



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 28.09.2018
DELIVERED ON : 24.10.2018

WEB COPY

CORAM
THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P.(NPD) (MD)No.555 of 2015
and
M.P.(MD)No.1 of 2015

G.P.Shanmugam .. Petitioner
Vs.
S.Muthu Ramalingam .. Respondent

Prayer : This Civil revision petition is filed under Section 115 of the C.P.C., to set aside the fair order and decreetal order dated 19.08.2014 passed in I.A.No.155 of 2013 in A.S.No.12 of 2013 on the file of the Additional Sub Court, Tirunelveli.

For Petitioner : Mr.T.Selvan
For Respondent No.3 : Mr.K.Chengiz Khan

ORDER

Heard Mr.T.Selvan, learned counsel appearing for the petitioner and Mr.K.Chengiz Khan, learned counsel appearing for the respondent.

2.This petition has been filed to set aside the fair order and decreetal order dated 19.08.2014 passed in I.A.No.155 of 2013 in A.S.No.12 of 2013 on the file of the Additional Sub Court, Tirunelveli.

3.The petitioner herein is the defendant and the respondent is the plaintiff herein in the suit. The respondent filed a suit in O.S.No.48 of 2005 for a prayer of injunction before the learned II Additional District Munsif, Tirunelveli. After the trial, the learned II Additional District Munsif, dismissed the suit. Against the order of dismissal, the respondent filed an appeal in A.S.No.12 of 2013. The petitioner filed petition in I.A.No.155 of 2013 to condone the delay of 220 days in filing the cross objections. The learned II Additional District Munsif dismissed the petition. Against the order of dismissal, the petitioner has filed this revision petition.

4.On the side of the petitioner, it is stated that the suit filed by the respondent was dismissed by the lower Court. The respondent filed an appeal when the case was posted for arguments. The learned counsel for the petitioner came to verify the records and find out that there was a finding by the trial Court that the purchase of the respondent is valid as there is no evidence as to the cancellation of general power and the petitioner can object the



evidence only by way of pleadings or by way of cross objections. The petitioner received summons on 14.03.2013 and he has failed to file cross appeal within 14.04.2013. There was a delay of 220 days and the same is to be condoned.

5. On the side of the respondent, it is stated that the petitioner has not filed any appeal, against the findings of the trial Court, no specific reasons are stated in the petition. The petitioner cannot file cross appeal, he can only file cross objections.

6. Records perused. Order 41 of Rule 22 is applicable only for the cross objections but the petitioner has filed this petition stating that he wanted to file a cross appeal. The trial Court has dismissed the suit of the respondent with a finding in his favour. Opportunity for the petitioner to put forth his case on the particular point is to be given. The petitioner can contest the point only at the time of appeal. The reasons for the delay stated by the petitioner is that the counsel for the petitioner failed to note the particular point. The right of the petitioner cannot be curtailed due to the fault of his counsel and an opportunity for the petitioner to put forth his case is to be given. This Civil Revision Petition is allowed and the order passed by the lower Court is set aside. No Costs. Consequently, M.P.(MD)No.1 of 2015 is closed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar(CS-III)

Mrn
To

1. The Additional Sub Judge, Tirunelveli.
2. The II Additional District Munsif, Tirunelveli.

Copy to

The Section Officer, Record Keeper, (2 COPIES)
V.R. Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.T.Selvam, Advocate in SR No.91597

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and

M.P. (MD) No.1 of 2015