



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2017

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD) (PD) No.2536 of 2017

Ramaiah

... Petitioner/Petitioner/Defendant

-Vs-

S.Nadarajan

... Respondent/Respondent/Plaintiff

Prayer: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure to set aside the fair order and decreetal order in I.A.No.1116 of 2016 in O.S.No.82 of 2011 dated 04.02.2017 on the file of Principal District Munsif, Tenkasi.

For Petitioner : Mr.P.T.Thiraviam

O R D E R

This Civil Revision Petition has been filed to set aside the fair order and decreetal order passed in I.A.No.1116 of 2016 in O.S.No.82 of 2011 dated 04.02.2017 on the file of Principal District Munsif, Tenkasi.

2.The defendant is the petitioner in this Civil Revision Petition. He was served with suit summons in O.S.No.82 of 2011 on the file of the Principal District Munsif, Tenkasi. He had filed written statement also. Thereafter he did not contest the suit proceedings. As a result, an ex-parte decree came to be passed on 09.09.2011. The revision petitioner filed an application for setting aside the same. But there was a delay of 1590 days in filing the application under Order 9 Rule 13 C.P.C. The learned trial Judge dismissed the application on the ground that no sufficient cause was set out for condonation of delay. Aggreived by the dismissal of his application under Order 9 Rule 13 C.P.C on 04.02.2017, this Civil Revision Petition has been filed.

3. The learned counsel appearing for the petitioner submitted that the defendant did not contest the suit proceedings as the matter was amicably settled between the parties and on believing the words of the plaintiff, the defendant did not participate in the suit proceedings. He was aware about passing of the ex-parte decree only much later and that the delay occasioned in filing the said application cannot be put against him.



4. I am of the view that explanation offered by the revision petitioner is not convincing. The reasons assigned for dismissing the application are sound. It is relevant to note here that the ex-parte order came to be passed on 09.09.2011. The present I.A.No.1116 of 2016 came to be filed on 27.07.2016. There is a gap of almost 5 years between passing of decree and filing of the present application. The explanation offered by the revision petitioner is vague and general. When he was made a party to the suit proceedings and he had filed written statement also, he ought to have verified as to whether the suit got terminated or not. If any compromise was arrived at between the parties, a compromise memo should have been filed and the suit should have been disposed of. The conduct of the defendant is not *bonafide*. I see no merit in this Civil Revision Petition.

5. It is made clear that the dismissal of this petition will not take away the right of the revision petitioner to file an appeal against the ex-parte decree.

6. With the above observation, this Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To,

The Principal District Munsif,
Tenkasi.

+ 1 cc TO Mr.P.T.Thiraviam , Advocate in SR No. 94151

CM

AE/KK/SAR1/18.01.2018/2P/3C

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