



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2017

CORAM:

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THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP(PD) (MD) No. 38 of 2017 and
CMP(MD).No.153 of 2017

1.Thiruppali
2.Subban

..Revision petitioners

Vs.

Ayyasamy

.. Respondent

Prayer: This Civil Revision Petition is filed under Section 115 of CPC against the Order and decreetal order in I.A.No.586 of 2014 in O.S.No.101 of 2006 dated 21.10.2016 on the file of the District Munsif Cum Judicial Magistrate, Keeranoor, Pudukkottai District.

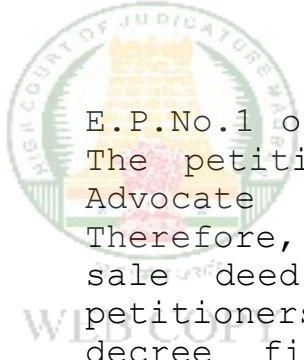
For Petitioners : Mr.G. Thandayuthapani for
Mr.K.Balasundharam

For Respondent : Mr. K.P. Narayana Kumar

O R D E R

This Civil Revision Petition is filed against the fair and decreetal order made in I.A.No.586 of 2014 in O.S.No.101 of 2006 dated 21.10.2016 on the file of the District Munsif Cum Judicial Magistrate, Keeranoor, Pudukkottai District.

2. The revision petitioners are defendants in O.S.No.101 of 2006, on the file of the District Munsif Cum Judicial Magistrate, Keeranoor, Pudukkottai District. The respondent, who is the plaintiff filed the suit for specific performance of the agreement of sale dated 09.09.2003. The petitioners entered appearance on 25.08.2006 through Advocate. Subsequently, the petitioners did not file written statement, in spite of several adjournments. Therefore, ex parte order was passed on 27.11.2006. On the application filed by the petitioners, by an order dated 25.06.2007, the ex parte order was set aside. The petitioners filed written statement. Based on the pleadings, issues were framed and trial commenced. The respondent examined as PW.1 and he was examined in chief on 10.11.2010 and the suit was posted for cross examination by the petitioners on 16.11.2010. On that date, the respondent's counsel for the petitioners reported no instructions and an ex parte decree was passed. The respondent deposited the balance sale consideration of Rs.17,500/- on 12.01.2011 and filed



E.P.No.1 of 2012. In the Execution Petition, notice was ordered. The petitioners received notice and entered appearance through Advocate on 18.04.2012. But, did not file any counter. Therefore, the petitioners were set ex parte on 28.07.2012 and sale deed was executed and registered on 13.06.2013. The petitioners along with an application to set aside the ex parte decree filed an application in I.A.No.586 of 2014 to condone the delay of 1397 days in filing a petition to set aside the ex parte decree and the petitioners also filed another Interlocutory application.

3. According to the first petitioner, the second petitioner was conducting the case and he fell sick and underwent surgery and for two years he could not move out and therefore, the petitioners could not contest the case and therefore, the delay in filing an application to set aside the ex parte decree is neither wilful nor wanton. The respondent filed detailed counter and opposed the said application.

4. The learned Judge considering the averments made in the affidavit and counter affidavit dismissed the application holding that the petitioners have not given any valid reason for condoning the delay in filing a petition to set aside the ex parte decree.

5. Against the said order of dismissal, the present Civil Revision Petition has been filed.

6. I have heard the learned counsels appearing on either side and perused the materials available on record.

7. From the materials available on records it is seen that, after the ex parte decree dated 16.11.2010, the respondent deposited the balance sale consideration of Rs.17,500/- on 12.01.2011 and filed E.P.No.1 of 2012 on 13.03.2012. The petitioners received notice and entered appearance through Advocate in the Execution Petition on 18.04.2012. At that time, the petitioners did not file any application to set aside the ex parte decree. Even after receiving notice in the E.P.No.1 of 2012, the petitioners did not file counter in the Execution petition. After entering appearance in Execution Petition on 18.04.2012, the petitioners filed the present application to condone the delay in filing a petition to set aside the ex parte decree, only on 13.10.2014. The petitioners not given any valid reason to set aside the ex parte decree, especially the delay from 18.04.2012, when they entered appearance through Advocate in E.P.No.1 of 2012, filed by the respondent, to 13.10.2014 when they filed the present application to condone the delay. In the circumstances there is no illegality or irregularity in the order passed by the Court below warranting interference by this Court.



8. In the result the Civil Revision Petition is dismissed.
No costs. Consequently, Connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar (CSIII)

/True Copy/

Sub-Assistant Registrar

To

The District Munsif Cum Judicial Magistrate, Keeranoor,
Pudukkottai District.

+One cc to Mr.K.Baalasundharam, Advocate, SR.No.12007

+One cc to Mr.K.P.Narayanakumar, Advocate, SR.No.12124

trp
RL/4C/3P/MR/SAR2/6.4.2017

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