



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.01.2017

CORAM:

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.182 of 2017 (PD)

and

C.M.P (MD) No.792 of 2017 (PD)

Shanmugavel

...Petitioner/Petitioner/Defendant

Vs

Ramaiah

...Respondent/ Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed, under Section 115 of Code of Civil Procedure, to set aside the fair and decreetal order, in I.A.No.527 of 2013 in O.S.No.14 of 2010, dated 09.09.2016 on the file of the District Munsif- cum-Judicial Magistrate, Keeranur, Pudukottai.

For Petitioner : Mr. K. Baalasundharam

ORDER

The petitioner has filed this Civil Revision Petition to set aside the fair and decreetal order, in I.A.No.527 of 2013 in O.S.No.14 of 2010, dated 09.09.2016 on the file of the District Munsif- cum-Judicial Magistrate, Keeranur, Pudukottai.

2.The petitioner is the defendant. The respondent is the plaintiff. The respondent filed O.S.No.14 of 2010 for specific performance before the District Munsif-cum-Judicial Magistrate, Keeranur. The petitioner entered appearance on 22.02.2010 through Advocate. Subsequently, he did not file written statement after taking number of adjournments. The petitioner was set ex-parte and ex-parte decree was passed on 09.06.2010. The respondent filed E.P.No.20 of 2011 to execute the decree. In the E.P., the petitioner received notice and entered appearance through one S.M.Sekar Advocate. Subsequently, he did not file any counter. The Court executed the sale deed in favour of the respondent on the file of Sub Registrar Office, Virudhunagar document No.1948/2013. The respondent also filed E.P.No.17 of 2013 for possession. At that time, the petitioner filed I.A.No.527 of 2013 for condoning the delay of 1248 days in filing the petition to set aside the ex-parte decree. According to the petitioner, he was suffering from severe joint pain and he was taking native treatment. After receiving notice in the E.P.No.20 of 2011 one Durairaj friend of



the petitioner engaged an Advocate on behalf of the petitioner. The said Durairaj suffered loss in the business and left the Village. The petitioner did not know the name of the Advocate and therefore, he could not follow the proceedings. The delay is neither willful nor wanton, only due to the reasons stated above.

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3.The respondent filed counter affidavit and stated that the petitioner after entering appearance on 22.02.2010 took number of adjournments for filing written statement. Subsequently, written statement was not filed and he was set ex-parte and ex-parte decree was passed on 09.06.2010. The respondent filed E.P.No.20 of 2011 and in the said E.P., also the petitioner was entered appearance and did not file counter and contest the E.P. Execution Court executed the sale deed bearing document No.1948 of 2013. The respondent filed E.P.No.17 of 2013 for possession. At that time, the petitioner filed the present application only to drag on the proceedings. The petitioner has not given any valid reason from when he is suffering from Jaundice and from whom he was taking treatment. The petitioner was working in Archaeology Survey of India as Contract worker and respondent obtained copy of the attendance register to show that the petitioner was working in Archaeology Survey of India during the period from 2012 to 25.09.2014. The petitioner has not approached the Court with clean hands and prayed for dismissal of the application.

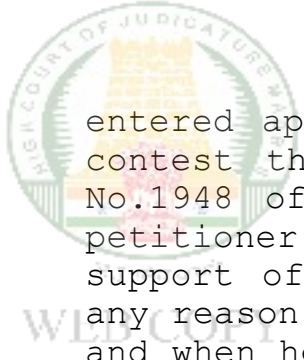
4.The learned Judge considering the averments made in the affidavit and counter affidavit, dismissed the application holding that the petitioner has not given any valid reason for the delay of 1248 days in filing the petition to set aside the ex-parte decree.

5.Against the said order of dismissal, the petitioner has come out with the present Civil Revision Petition.

6.The learned counsel appearing for the petitioner submitted that the learned Judge failed to see that the petitioner has given sufficient reason to condone the delay of 1248 days. The learned Judge dismissed the application erroneously holding that the petitioner was working in some institution without any basis and without any document. The learned Judge failed to consider the application for condonation of delay liberally.

7.I have heard the learned counsel appearing for the petitioner and also perused the entire materials on record.

8.The petitioner filed application for condonation of delay of 1248 days to set aside the ex-parte decree. From the materials it is seen that the petitioner entered appearance through Advocate on 22.02.2010 but he did not file written statement. An ex-parte decree was passed on 09.06.2010. The respondent filed E.P.No.20 of 2011 to execute the sale deed. In the said E.P., the petitioner



entered appearance through Advocate and did not file counter and contest the same. The Court executed the sale deed by document No.1948 of 2013 in favour of the respondent. At that time, the petitioner filed present application. In the affidavit filed in support of the present application, the petitioner has not given any reason and not stated from when he was suffering from jaundice and when he was cured. In the E.P., he entered appearance through Advocate. The petitioner has stated that his friend one Durairaj engaged advocate. The respondent filed attendance register of the petitioner received from employer of the petitioner through Right to Information Act to the effect that the petitioner was working from July 2012 December 2013. The petitioner has not given any valid reason for not filing application during this period. The learned Judge has rightly exercised his jurisdiction conferred on him and there is no illegality or irregularity warranting interference by this Court.

9.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar

To

The District Munsif- cum-Judicial Magistrate,
Keeranur, Pudukottai.

+1 cc to M/s.K.Baalasundharam, Advocate in SR.No.5102/17

am

CSL/CM-MSA/15.02.2017 :3P/3C

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30.01.2017