



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CRP(MD) No.393 of 2017 (NPD)

and

CMP(MD) No.1955 of 2017

Rengasamy

...Petitioner/Petitioner/1stDefendant

Vs.

Rengan

...Respondent/Respondent/Plaintiff

Prayer: This Civil Revision Petitions is filed under Section 115 of C.P.C praying to call for the records pertaining to the fair and decreetal order in I.A.No.107 of 2014 in O.S.No.47 of 2006, dated 14.11.2016, passed by the learned District Munisf-cum-Judicial Magistrate, Keeranoor.

For Petitioner

:Mr.K.P.Narayana Kumar

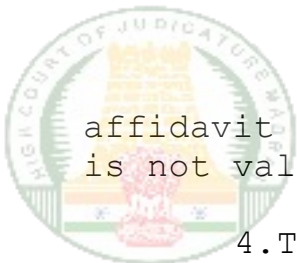
O R D E R

The petitioner has filed this Civil Revision Petition to set aside the fair and decreetal order in I.A.No.107 of 2014 in O.S.No.47 of 2006, dated 14.11.2016, passed by the learned District Munisf-cum-Judicial Magistrate, Keeranoor.

2.The petitioner is the first defendant and the respondent is the plaintiff. The respondent filed suit in O.S.No.47 of 2006 before the District Munsif-cum-Judicial Magistrate, Keeranur, for declaration of title, injunction and to declare the sale deed, dated 20.1.1987 as void. The petitioner entered appearance through Advocate. Subsequently, he did not file any written statement and therefore, he was set ex-parte and ex-parte decree was passed on 20.11.2006 against the petitioner. The petitioner filed I.A.No.107 of 2014 to condone the delay of 2633 days in filing application to set aside the ex-parte decree. According to the petitioner, he underwent eye operation in Agarwal Eye Hospital, Chennai and he was inpatient from 10.08.2006 to 15.08.2006 for 5 days. After that, he was affected by jaundice and he was taking native treatment for four years. He was also suffering from Kidney ailment and was taking treatment in ABC Hospital, Trichy.

<https://hcservices.ecourts.gov.in/hcservices/>

3.In the said I.A., the respondent filed counter affidavit and denied all the averments made by the petitioner in the



affidavit and contended that the reasons given by the petitioner is not valid reason to condone the delay.

4.The learned Judge considering the averments made in the affidavit and counter affidavit and documents filed by the petitioner, dismissed the application holding that the petitioner has not given valid reason for condoning the delay and the intention of the petitioner is not bonafide.

5.Against the said order of dismissal made in I.A.No.107 of 2014, dated 14.11.2016, the petitioner has come out with the present Civil Revision Petition.

6.The learned counsel appearing for the petitioner reiterated the averments made in the grounds and relied on the judgment reported in (1998) 7 Supreme Court Cases 123 (*N.Balakrishnan vs. M.Krishnamurthy*).

7.Heard the learned counsel appearing for the petitioner and also perused all the materials available on record.

8.According to the petitioner, he was taking treatment for more than 4 years. The petitioner has not substantiated his claim with regard to treatment taken by him for his alleged ailment. Further, he has not given any reason for not contact his advocate earlier. The petitioner after receipt of summons in the suit, engaged an advocate to conduct the suit. In that case, the petitioner ought to have been diligent enough to contact his advocate to put-forth his case and defend the same. The contention of the learned counsel for the petitioner that the petitioner has furnished the details of the hospital from where he has taken treatment and period from which he has taken treatment. Treatment taken by the petitioner will not be a ground for not contacting his advocate to defend his case. The petitioner was not diligent enough to prosecute the case. It is well settled that the length of delay is not a criteria. The reason given by the petitioner must be sufficient and bonafide. In the present case, the petitioner has not given any sufficient reason. The judgment relied on by the learned counsel for the petitioner is not applicable to be facts of the present case.

9.From the materials it is clear that the intention of the petitioner is not bonafide and his intention is only to drag on the proceedings. It is pertinent to note that the petitioner died on 13.12.2016 and present CRP is filed on 16.12.2016. The learned counsel for the petitioner submitted that he has received the papers on 11.12.2016 and filed the petition on 16.12.2016. When the Civil Revision Petition is posted for admission, the learned
<https://hcservices.hcscs.gov.in/hcservices> petitioner took time for filing petition for impleading the LRs of the petitioner. Today, the learned counsel for the petitioner submitted that the petition filed by the



petitioner for impleading has been returned for want of some correction.

10. In view of the above, the Civil Revision Petition is not maintainable. Hence, the Civil Revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(AD II)

/True Copy/

Sub Assistant Registrar

To
The District Munisf-cum-Judicial Magistrate,
Keeranoor.
+1cc to M/S.K.P.Narayanakumar, Advocate, SR.12260

CRP(MD) No.393 of 2017 (NPD)
03.03.2017

AM
KK-RR-28.3.2017-3P-3C