



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 20.04.2017
CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.R.P (PD) (MD) No.528 of 2016
and
C.M.P (MD) No.2241 of 2017

V.Murugan : Petitioner

vs.

1.V.Mariammal
2.V.Narayanan : Respondents

Prayer : Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, against the order and decretal order, dated 25.02.2016 made in I.A.No.192 of 2016 in I.A.No.1030 of 2015 in O.S.No.125 of 2007 on the file of Principal District Munsif Court, Tuticorin.

For Petitioner : Mr.M.P.Senthil
For Respondent : Mr.S.C.Herold Singh

O R D E R

It is a case of partition suit. The revision petitioner who is the defendant is none other than the son of the 1st plaintiff remained *ex parte* and allowed decree to be passed against him on 14.09.2007. Thereafter, final decree was also passed on 18.07.2011. Stating illness, his attempt to set aside the *ex parte* order failed for non furnishing sufficient cause and the decree holder has proceeded further with I.A.No.1030 of 2015 for Court auction of the suit property, in which, an order was passed on 11.09.2015.

2.The revision petitioner again stating illness for his non appearance, took out an application in I.A.No.192/2016 to condone the delay and set aside *ex parte* order. The Court below after considering the facts of the case has narrated in detail how this revision petitioner is consistently delaying the process by remaining *ex parte*, giving the very same reason of illness and even without disclosing the nature of illness, has filed an application on 25.01.2016 to set aside the *ex parte* order passed in I.A.No.1030 of 2015. Since there is no sufficient cause put forth by the revision petitioner for the delay of four months, the Trial Court has dismissed his application.

3.The learned counsel for the revision petitioner submitted that the Court below has committed an error in dismissing his



application even without advertng to the reasons assigned in the affidavit filed in support of the application which is more satisfactory and convincing for the cause which prevented the petitioner from appearing on the day when he was set ex parte.

4. Since the learned counsel for the revision petitioner has insisted that the revision petitioner has adverted reasons for non appearance, the Court went through the entire pleadings of the revision petitioner made in his application to set aside the ex parte order. In the said petition, the revision petitioner has stated that he engaged a counsel to set aside the ex parte decree passed against him and meanwhile, he received a notice in I.A.No.1030/2015 and engaged the present counsel. But, due to his illness, he was not able to contact his counsel regularly. Believing his counsel will conduct the case, he kept silent without enquiring about the progress of the case and he came to know about the ex parte order passed against him later. But, again due to his illness, he was taking native treatment which prevented him from contacting his counsel to know about the progress of the case. Only on 29.01.2016, when he received auction notice, he came to know about the ex parte order passed against him and then, again due to his illness, he was not able to contact his counsel immediately.

5. Nowhere in his affidavit, he has disclosed what illness he was suffering and where he was taking treatment and whether that was sufficient to prevent him from contacting his counsel. Since there is no sufficient cause provided by the revision petitioner for his absence, the Trial Court has rightly dismissed his application.

6. This Court finds no error in the said order. Hence, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To

The Principal District Munsif,
Tuticorin.

+1 CC to Mr.M.P.Senthil, Advocate, SR No. 53200/17.

+1 CC to Mr.S.C.Herold Singh, Advocate, SR No. 53185/17.

NBI/IA

PSM/JC/02.05.2017/2P/4C

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