff.

7. In such circumstances, the petition to condone the delay in filing the application to set aside the ex parte decree only indicates that the revision petitioner was suffering from viral fever on 25.11.2015, the date on which ex parte decree was passed and due to his illness, he was not able to attend the Court and give instructions to his counsel. There is no explanation on his part in his affidavit for his failure to file written statement despite adequate opportunity given to him and his non appearance on 13.10.2015 when he was set ex parte.

8. When sufficient time was given to file a petition to set aside the ex parte order dated 13.10.2015, the revision petitioner could have averted the decree which came to be passed 1½ months later on 25.11.2015. Waiting for the Court to pass a decree and the decree holder to file execution petition, the revision petitioner has come out with an imaginary reason to condone the delay. Having seen through the game, the Court below has dismissed the application since the application to condone delay is bereft of sufficient reasons.



9. This Court finds no reason to interfere with the well considered order of the Trial Court, since there is no illegality or perversity in the impugned order.

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Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To

The Principal Sub Court,
Madurai.

+1 CC to M/s.K.GUHAN, Advocate, SR No. 61288.

+1 CC to M/s.T.R.JEYAPALAM, Advocate, SR No. 61151.

NBI

PSM/MR-KKR/SAR2/05.07.2017/3P/4C

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