

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : 06.02.2018

Delivered on : 20.03.2018

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM**CRP (NPD) (MD) .No.455 of 2011****and****MP(MD)No.1 of 2011**

Anbu Selvam ...Petitioner/Petitioner/Defendant

vs.

Saroja Palanichamy ...Respondent / Respondent/ Plaintiff

PRAYER : Petition filed under Section 115 of Civil Procedure Code, to set aside the order 21.07.2010 and made in I.A.No.98 of 2009 in O.S.No.43 of 2007 on the file of Principal District Judge, Theni.

For Petitioner : Mr.R.Suriyanarayanan

For Respondent : Mr.A.Thirumurthy

O R D E R

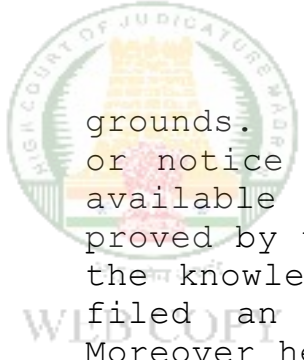
This Civil Revision Petition has been preferred against the decretal order passed in I.A.No.98/2009 in O.S.No.43/2007 on the file of the Principal District Judge, Theni.

2.The brief facts of the case is that the plaintiff/respondent had filed the suit in O.S.No.43 of 2007 for Specific Performance. Since there was no representation for the defendant, exparte decree was passed on 08.01.2008 in the suit. On the basis of the decree the plaintiff has filed Execution Petition in E.P.No.16/2009 and the same is pending before the Sub Registrar's Office for registration of document. In the mean time, the defendant/respondent has filed a petition to condone the delay of 582 days in filing the petition to set aside the exparte decree passed on 08.01.2008.

3.The learned counsel for the respondent submitted that the reasons for the delay stated by the petitioner is not acceptable. Only with an intention to drag on the proceedings the petitioner has filed this petition.

<https://hcservices.ecourts.gov.in/hcservices/>

4.The defendant has attacked the order by the following



grounds. The first ground is that there is no service of summon or notice in the suit is served on the petitioner as he is not available in the address mentioned in the plaint and the same is proved by the document namely transfer advice by BPCL, and she got the knowledge of the suit only recently and hence she could not file an application for setting aside the exparte decree. Moreover he has not taken steps for substituted service also. The second ground is that the suit is one for specific performance filed by a financier against the borrower based on the alleged agreement. The third ground is that it is settled principle that the length of delay is immaterial but the reason for delay must be reasonable.

5. Heard both sides and perused the materials available on record

6. I.A.No.98/09 was filed by the defendant in condoning the delay of 582 days in preferring application to set aside the exparte decree that was passed on 08.01.2008. The reason stated by the petitioner is that the respondent has given a wrong address of the petitioner when the petitioner is doing business at Chennai, during the proceedings of the suit and the decree has been obtained against this petitioner. In the counter statement the respondent has stated that based on the decree, E.P.16 of 2009 was filed for the execution of the sale deed and now for the execution of the said sale is pending before the Sub Registrar Office. The petitioner is fully aware of all this proceedings and he has purposely filed this petition to cause inconvenience to the petitioner.

7. The trial Court, after examining the witness and after perusing the records, has found that service was taken to the petitioner to the address that was stated in the sale agreement and when it was not served in the said address, publication was effected. The trial Court, observed the fact that proper service has been effected for the appearance of the defendant and after confirming the same only the absence of the petitioner was noted and the exparte decree was passed. Further, the petitioner has not filed any document before the trial Court to prove that he was residing in Chennai and doing business during the time of the proceedings of the case and he has not filed any document or reliable evidence to prove that the respondent has taken service to a improper address. Now, the sale deed was also executed by the trial Court. Further, how this petitioner came to know about the date of passing of the exparte decree and what is the reason for the huge delay of 582 days caused in filing application to set aside the exparte decree is not proved by the petitioner before the trial Court. Hence, the order of the trial court in dismissing the application does not require any interference.



8. In the result, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Principal District Judge,
Theni.

2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+ 1 cc TO Mr. R. Suryanarayanan , Advocate in SR No. 56575

+ 1 cc TO Mr. D. Nallathambi , Advocate in SR No. 56716

TM/CM

AE/SKN RSK/SAR4/03.04.2018/3P/6C

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