

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CRP (NPD) No.3573 of 2010

Therasa

...

Petitioner

Vs

K.M.Velusamy

...

Respondent

PRAYER : Civil Revision Petition filed under Section 115 of CPC against the order and decretal order dated 30.08.2010 passed in I.A.No.594 of 2007 in O.S.No.64 of 2003 on the file of the learned II Additional Subordinate Judge, Coimbatore.

For Petitioner : Mr.G.Jeremiah

For Respondent : Mr.S.Saravanan

ORDER

This Civil Revision Petition is filed against the order and decretal order dated 30.08.2010 passed in I.A.No.594 of 2007 in O.S.No.64 of 2003 on the file of the learned II Additional Subordinate Judge, Coimbatore.

2. The petitioner is the defendant and the respondent is the plaintiff in the suit in O.S.No.64 of 2003 on the file of the Additional Subordinate Court, Coimbatore. The respondent filed the above said suit for specific performance of agreement of sale. The petitioner filed written statement on 28.07.2003 but did not contest the suit. Hence, an ex parte decree was passed on 15.06.2004. As per the ex parte decree, the respondent deposited the balance sale consideration on 13.07.2004 and filed E.P for execution of the decree. Notice was served on the petitioner in the EP in the year 2005. The petitioner did not appear and remained ex parte. At that stage, the petitioner filed the present application in I.A.No.594 of 2007 to condone the delay in filing the petition to set aside the ex parte decree. According to the petitioner, he was not feeling well and was suffering from Aristritics and taking treatment at Chennai and could not contact his counsel and instruct him. Only on 16.07.2007 when the respondent came to take delivery and possession of the suit property, he came to know about the ex parte decree. Since the petitioner had no knowledge in legal side and he acquired the information from his counsel, the delay in filing the set aside petition has occurred and the delay is neither wilful nor wanton.

3. The learned Judge, considering the averments in the affidavit, counter affidavit and materials on record, dismissed the application holding that the petitioner has not given sufficient reason to condone the delay.

4. Against the said order of dismissal dated 30.08.2010 made in I.A.No.594 of 2007 in O.S.No.64 of 2003, the petitioner has filed the present Civil Revision Petition.

5. Heard the learned counsel appearing for the petitioner as well as respondent and perused the materials available on record.

6. From the materials available on record, it is seen that exparte decree was passed on 15.06.2004. As per the exparte decree, the respondent had deposited the balance sale consideration on 13.07.2004 and filed E.P for execution of the decree. Notice was served on the petitioner in the E.P in the year 2005. The petitioner having received the notice in the E.P, did not appear and remained exparte.

7. It is well settled that the application for condoning the delay must be considered liberally and length of delay is not a criteria. The intention of the parties must be bonafide and should not be malafide. There must be sufficient reason to condone the delay. In the present case, the petitioner has not given valid and sufficient reason to condone the delay. The learned Trial Judge has rightly dismissed the application, by giving cogent and valid reason. I do not find any irregularity or illegality in the order passed by the learned Trial Judge, warranting interference by this Court.

8. In the result, the Civil Revision Petition is dismissed. No costs.

19.03.2018

rgr
Index: Yes/No
Speaking/Non-speaking order

To

The II Additional Subordinate Judge,
Coimbatore.

सत्यमेव जयते
WEB COPY

V.M.VELUMANI, J.

rgr



CRP (NPD) No.3573 of 2010

WEB COPY

19.03.2018