



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.01.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP(MD) No. 174 of 2017

S.A. @ Kadarkarai ..Petitioner/Petitioner/ Defendant

Vs.

Arasamuthu Nambiyar(died)

2. Sundari

3.Ananthapadmanabhan

4.Mukesh

..Respondents/Respondents/ Plaintiffs

(R2 to R4 impleaded as per order made in MP(MD).No.1 of 2015)

Prayer: This Civil Revision Petition is filed under Section 115 of CPC against the fair and decreetal order made in I.A.No.2210 of 2010 in O.S.No.478 of 2004 by the learned Principal District Munsif Court, Tenkasi.

For Petitioner

:Mr. D. Venkatesh

For respondents

: Mr.D. Srinivasaraghavan

O R D E R

This Civil Revision Petition is filed against the fair and decreetal order made in I.A.No.2210 of 2010 in O.S.No.478 of 2004 by the learned Principal District Munsif Court, Tenkasi.

2. The petitioner is the defendant in O.S.No.478 of 2004 on the file of the Principal District Munsif Court, Tenkasi. The respondent is the plaintiff. The suit in O.S.No.478 of 2004 is filed for declaration and injunction. The petitioner entered appearance through Advocate, but, subsequently, did not file written statement and contest the suit. On 03.06.2004, ex parte decree was passed. The petitioner filed I.A.No.2210 of 2010 for condoning the delay of 2346 days in filing a petition to set aside the ex parte decree.

3. The petitioner was doing the Milk Vending business and his father was looking after the suit proceedings. He incurred loss in the business and earning his livelihood as coolie. Therefore, he sold the property by way of sale deed to one Kannan. Subsequently, the petitioner settled in Kerala. The said Kannan approached the petitioner and informed him about the ex parte decree and called upon the petitioner to set aside the ex



parte decree or to take back the property. Immediately, he filed the petition to set aside the ex parte decree and hence, the delay is neither wilful nor wanton but due to the reasons stated above.

4. The respondent filed counter affidavit and stated that the petitioner has not given any sufficient and valid reason to condone the huge delay of 2346 days to set aside the ex parte decree. The said kannan filed O.S.No.120 of 2009, on the file of the District Munsif Court, Thenkasi, for declaration and injunction and the said suit was dismissed on 06.09.2010 for default. The petitioner has suppressed the suit filed by said Kannan and dismissal of the said suit for default, filed present application and prayed for dismissal of the petition.

5. The learned Judge considering the averments made in the affidavit and counter affidavit and materials on record dismissed the application holding that petitioner has not given any valid and sufficient reason for condoning the delay of 2346 days in filing a petition to set aside the ex parte decree.

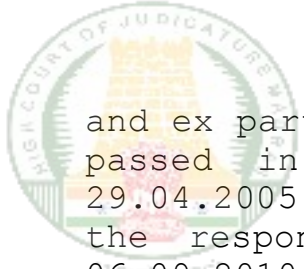
6. Against the said order, present Civil Revision Petition has been filed.

7. The learned counsel appearing for the petitioner submitted that the learned Judge failed to see that petitioner's father was looking after the suit proceedings and due to his old age, he could not contest the suit properly. The petitioner has given valid and sufficient reason for delay in filing the petition to set aside the ex parte decree. The learned Judge failed to consider the Judgments of this Court and Hon'ble Apex Court that the application to condone the delay must be liberally considered and party must be given an opportunity to contest the case on merits.

8. The learned counsel appearing for the respondents submitted that the petitioner has not given any valid and sufficient reason for condoning the delay of 2346 days in filing a petition to set aside the ex parte decree. The intention of the petitioner is not bonafide, but only to drag on the proceedings, he has filed the present petition. The petitioner has not approached the Court with clean hands, as he has suppressed the fact that suit filed by the said Kannan, was dismissed for default.

9. I have heard the learned counsel appearing on either side and perused the materials available on record.

10. The respondents filed suit for declaration and injunction against the petitioner. The petitioner after entering appearance, did not file written statement and contest the suit



and ex parte decree was passed on 3.06.2004. After the decree was passed in the suit, sold the property to one Kannan on 29.04.2005. The said Kannan has filed O.S.No.120 of 2009 against the respondents herein and the said suit was dismissed on 06.09.2010 for default. Subsequent to that, the petitioner filed present application in the year 2010. The reason given by the petitioner for condoning the delay is not valid and it is well settled that length of delay is not criteria, the intention of the party must be bonafide and reason must be sufficient.

11. In the circumstances, the learned Judge considered all the materials on record in proper perspective and has given cogent and valid reasons for dismissing the application in I.A.No.2210 of 2010 in O.S.No.478 of 2004. Further, the learned Judge has exercised his power conferred on him properly and there is no irregularity or illegality warranting interference by this Court.

12. In the result, the Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar (AS)

/True copy/

Sub Assistant Registrar

To

The Principal District Munsif, Tenkasi.

+1 CC to M/s.D.SRINIVASA RAGAVAN, Advocate, SR No. 4644.

+1 CC to M/s.D.VENKATESH, Advocate, SR No.5035.

TRP

PSM/CM-MSA/22.02.2017/3P/4C

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