



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.10.2018

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP (MD) No.2419 of 2016 (NPD)

and

CMP(MD) Nos.11404 & 11405 of 2016

M/s.Tristar Creators Pvt.Ltd, Chennai,  
No.9/5, Nandhanam Extension,  
First Street, Nandhanam, Chennai - 600 035.  
Rep.through its Assistant Manager,  
A.Jebakumar

...Petitioner/Petitioner/Defendant

Vs.

Ramasubramania Perumal

... Respondent/Respondent/Plaintiff

Prayer: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order made in I.A No.218 of 2015 in O.S No.150 of 2008 dated 29.09.2015 on the file of the Principal District Munsif, Tuticorin and allow the Civil Revision Petition.

For Petitioner : Mr.Muthu Geethaiyan  
for AAV.Partners

For Respondent : Mr.M.P.Senthil

### ORDER

The defendant in O.S No.150 of 2008 on the file of the learned Principal District Munsif, Tuticorin is the revision petitioner herein. The respondent filed the said suit seeking the relief of declaration and permanent injunction. Recovery of possession was also sought in the alternative. The suit was decreed exparte on 11.06.2008. To set aside the same, the revision petitioner filed an application in the year 2015. But then, there was a delay of 2261 days. To condone the same, I.A No.218 of 2015 was filed. The court below by the impugned order dated 29.09.2015 dismissed the I.A. Questioning the same, this civil revision petition has been filed.



2. Heard the learned counsel on either side.

3. The learned counsel appearing for the respondent/plaintiff pointed out that the plaintiff took summons only to the correct address and that it was returned un-served. The plaintiff cannot be blamed for the same. Likewise, the revision petitioner did not even enter appearance at the execution stage. The delay in this case is inordinate. He called upon this court to have a look at the affidavit filed in support of the set aside petition and the condone delay petition. The affidavit is highly unsatisfactory.

4. Though all these contentions urged by the learned counsel appearing for the plaintiff/respondent have considerable weight and force, this Court is of the view that the manner in which the Judgment has been rendered in this case is absolutely unsatisfactory. It only records the fact that proof affidavit was filed on the side of the plaintiff and that Exs.A1 to A4 was marked and since the relief which was sought for was made out, it was granted as such.

5. This Court has time and again reminded the courts below that such kinds of judgments ought not to be passed even in exparte cases. In this case, the revision petitioner's valuable property rights are involved. The revision petitioner had purchased the property in question on 12<sup>th</sup> September, 2007 by a registered document. Therefore, in cases such as this the plaintiff must take a decision only on merits.

6. In view of the long delay, this Court is of the view that the revision petitioner can be put on terms. The revision petitioner shall pay a sum of Rs.20,000/- as cost to the plaintiff within a period of three weeks from the date of receipt of a copy of this order. Upon proof of such payment, the court below shall number the set aside application and allow the same. The order impugned in this civil revision petition is set aside. One more opportunity is given to the revision petitioner to contest the suits on merits. Since the property in question is a vacant land, the possession will naturally follow title. Therefore, status quo that obtains as on date will prevail till O.S No. 150 of 2008 is disposed of on merits and in accordance with law.

7. If the revision petitioner fails to pay the cost amount of Rs.20,000/- to the plaintiff within the time stipulated above, the order passed in this civil revision petition will get recalled and the civil revision petition will stand dismissed automatically. If the plaintiff declines to accept the said amount, the revision petitioner shall deposit the same to the credit of the suit and it is open to the plaintiff to withdraw the same. Since the suit is



of the year 2008, the court below shall dispose of the same within a period of six months from the date of receipt of a copy of this order. This civil revision petition is allowed on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar(P&A)

/TRUE COPY/

Sub Assistant Registrar(CS-I)

To

The Principal District Munsif, Thoothukudi.

COPY TO:

THE RECORD KEEPER,  
V.R. SECTION,  
MADURAI BENCH OF MADRAS HIGH COURT,  
MADURAI. (2 Copies)

+1. C.C. to M/S.AAV.Partners, Advocate SR.No. 88058

+1. C.C. to M/S.M.P.Senthil, Advocate SR.No. 88182

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