



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.03.2018

CORAM:

THE HONOURABLE MRS. JUSTICE J. NISHA BANU

C.R.P (MD) No.1475 of 2016 (PD)

and

C.M.P. (MD) .No.7223 of 2016 and 10905 of 2017

R.Murugavel

.. Petitioner /
Petitioner / Defendant

Vs.

N.R.Kuppusamy

... Respondent /
Respondent / Plaintiff

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the fair and decreetal order, dated 23.03.2016, passed in I.A.No.481 of 2014 in O.S.No.94 of 2013 by the learned Additional Subordinate Judge, Dindigul.

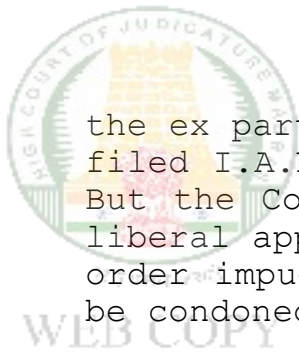
For Petitioner : Mr.V.Ragavachari
For respondent : Mr.V.Janakiramulu

ORDER

This civil revision petition has been filed by the revision petitioner / defendant as against the order, dated 23.03.2016, passed by the Court below dismissing Section 5 petition for condonation of delay of 386 days in filing a petition to set aside the ex parte decree.

2.The respondent / plaintiff has filed the suit in O.S.No.94 of 2013 for specific performance. Due to non appearance of the revision petitioner / defendant, an ex parte decree came to be passed on 05.08.2013. The respondent / defendant remained ex parte in the execution proceeding also. Therefore, a sale deed has been executed in the name of the respondent / plaintiff. Thereafter, the revision petitioner / defendant has filed I.A.No.481 of 2014 in O.S.No.94 of 2013 seeking to condone the delay of 386 days in filing a petition to set aside the ex parte decree. The Court below has dismissed the said application holding that no sufficient reason is assigned to condone the delay. Aggrieved by that order, the revision petitioner / defendant has filed this revision petition.

3. The learned counsel for the revision petitioner would submit that it was only a loan transaction and the revision petitioner / defendant was forced to execute the said agreement. He would further submit that due to ill-health the revision petitioner / defendant could not appear before the Court below and that he came to know about the ex parte decree only after receipt of summons in the execution proceeding and that for filing a petition to set aside



the ex parte decree, there was a delay of 386 days and hence, he has filed I.A.No.481 of 2014. The delay was neither willful nor wanton. But the Court below, without considering the same in pragmatic and liberal approach, has dismissed the said petition and therefore, the order impugned in this petition may be set aside and the delay may be condoned.

4. The learned counsel for the respondent / plaintiff would submit that though the revision petitioner / plaintiff has stated that he came to know about the ex parte decree only after receipt of summons in the execution petition, he has purposefully remained ex parte in the execution proceeding also and filed a petition to condone the huge delay of 386 days in filing a petition to set aside the ex parte decree without assigning any valid reason. The Court below has rightly dismissed the said petition and the same need not be interfered with.

5. Heard the learned counsel for the revision petitioner and the learned counsel for the respondent and perused the records carefully.

6. Admittedly, it is not the case of the revision petitioner / defendant that he did not receive any notice either in the suit or in the execution proceeding. Even according to him, due to ill-health, he could not appear before the Court and could not file the petition to set aside the ex parte decree in time. Except the word "ill-health", he did not aver anything about the same. He has also not produced any document to substantiate the same.

7. Though it is stated by the revision petitioner / defendant that in the loan transaction, the revision petitioner / defendant was forced to execute the said agreement, the said reason has not been mentioned in the affidavit filed in support of the petition. The attitude of the revision petitioner / defendant in not appearing before the Court below even after receipt of notice would go to show that in order to drag on the matter, he has purposefully left the suit and the execution proceeding in ex parte. The reason assigned by the revision petitioner / defendant is not sufficient enough to condone the enormous delay of 386 days in filing a petition to set aside the ex parte decree. The Court below has rightly dismissed the said application and the same does not warrant interference of this Court.

8. In view of the above, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (AS)

/True copy/



To

1.The Additional Sub Judge,
Dindigul.

2.The Record Keeper, (2 Copies)

V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1CC TO M/S.V.JANKIRAMULU, ADVOCATE, SR NO.52447

+1CC TO M/S.V.RAGHAVACHARI, ADVOCATE, SR NO.52837

order made in
C.R.P(MD)No.1475 of 2016 (PD)
02.03.2018

gcg

MS/SV/SAR-1/26.03.2018/3P.6C