



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.216 of 2017

and C.M.P (MD) No.952 of 2017

Deva Arulraj

... Petitioner/Petitioner/Defendant

Vs.

M/s.The Federal Bank Limited,
Rep. Through its Senior Manager,
Kunnathukal,
Kaarakonam Neyyattinkara Taluk,
Trivandrum District.

... Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure against the order, dated 23.02.2015 passed in I.A.No.75 of 2012 in O.S.No.226 of 1998 on the file of the Principal Sub Court, Nagercoil.

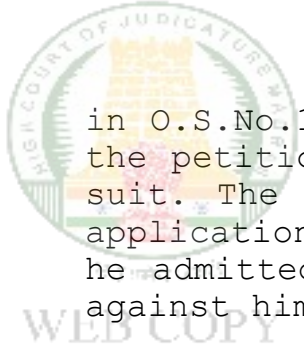
For Petitioner : Mr.T.Lajapathi Roy

ORDER

The petitioner has filed the above Civil Revision Petition against the order, dated 23.02.2015 passed in I.A.No.75 of 2012 in O.S.No.226 of 1998 on the file of the Principal Sub Court, Nagercoil.

2.The petitioner is the defendant and the respondent is the plaintiff in the suit in O.S.No.226 of 1998 on the file of the Principal Sub Court, Nagercoil. The respondent filed the said suit for recovery of money by enforcing mortgage created over the property by the petitioner. The petitioner remained ex-parte. A preliminary decree and final decree were passed on 05.08.1999. The respondent filed an Execution Petition in E.P.No.35 of 2004 for sale of mortgaged property. The petitioner, at that stage, filed an application in I.A.No.75 of 2012 to condone the delay of 4203 days in filing the petition to set aside the ex-parte decree.

3.According to the petitioner, no summons were served on him either in the suit or in the final decree proceedings. In both the proceedings, the petitioner was served only by paper publication. The respondent filed counter and contended that the petitioner was aware of the suit filed by the respondent as one Wilson filed a suit



in O.S.No.196 of 1997 against the petitioner and the respondent and the petitioner through his Advocate appeared and contested the said suit. The petitioner was examined himself as D.W.1 in the present application. During his chief examination and in cross-examination, he admitted that the proceedings were initiated by the said Wilson against him and the respondent.

4.The learned Judge considering these facts as well as the fact that the petitioner filed the application to condone the delay after 9 months from the date of receipt of notice in the second Execution Petition and the petitioner did not explain the delay properly and dismissed the application and imposed cost of Rs.10,000/-. Against the dismissal order, the present Civil Revision Petition is filed.

5.The learned counsel for the petitioner reiterated the averments made in the affidavit filed in support of the application and the grounds raised in the present Civil Revision Petition and submitted that the learned Judge has not properly considered all the materials on record and ought to have considered the application to condone the delay liberally as held by this Court and the Honourable Apex Court.

6.Heard the learned counsel for the petitioner and perused the materials available on record.

7.The petitioner filed an application to condone the delay in filing the application to set aside the ex-parte decree along with the petition to condone the delay of 4203 days. It is well settled that the length of delay is not a criteria, but party must give sufficient reason to condone the delay. The intention must be bonafide and should not be malafie. The intention should not be to drag on the proceedings. In the present case, there is enormous delay in filing the petition to set aside the ex-parte decree. The petitioner was aware of the suit filed by the respondent in view of the suit filed by one Wilson against the petitioner and the respondent wherein he appeared through Advocate. Further, even after receipt of notice in the Execution Petition in E.P.No.35 of 2004, the petitioner did not file any application immediately to condone the delay in filing the petition to set aside the ex-parte decree. He has filed the present application only after nine months. The learned Judge has properly considered the well settled legal proposition and relied on the Judgment of the Honourable Supreme Court in **Brijesh Kumar and others Vs. State of Haryana and others** reported in **2014 SAR (Civil) 613** and dismissed the application by imposing cost of Rs.10,000/- on the petitioner. The order of the learned Judge is valid and there is no error or irregularity in the order passed by the learned Principal Sub Judge, Nagercoil, warranting interference of this Court. Hence, this Civil Revision Petition is liable to be dismissed.

8.Accordingly, this Civil Revision Petition is dismissed. No



costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(AE)

WEB COPY

/True copy/

Sub Assistant Registrar

To

The Principal Subordinate Judge,
Nagercoil.

+1cc to Mr. T.LAJAPATHI ROY, ADVOCATE, SR NO.5871

PS

MAS/MR:20.02.2017:3P/3C

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