

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2018

CORAM : THE HONOURABLE MR.JUSTICE N.SESHASAYEE

CRP (PD) No. 2541 of 2012
and MP.No.1 of 2012

Easwaran ... Petitioner

Vs

G.Chandrasekaran ... Respondent

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code against the order dated 04.04.2012 made in I.A.No.751 of 2011 in O.S.No.104 of 2008 on the file of the District Munsif-cum-Judicial Magistrate, Uthankarai.

For Petitioner : Mr.D.Ravichander

For Respondents : Mr.Su.Srinivasan

ORDER

1.1. The case of the revision petitioner is that he has laid a suit in O.S.No.104 of 2008 on the file of the District Munsif Court, Uthankarai, against the respondent for specific enforcement of a contract of sale agreement entered into between the parties on 18.08.2003. The respondent/defendant has filed his written statement on 04.06.2009. Necessary issues were settled by the trial Court and the case was listed for trial on 03.01.2011. From 03.01.2011, the case was adjourned to 10.01.2011, on which date, the respondent was set *ex parte* and on 12.01.2011, evidence was recorded and an *ex parte* decree

was passed.

1.2. To set aside the aforesaid decree, the respondent herein had filed an application in I.A.No.751 of 2011 within the statutorily stipulated 30 days time. In the affidavit filed in support of the said application, the respondent would aver that he was down with a viral fever, consequent to which he could not make his appearance during trial. This was accepted by the trial Court and an *ex parte* decree was set aside Vide order dated 04.04.2012. This order is now in challenge.

2. The learned counsel appearing for the revision petitioner/plaintiff would now allege that on 08.02.2011, the respondent had filed his I.A.No.751/2011, this was returned on 14.02.2011 with a direction to submit it within 15 days, but without representing the said application in time he had filed it only on 21.12.2011, after a delay of 311 days. Even this delay was not properly condoned by filing appropriate petition. This would indicate, submitted the learned counsel for the petitioner, that respondent/defendant has not displayed the right attitude required to defend the action, and that he is attempting to hoodwink the judicial process by resorting to his own ingenious methods and technics that would delay and defeat justice and the cause.

3. The learned counsel for the respondent would argue that the respondent was a senior citizen aged 70 years at that relevant time, and he has substantial defence to the suit as has been disclosed in his written statement

<http://www.judis.nic.in> and hence the trial Court has rightly exercised his discretion in setting aside

the *ex parte* decree.

4. From the order of the trial Court, it is evident whether the delay in representation has actually been condoned. However, it needs to be insisted that the nature of defence that the respondent has taken in his written statement are substantial and it is highly essential that the parties are allowed to contest on the defence offered. Therefore, this Court does not want to interfere with the order now under challenge and accordingly confirms it without getting into other technicalities. The revision petition is accordingly dismissed, however with no costs. Consequently, connected miscellaneous petition is closed. The trial Court is also required to list the matter for trial at the earliest and complete the trial on or before 31.08.2018.

10.04.2018

ds

Index : Yes/No

Speaking Order / Non-Speaking Order

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N.SESHASAYEE, J.,

ds

To:

The District Munsif-cum-Judicial Magistrate,
Uthankarai.



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