



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.08.2018

CORAM

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THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

C.R.P. (NPD) (MD) No. 769 of 2016

and

C.M.P. (MD) No. 3838 of 2016

M. Ramdoss

.. Petitioner/Petitioner/Defendant

Vs.

S. Raj (Died)

1. R. Suseela

2. R. Sudhakaran

3. Sathiya

.. Respondents/Respondents/Legal

Representatives of plaintiff

PRAYER: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the fair and decretal order made in I.A.No.223 of 2015 in O.S.No.73 of 2007 on the file of the learned District Munsif Court, Periyakulam, Theni District, dated 17.03.2016 and allow the instant Civil Revision Petition.

For Petitioner : Mr.R.Shankar Ganesh

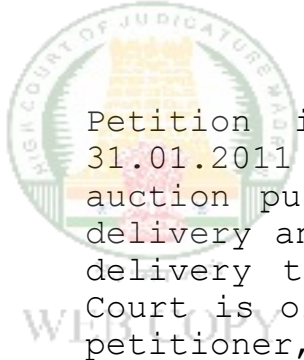
For Respondents : Mr.R.Suriya Narayanan for R1 to R3

O R D E R

The revision petitioner is defendant in O.S.No.73 of 2007 on the file of the District Munsif Court, which is a suit for recovery of a sum of Rs.10,000/-. The revision petitioner entered appearance through counsel, but then remained ex-parte. Therefore, an ex-parte decree was passed against the revision petitioner on 06.11.2007. To enforce the decree, E.P.No.3 of 2010 was filed and was also allowed. The property belonging to the revision petitioner was brought to auction and sold. In the meanwhile, the revision petitioner filed an Insolvency Petition in I.P.No. 9 of 2009. The revision petitioner filed a petition under Order 9 Rule 13 of C.P.C only in the year 2015. In the meanwhile, there was a delay of 2592 days. To condone the same, I.A. No.223 of 2015 was filed. The court below by order dated 17.03.2016 dismissed the said Interlocutory Application. The correctness of the said order is questioned in the Civil Revision Petition.

2. The learned counsel appearing for the revision petitioner submitted that the suit claim is only Rs.10,000/- and that he is ready to satisfy the same.

3. This Court was initially inclined to accede to the said request and set aside the ex-parte judgment and decree. But then, it is seen from the records that the decree holder filed an Execution



Petition in the year 2010 and the auction was conducted on 31.01.2011 and the sale deed was registered on 13.09.2011. The auction purchaser namely Murugaiah filed E.A.No.3 of 2012 seeking delivery and the same was allowed and the matter was not posted for delivery till date. Since third party right has intervened, this Court is of the view that if any sympathy is shown to the revision petitioner, it would be a misplaced one. The delay is not nominal. It is inordinate. It is more than 7 years. The reason set out in the affidavit filed in support of this petition is that the revision petitioner filed Insolvency Petition and due to the pressure of the debtors, he was not available. These reasons cannot be said to make out sufficient cause for condonation. Therefore, the court below was justified in dismissing I.A.No.223 of 2015 filed by the revision petitioner. There is no merit in this Civil Revision Petition and the same is dismissed. No costs. Consequently, connected C.M.P.(MD) No.3838 of 2016 is closed.

Sd/
Assistant Registrar (Writs)

/True copy/

Sub Assistant Registrar(CS-II)

To

- 1.The District Munsif, Periyakulam, Theni District.
- 2.The Section Officer,
V.R.Section, Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1cc to Mr.R.SURIYA NARAYANAN, Advocate, SR.No.80078

C.R.P. (NPD) (MD) No.769 of 2016
and C.M.P. (MD) No.3838 of 2016
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