



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 14.11.2017

DELIVERED ON : 06.02.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (PD) (MD) No.1321 of 2016

and

C.M.P. (MD) No.6326 of 2016

N.Murugavel : Petitioner/Petitioner/Defendant

vs.

N.Shanmugavel : Respondent/Respondent/Plaintiff

PRAYER : Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the order passed in I.A.No.487 of 2010 in O.S.No.1221 of 2004 dated 12.02.2016 on the file of the Principal District Munsif, Madurai Town.

For Petitioner : Mr.F.X.Eugene

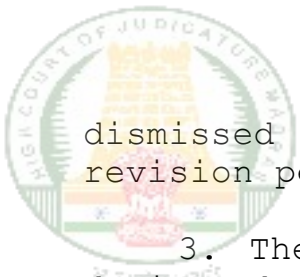
For Respondent : Mr.V.Sitharanjandas

ORDER

Assailing over the order passed by the learned Principal District Munsif, Madurai, in I.A.No.487 of 2010 in O.S.No.1221 of 2004 dated 12.02.2016, this Civil Revision Petition has been filed.

2. The facts of the case, in nutshell, are as follows:

2.1. The petitioner and respondent are brothers. The petitioner is the defendant in the suit instituted by the respondent/plaintiff, in O.S.No.1221 of 2004, seeking a direction to the defendant to execute the sale deed, as per the family agreement dated 26.05.1997. During the course of trial, the petitioner/defendant was directed to file his written statements. As the petitioner failed to do so, an ex-parte decree dated 17.04.2007 came to be passed against the petitioner. Thereafter, the petitioner has filed an interlocutory application in I.A.No.487 of 2010 under Section 5 of the Limitation Act and Section 151 of the Civil Procedure Code, requesting to condone the delay of 996 days in filing a petition, challenging the ex-parte decree. The Trial Court, after hearing both the sides, had



dismissed the petition. Aggrieved thereby, the present civil revision petition came to be filed.

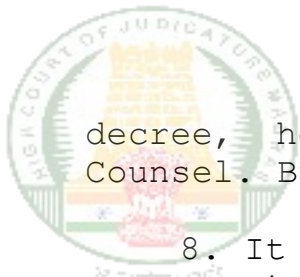
3. The learned Counsel for the petitioner would submit that during the relevant point of time, he was suffering from severe diabetics, besides, he had also shifted his residence. Therefore, he has not received the communication sent by his erstwhile Counsel. When he received the Court summons in E.P.No.267 of 2009, he had contacted his Counsel and came to know about the ex-parte decree. As his health was not good at that time, he was not able to file the application to set aside the ex-parte decree on time. Therefore, the delay is neither wilful nor wanton and the Court below ought to have a liberal approach in condoning the delay application, imposing a reasonable cost. In support of his contention, he has relied upon certain reported judgments viz., **(2002) 3 SCC 195, (2001) 6 SCC 176, (1998) 7 SCC 123** and he prays to quash the impugned order, so as to contest the suit on merits, after setting aside the ex-parte decree.

4. Per contra, the learned Counsel for the respondent would strongly deny the fact that the petitioner/defendant had shifted his residence and therefore, the communications sent by his Advocate had not reached him. The learned Counsel would further submit that according to the petitioner/defendant, even after receiving the E.P., notice from the Court, due to his illness, he was not able to file the application to set aside the ex-parte decree, but, on the other hand, pending E.P., he had fraudulently executed a sale deed in favour of his brother-in-law, which shows his *mala fide* intention. Therefore, the trial Court is right in dismissing the petitioner's plea and he prays to dismiss this petition. He has also relied upon some reported judgments viz., **2004 (1) L.W. 406, 2005 (2) L.W. 218, 2009 (5) CTC 48, 2015 (3) MWN (Civil) 46, 2015 (2) MWN (Civil) 276 and 2001 (2) M.L.J. 734** in support of his plea.

5. Heard the learned Counsel appearing for both sides and perused the documents placed on record.

6. The learned Counsel for the petitioner/defendant has submitted certain judgments, wherein, it is observed that liberal approach has to be made in condone delay applications. The learned Counsel for the respondent/plaintiff has also produced certain judgments, to the effect that though liberal approach has to be made in condone delay applications, the delay tactics attributed by the petitioner has to be strictly viewed.

7. A perusal of records would show that the main ground, on which the petitioner/defendant has filed this petition is that he has shifted his residence to one of his own buildings and due to this shifting of residence at the time of passing the ex-parte



decree, he had not received the communications sent by his Counsel. But, to that effect, he has not produced any proof.

8. It is an admitted fact that the petitioner had received the summons in E.P.No.267 of 2009 and entered appearance through his Counsel and filed Vakalath on 22.10.2009. But, the petition to set aside the ex-parte decree was filed on 14.02.2010, with further delay and subsequently, a sale deed dated 02.07.2010, has also been registered by the petitioner in favour of his brother-in-law, which shows his *mala fide* intention.

9. From the records, it is also seen that the address mentioned in the proof affidavit and deposition of PW1 is the address mentioned in the plaint O.S.No.1221 of 2004 and therefore, his argument that he had shifted his residence, so that he was not able to contact the Counsel and not able to know the fate of the case cannot be accepted.

10. The Judgments produced by the learned Counsel appearing for the respondent squarely applicable to the present circumstances of the case.

11. In view of the foregoing discussions, this civil revision petition is liable to be dismissed, as it is devoid of merits and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

sd/-

Assistant Registrar (Crl.Side)

/True Copy/

Sub Assistant Registrar

gk

To

The Principal District Munsif, Madurai Town.

+1cc to Mr.F.X.Eugene, Advocate in SR.No.46629

+1cc to Mr.V.Sitharanjandas, Advocate in SR.No.46331

GJM/RSK/SKN/SAR-I-26.2.18-3P-4C

**order made in
C.R.P. (PD) (MD) No.1321 of 2016
and C.M.P. (MD) No.6326 of 2016
06.02.2018**