



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.01.2018

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CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.(NPD) (MD)No.1890 of 2017

Ramamoorthy : Petitioner/Petitioner/5th Defendant

Vs.

Periyapandi : Respondent/Respondent/Plaintiff

Prayer: Civil Revision Petition is filed under section 115 of the Code of Civil Procedure, against the fair and decreetal order, dated 24.07.2017 passed in I.A.No.380 of 2016 in O.S.No.109 of 2006 on the file of the District Munsif Court, Nilakottai.

For Petitioner : Mr.M.Shankar

For Respondent : Mrs.Radhi Sathish

O R D E R

This civil revision is filed against the order dated 24.07.2017 made in I.A.No.380 of 2016 in O.S.No.109 of 2006 on the file of the District Munsif Court, Nilakottai, dismissing the application to condone the delay of 2539 days in filing the petition to set aside the ex-parte decree, dated 04.08.2009 passed in O.S.No.109 of 2006.

2.The learned counsel appearing for the petitioner has contended that the suit was posted on 16.04.2004 for filing written statements. The petitioner is as an Army man in Maharashtra State and hence, he has not received any summons. Therefore, the petitioner was not able to appear before the trial court on that day and hence, the suit was decreed ex-parte. When the petitioner came to know about the ex-parte decree, there was a delay of 2539 days in filing a petition to set aside the ex-parte decree. As the delay caused is neither wilful nor wanton, the petition to condone the delay, which was dismissed by the learned Trial Judge on 24.07.2017, against which the present Civil Revision Petition is filed.



3. Per contra, the learned counsel appearing for the respondent has contended that the petitioner had filed this revision with an intention to drag on the proceedings and he knows about the ex-parte decree passed against him well in advance.

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4. Heard the learned Counsel for the petitioner and the learned Counsel for the respondent and perused the materials available on record.

5. The learned counsel for the petitioner would contend that the notice was not served.

6. It is seen from the records that the suit is filed for partition, separate possession and for declaration and the suit was decreed ex-parte on 04.08.2009. On perusal of records, it shows that the notice was served in the year 2007. Time was granted upto 2009 for filing written statements, but he has not filed written statements. After receipt of E.P. notice he has filed the condone delay application. The learned Trial Judge concluded that he has appeared in the year 2007. He has knowledge about the case, but he has not contested the case and hence the Trial Judge dismissed the petition.

7. The main grievance of the petitioner is that there are arguable points available to contest the suit and hence, the ex-parte decree passed against him has to be set aside and he is also ready to compensate the plaintiff by way of costs.

8. The learned Counsel appearing for the respondent though initially opposed for considering the delay would submit that the revision may be allowed on terms, with a direction to the learned Trial Judge to dispose of the suit within the time stipulated by this Court.

9. Keeping in view of the above facts and also considering the fact that the petitioner is working for the Country, this Court is of the view that an opportunity shall be given to him, to contest the suit on merits. As the delay was huge, i.e., 2539 days in filing the application to set aside the ex-part decree, this Court feels ends of justice would be met if ordered on terms.

10. In the result, this revision is allowed and the order dated 24.07.2017, passed in I.A.No.380 of 2016 in O.S.No.109 of 2006 on the file of the learned District Munsif, Nilakottai, is set aside. The I.A.No. 380 of 2016 in O.S.No.109 of 2006 is allowed on condition that the petitioner shall pay a sum of Five Thousand only] to the respondent, as costs, within a period of one week from the date of receipt of a copy of this order. If the cost is not paid within the said period, the



Civil Revision Petition stands automatically dismissed. The learned Trial Judge is also directed to dispose of the suit within three months from the date of receipt of a copy of this order.

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Sd/-

Assistant Registrar(Crl. side)

/True Copy/

Sub Assistant Registrar

To

The District Munsif,
District Munsif Court, Nilakottai.

+1cc to M/S.M.Sankar, Advocate SR.No. 42476

+1cc to M/S.N.Sathish Babu, Advocate SR.No. 42739

C.R.P. (NPD) (MD) No.1890 of 2017
17 .01.2018

RM

JM/MR/SAR 4/06.02.2018/3P/4C