



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.03.2018

CORAM :

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (NPD) (MD) No.1804 of 2017

and

CMP (MD) No.9606 of 2017

K.Rajappan : Petitioner/Petitioner/Defendant

Vs.

1.K.N.Anandamoorthy

2.Thangavel

3.K.S.M.Karunanidhi

for themselves and as representatives of
the members of Mukkulathoor Kalvikuzhu

: Respondents/Respondents/Plaintiff

Prayer: Civil Revision Petition is filed under section 115 of the Code of Civil Procedure, against the fair and decreetal order, dated 05.06.2017 passed in I.A.No.103 of 2017 in O.S.No.421 of 2013 on the file of the II Additional District Munsif Court, Tiruchirappalli.

For Petitioner : Mr.M.Ashok Kumar

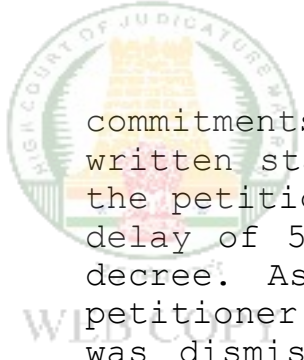
For Respondents : Mr.R.Subramanian

O R D E R

This civil revision is filed against the order dated 05.06.2017 passed in I.A.No.103 of 2017 in O.S.No.421 of 2013 on the file of the II Additional District Munsif Court, Tiruchirappalli, dismissing the application to condone the delay of 507 days in filing the petition to set aside the ex-parte decree, dated 13.10.2014 passed in O.S.No.421 of 2013.

2. The petitioner is the defendant in the suit in O.S.No.421 of 2013 and the respondents are the Plaintiffs have filed the said suit for recovery of possession and for rental arrears and for claiming damages.

3. The learned counsel appearing for the petitioner has contended that the suit was posted on 13.10.2014 for filing written statement. But the petitioner did not instruct his counsel to prepare the written statement due to his business



commitments. Therefore, the petitioner was not able to file his written statement and hence, the suit was decreed ex-parte. When the petitioner came to know about the ex-parte decree, there was a delay of 507 days in filing a petition to set aside the ex-parte decree. As the delay caused is neither wilful nor wanton, the petitioner has submitted the petition to condone the delay, which was dismissed by the learned Trial Judge on 05.06.2017, against which the present Civil Revision Petition is filed.

4. Per contra, the learned counsel appearing for the respondents has contended that the petitioner had filed this revision with an intention to drag on the proceedings and he knows about the ex-parte decree passed against him well in advance. He would further submit that after the ex-parte decree, the respondents filed an execution petition in E.P.No.63 of 2015, in which the petitioner/defendant also filed his counter and the case was adjourned for hearing.

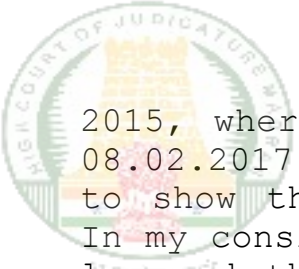
5. Heard the learned Counsel for the petitioner and the learned Counsel for the respondents and perused the materials available on record.

6. The learned counsel for the petitioner would contend that the since he has not given instructions to his counsel, the written statement has not been filed in time. He would further contend that the petitioner does not know about the ex-parte order and the learned Judge has dismissed the application only on the ground that the reason for delay has not been properly explained by the petitioner and the learned Judge ought to have allowed the application on terms.

7. It is seen from the records that the suit is filed for recovery of possession and the suit was decreed ex-parte on 13.10.2014. On perusal of records, it is seen that notice was served and the case was posted for filing written statement, but the petitioner has not filed written statement and hence, ex-parte decree was passed.

8. The main grievance of the petitioner is that there are arguable points available to contest the suit and hence, the ex-parte decree passed against him has to be set aside.

9. The learned Counsel appearing for the respondent would submit that the execution petition notice has been served on the petitioner in the month of March 2015 and he has filed his counter in the above execution petition as early as on 24.11.2015. Though the above suit has been set ex-parte on 19.08.2014, even then the petitioner has not taken any steps to set aside the ex-parte order served on him on 19.08.2014 and on that date the petitioner has not appeared and therefore, the suit was decreed ex-parte. The petitioner filed his counter in the above execution petition in November



2015, whereas, the delay condonation petition was filed only on 08.02.2017. Therefore, the above attitude of the petitioner goes to show that his intention is only to protract the proceedings. In my considered opinion the above petition is abuse of process of law and therefore, there is no acceptable reason to condone the delay.

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10. The trial court, after analysing the entire facts and circumstances of the case, has rightly dismissed the petition and I do not find any perversity or illegality in the order impugned in this revision.

11. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

rm

To

The II Additional District Munsif Court,
Tiruchirappalli.

+1 cc to MR.M.ASHOKKUMAR, Advocate SR.No.53454

+1 cc to MR.R.SUBRAMANIAN, Advocate SR.No.53869

C.R.P. (NPD) (MD) No.1804 of 2017

07.03.2018

SMA/CM-VR/SAR-2/28.03.2018:3P/4C