



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP(MD) No. 363 of 2017 and
CMP(MD).No.1771 of 2017

C. Thankaraj

: Revision Petitioner

Vs.

Rukmony

: Respondent

Prayer: This Civil Revision Petition is filed under Section 115 of CPC against the order and decreetal order passed in I.A.No.279/2009 in O.S. No.61/2008 dated 30.09.2011 on the file of the learned Subordinate Judge, Padmanabhapuram.

For Petitioner

:Ms. C.K.M. Appaji

O R D E R

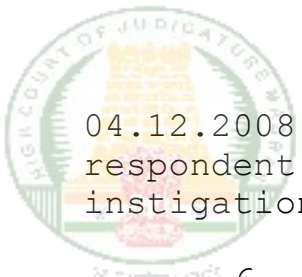
This Civil Revision Petition is filed against the fair and decreetal order passed in I.A.No.279/2009 in O.S. No.61/2008 dated 30.09.2011 on the file of the learned Subordinate Judge, Padmanabhapuram.

2. The revision petitioner, who is the plaintiff filed suit in O.S.No.61 of 2008, on the file of the Sub Court, Padmanabhapuram, for specific performance of agreement of sale dated, 10.06.2005, against the respondent and an ex parte decree was passed on 04.12.2008. The petitioner filed I.A.No.279 of 2009 to condone the delay of 238 days in filing a petition to set aside the ex parte decree.

3. According to the respondent, due to the dispute between herself and her husband, her husband instigated the petitioner to file suit with false averments. HMOP filed for divorce is pending between the respondent and her husband. The suit summon was received by her husband forging the signature of the respondent with an intention to throw her out of the house property.

4. The petitioner filed counter and opposed the said application.

5. According to the petitioner, the respondent received ~~sentences on and in her~~ appearance through Advocate one Mr.Balachandar. Subsequently, she did not file written statement. Therefore, the petitioner was set ex parte and ex parte decree was passed on



04.12.2008. The petitioner denied that petitioner and respondent's husband colluded together and filed suit at the instigation of the respondent's husband.

6. Before the learned Judge, the respondent examined herself as PW.1

7. The learned Judge considering the averments in the materials on record and evidence allowed the application on condition that respondent pays a sum of Rs.1,000/- as cost, by an order dated 30.09.2011.

8. Against the said order, the petitioner has come out with the present petition.

9. I have heard the learned counsel appearing for the petitioner and perused the materials available on record.

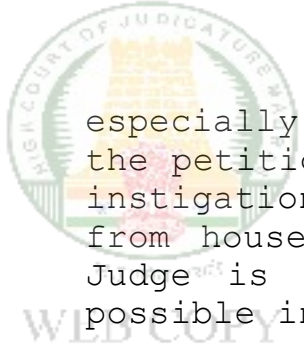
10. From the records it is seen that the respondent has contended she did not receive suit summons and her signature was forged by her husband and she came to know about the suit and ex parte decree, only when the petitioner demanded the respondent to execute the sale deed in respect of suit property and when the petitioner demanded the respondent to vacate and hand over the possession of the suit property, after receiving the balance sale consideration. She examined herself as PW.1. The petitioner did not let in any evidence contradictory to the respondent's contention.

11. The learned Judge considering all the materials on record allowed the application in order to give an opportunity to the respondent to put forth her case on merits. The learned Judge has compensated the petitioner by awarding a sum of Rs.1,000/- as cost.

12. It is well settled that application to condone the delay must be considered liberally and length of delay is not a criteria. Party must give sufficient reason for condoning the delay and intention of the party must be bonafide. Party must be given an opportunity to put forth his case on merits and should not be shut out at the threshold itself.

13. In view of the well settled proposition, there is no irregularity or illegality in the order passed by the learned Subordinate Judge, Theni, warranting interference by this Court. No costs. Consequently, connected Miscellaneous Petition is closed.

<https://hcservices.ecourts.gov.in/hcservices/> The learned counsel for the petitioner has not stated the stage of the suit. It will be in the interest of justice if the respondent is given an opportunity to put forth her case,



especially when she made serious allegation of collusion between the petitioner and her husband that the suit has been filed at the instigation of her husband with an intention to throw her out from house property. The suit is of the year 2008, the learned Judge is directed to dispose of the suit as expeditiously as possible in any event not later than 30th June 2017.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The learned Subordinate Judge, Padmanabhapuram.

+1CC to M/S.C.K.M.Appaji, Advocate, SR.No. 10344,

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