



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.10.2018
CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP (NPD) (MD) No.1554 of 2018
and
CMP (MD) No.6809 of 2018

Murugan ... Petitioner/Petitioner/Defendant
Vs.

Balakrishnan ... 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 dated 05.07.2018 passed in I.A No.333 of 2018 in O.S No.166 of 2012 on the file of the District Munsif Court, Srivaikundam.

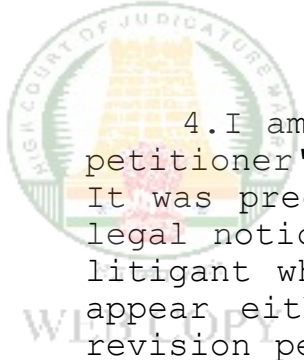
For Petitioner : Mr.M.P.Senthil
For Respondent : Mr.A.Thiruvadikumar

ORDER

The defendant in O.S No.166 of 2012 on the file of the District Munsif Court, Srivaikundam is the revision petitioner herein. The respondent/plaintiff filed the said suit for the relief of declaration and for recovery of possession. The suit was decreed exparte. Thereafter, execution petition was also filed. After receiving the notice in the execution petition, the revision petitioner applied for setting aside the exparte decree. In the meanwhile, there was a delay of 775 days in filing the said application. To condone the same, I.A No.333 of 2018 was filed. The court below by the order impugned in this civil revision petition dismissed the said 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 revision petitioner pointed out that after obtaining the exparte decree, the plaintiff did not file any execution petition and that for almost two and half years, he chose to wait. This was because the plaintiff had assured the revision petitioner that he would withdraw his suit. This understanding was arrived at in the presence of one Vadivel Nadar. The plaintiff therefore did not take any step for executing the decree so long as the said Vadivel Nadar was alive. Only after his demise, E.P came to be filed. The revision petitioner submitted that this clearly probablised the contentions set out by him in the affidavit filed in support of the I.A in question.



4.I am unable to agree with the said submission of the revision petitioner's counsel. The suit was not straightaway instituted. It was preceded by a legal notice. The defendant had received the legal notice. But, he did not offer any reply. The duty of any litigant who receives the court summons is to engage a counsel and appear either in person or through counsel. In this case, the revision petitioner claims that he met the plaintiff in person and that he was assured that the suit itself would be withdrawn. It is only a cock and bull story.

5.The court below rightly did not believe the same. The delay in this case is inordinate. The revision petitioner ought to have verified as to whether the suit was actually withdrawn as assured by the plaintiff. The court below has observed that sufficient cause has not been made out. This Court finds no ground to interfere with the well considered order passed by the court below. There is no merit in this civil revision petition. It stands dismissed. No costs. Consequently, connected miscellaneous also stands dismissed.

Sd/-
Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar(CS-II)

To

The District Munsif,
Srivaikundam.

+1CC to Mr.M.P.Senthil, Advocate, SR.No.88904
+1CC to Mr.A.Thiruvadikumar, Advocate, SR.No.89065

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