



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.2624 of 2016 (NPD)

and

C.M.P(MD)No.12329 of 2016

Essaru .. Petitioner/Petitioner/2nd Respondent/
2nd Defendant

Vs.

1.Thomas

2.Ramany

.. Respondents/Respondents/Petitioner &
1st Respondent/Plaintiff & 1st Defendant

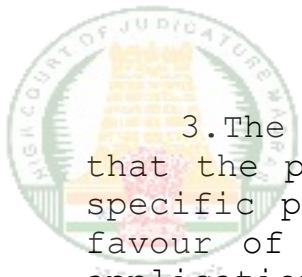
PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the order and decreetal order passed in E.A.No.338 of 2015 in E.P.No.51 of 2014 in O.S.No.42 of 2011, dated 29.06.2016 on the file of the Sub Court, Kuzhithurai and allow the Civil Revision Petition.

For Petitioner : Mr.K.Sreekumaran Nair

ORDER

This petition has been filed by the petitioner to set aside the order and decreetal order passed in E.A.No.338 of 2015 in E.P.No.51 of 2014 in O.S.No.42 of 2011, dated 29.06.2016 by the Sub Court, Kuzhithurai.

2.The petitioner is the second defendant in O.S.No.42 of 2011 on the file of the Sub Court, Kuzhithurai and second respondent in E.P.No.51 of 2014. Originally, the first respondent filed suit in O.S.No.42 of 2011 against the second respondent for specific performance. Subsequently, by the order, dated 20.12.2012 in I.A.No.393 of 2012 the petitioner was impleaded as second defendant in the said suit. Summons was served on the petitioner. The petitioner did not contest the suit and he was said ex-parte. The said suit was decreed by the judgment and decree, dated 28.11.2013. The first respondent filed E.P.No.51 of 2014 to execute the decree. In the E.P., notice was served on the petitioner for the hearing on 16.12.2014, the petitioner did not appear and contest the matter. In the E.P., an ex-parte order was passed on 15.04.2015. The petitioner filed E.A.No.338 of 2015 to condone the delay in filing to set aside the ex-parte order. According to the petitioner, the second respondent herein, who is his vendor assured him that he will contest the suit and therefore, he did not participate in the trial. Subsequently, when notice was received in the E.P., he was suffering from Heart Ailment and therefore, could not contest the E.P.,



3.The first respondent opposed the said application and stated that the petitioner purchased the suit property, pending suit for specific performance, knowing fully well the agreement of sale in favour of the second respondent and prayed for dismissal of the application.

4.The learned Judge considering the averments made in the affidavit and counter affidavit, contention of the learned counsel for the parties, dismissed the E.A.No.338 of 2015 holding that the petitioner has not given any valid reason for condonation of delay.

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 petitioner has given valid reason for condoning the delay in filing the petition to set aside the ex-parte order in the Execution Petition. The learned Judge failed to consider the reasons given by the petitioner that he was suffering from Heart Ailment and has produced the Medical Certificate. The learned Judge ought to have considered the application to set aside the ex-parte order liberally and prayed for allowing the Civil Revision Petition.

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

8.From the materials on record, it is seen that the petitioner did not contest the suit filed for Specific Performance of the agreement of sale. Even in the Execution Petition, after receiving notice, he did not appear and contest the E.P., The decree for specific performance was passed on 28.11.2013. The first respondent contended that the petitioner purchased the suit property pending suit for specific performance of the agreement of sale against the second respondent, knowing fully well. Considering the facts and entire materials on record, the learned Judge has dismissed the application holding that the petitioner has not given valid reason for setting aside the ex-parte order. From the facts of the present case it is clear that, the intention of the petitioner is not bonafide and it is only to drag-on the proceedings, he has come out with the present petition. The learned Judge has considered all the materials in proper perspective, dismissed the application 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(W)

/TRUE COPY/



To
The Sub Court,
Kuzhithurai.

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AES/RR-ME/3p/2c/19.01.2017

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