



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.11.2017

DELIVERED ON : 29.01.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (NPD) (MD) No.1758 of 2016

and

C.M.P. (MD) No.8483 of 2016

Rathinam : Petitioner/Petitioner/Defendant

vs.

1.Santhanam
2.Sundaravelu
3.Balu

: Respondents/Respondents/Plaintiffs

PRAYER : Civil Revision Petition filed Section 115 of the Civil Procedure Code, against the fair and decreetal order made in I.A.No.566 of 2013 in O.S.No.1406 of 2009 dated 18.03.2016 on the file of the learned II Additional District Munsif, Tiruchirappalli.

For Petitioner : Mr.S.Gopalamanikandan

For Respondents : Mr.C.Vakeeswaran

ORDER

Challenging the fair and decreetal order passed by the learned II Additional District Munsif, Tiruchirappalli, in I.A.No.566 of 2013 in O.S.No.1406 of 2009 dated 18.03.2016, this Civil Revision Petition has been filed.

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

2.1. The petitioner herein is the defendant in the suit instituted by the respondents herein, in O.S.No.1406 of 2009, seeking permanent injunction and other reliefs. During the course of trial, on 13.12.2011, a conditional order was passed directing the petitioner herein to file his written statements. But, the petitioner failed to do so. Thereafter, the matter was adjourned to 19.12.2011, 21.12.2011, 04.01.2012 for ex-parte evidence and on 06.01.2012, an ex-parte decree was passed against the petitioner.



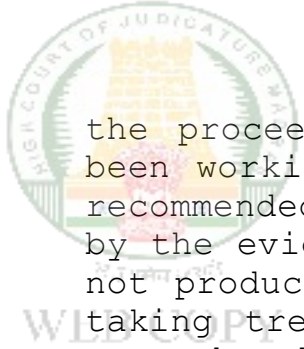
Thereafter, the petitioner has filed an interlocutory application in I.A.No.566 of 2013 under Section 5 of the Limitation Act, requesting to condone the delay of 603 days in filing a petition, challenging the *ex-parte* decree, under Order 9 Rule 13 CPC. The Trial Court, after hearing both the sides, 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 diabetics, blood pressure and chest pain, besides, he was ailing from Jaundice. For that, he took natural treatment at his native place in Udankudi, Thoothukudi District. Therefore, he was not able to meet his erstwhile Counsel and not able to follow the fate of the case. After recovery, he came to know about the *ex-parte* decree and by that time, there was a delay of 603 days in filing the petition to set aside the *ex-parte* decree. It is the case of the petitioner that the respondents have created and forged documents over the suit property and using the same, they have obtained an *ex-parte* decree. Therefore, he prays for allowing the present petition, so as to contest the suit on merits.

4. On the other hand, the learned Counsel for the respondents stoutly refuted the contentions of the petitioner. He would submit that during the relevant course of time, the petitioner was not sick. He was working as an agent for LIC of India and LIC Housing Finance and at that time, the petitioner had took several insurance policies for his customers. Besides, the petitioner had also executed a sale deed dated 23.04.2013 in favour of one Ganesan and Rajuvelu, before the Sub Registrar, K.Sathanur Registrar Office. Moreover, on 30.06.2013, he had appeared before the Airport Police Station, Tiruchirappalli and has submitted a statement before the then Inspector of Police. But, the interlocutory application was filed only on 30.09.2013. The learned Counsel for the respondents would strongly contest that the petitioner was closely watching the Court proceedings and with a view to cause damages to their rights, the interlocutory application came to be filed, which was rightly dismissed by the Trial Judge, therefore, he prays for dismissal of this revision petition.

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

6. A perusal of records would show that the petitioner has wantonly and wilfully, to deviate the Court and to prolong the proceedings has come forward with the present petition. He was well aware of the *ex-parte* decree awarded. But, he had filed the interlocutory application stating that he was suffering from jaundice and hypertension, therefore, he was not able to follow



the proceedings. Whereas, at the relevant point of time, he had been working as an LIC Agent and had took 70 policies as well as recommended for 140 housing loan applications, which was confirmed by the evidences produced before the lower Court. Moreover, he has not produced any documents, so as to prove his claim that he was taking treatment at his native place. Therefore, it is not his case that he was sick at the relevant point of time.

7. A perusal of records would also show that the petitioner has filed another interlocutory application in I.A.No.468 of 2014, to receive additional affidavit, so as to plead fraud. The said application was dismissed on merits and the petitioner has not challenged the same, so far.

8. This Court is generally very lenient in condoning the delay petitions. But, in the present case on hand, the petitioner is very well aware of the proceedings of the Court and only to delay the proceedings, he is before this Court with the present petition.

9. The learned Trial Judge has passed a detailed and elaborate order, touching all the aspects and this Court, finds no infirmity or inferiority in the order passed by the learned Trial Judge in I.A.No.566 of 2013 in O.S.No.1406 of 2009 dated 18.03.2016, which does not warrant any interference.

10. In view of the foregoing discussions, this civil revision petition is dismissed, as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

The II Additional District Munsif,
Tiruchirappalli.

+ 1 cc TO Mr.C.Vakeeswaran , Advocate in SR No. 44706
+ 1 cc TO Mr.S.Gopalamanikandan , Advocate in SR No. 44388

gk

AE/SV/SAR1/09.02.2018/3P/4C

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