



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 16.02.2018

PRONOUNCED ON : 27.03.2018

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THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

CRP (NPD) (MD) .No.461 of 2011

Dharmalingam ... Petitioner/Petitioner/Respondent

Vs.

Periasamy ... Respondent/Respondent/Petitioner

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Criminal Procedure, to set aside the order and decretal order, dated 05.11.2008 passed in I.A.No.199 of 2008 in A.S.No.73 of 2004 on the file of the Sub Court, Tuticorin.

For Petitioner : Mr.C.Dhanaseelan

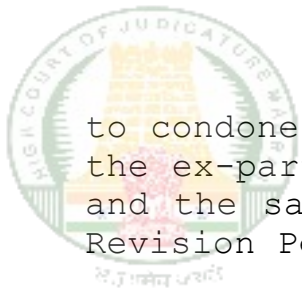
For Respondent : Mr.V.Sasikumar

O R D E R

The Civil Revision petition has been preferred against the order and decretal order, dated 05.11.2008, passed in I.A.No.199 of 2008 in A.S.No.73 of 2004 on the file of the Sub Court, Tuticorin.

2.The brief facts of the case are as follows:

Initially, the suit was filed by the plaintiff in O.S.No.54 of 2002 on the file of the District Munsif Court, Tuticorin, to evict the defendant from his property and for recovery of rent arrears and for mense profits. The said suit was dismissed on 18.06.2002. Aggrieved over the same, the plaintiff had filed the appeal suit in A.S.No.73 of 2004 before the Sub Court, Tuticorin. In the appeal on 14.06.2003, since there is no representation for the respondent/defendant the respondent called absent and set ex-parte. Thereafter, the case was posted for plaintiff's side argument on 07.07.2004, 08.07.2004 and 16.07.2004 and the appellant/plaintiff's side argument was heard and on 20.07.2004 the appeal was allowed in favour of the plaintiff. On the basis of the decree passed in A.S.No.73 of 2004, an Execution Petition was filed by the plaintiff and the same was also ordered. In the mean time, the revision petitioner has filed an Interlocutory Application in I.A.No.199 of 2008 before the Sub Court, Turicorin



to condone the delay caused in filing the application to set aside the ex-parte Judgment dated 20.07.2004 passed in A.S.No.73 of 2004 and the said application was dismissed. Against which this Civil Revision Petition has been filed.

3. The learned counsel for the revision petitioner submitted that since the petitioner had fell down from a tree, his spinal card was damaged and he was taking treatment for a long time. Therefore, he was unable to contact his counsel and take steps to set aside the Judgment. Hence, the delay is neither willful nor wanton.

4. The learned counsel for the revision petitioner/plaintiff submitted that before passing an ex-parte decree by reversing the well considered judgment and decree of the trial court, the Lower Appellate Court ought to have chosen to hear and decide the appeal on merit and the observation of the lower Appellate Court that the owner of the coconut tree was not examined for proving the incident of falling down from the tree, is hyper technical and against the principle of liberal approach pro-founded by the Apex Court. According to the learned counsel for the revision petitioner, the Court below has not correctly fixed the exact period of delay in filing the Interlocutory Application.

5. The learned counsel appearing for the respondent submitted that though the revision petitioner was set ex-parte before the 1st Appellate Court, he appeared through his counsel in the execution proceedings before the District Munsif Court, Tuticorin and after giving police protection, eviction of the defendant was ordered and thereafter, he has filed the interlocutory application to set aside the ex-parte judgment. Therefore, the court below has rightly dismissed the application and he prays for dismissal of this Civil Revision Petition.

6. Heard both sides and perused the materials available on records.

7. I.A.No.199 of 2008 was filed by the petitioner herein, who is arrayed as the respondent in the Appeal Suit, to condone the delay of 1663 days for filing the petition to set aside the ex-parte decree. The first Appellate Court verified the facts and averments made by both parties. When the matter was posted for argument, the appellant had not appeared before the Court on 07.07.2004, 08.07.2004 and 16.07.2004. The First Appellate Court observed that the submission of the petitioner that he is unaware of the execution proceedings till he received notice from the Execution Court is not reliable and dismissed the petition on 20.07.2004.

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

8. The evidence given by the petitioner before the trial court is also perused. It is observed that the appeal was



proceeded by the petitioner by engaging a counsel and it is also observed that after receiving the notice in the execution petition, this petition has been filed in the appeal in A.S.No.73 of 2004 and no acceptable reason has been given by the petitioner for such inordinate delay i.e nearly 5 years. In my considered opinion, the court below has rightly dismissed the application and the order of the court below does not warrant interference by this Court.

9. In the result, the Civil Revision Petition is dismissed.
No costs.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Subordinat Judge, Tuticorin.
2. The Section Officer,
V.R.Section, (2 Copies)
Madurai Bench of Madras High Court, Madurai.

Copy to : The District Munsif,
Srivaikundam

+1cc to M/s.C.Dhanaseelan Advocate in SR. No.58874
+1cc to M/s.V.Sasikumar Advocate in SR. No.58246
cm
JM/JC/SAR 3/18.05.2018/3P/7C

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