



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.01.2018

Delivered on : 22.03.2018

CORAM :

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

WEB COPY

C.R.P. (PD) (MD) Nos.786 and 787 of 2011
and M.P. (MD) No.1 of 2011

Thirumaran

... Petitioner
(In both petitions)

vs.

Veeraiyan

... Respondent
(In both petitions)

COMMON PRAYER: Petitions filed under Section 115 of Civil Procedure Code, to allow the Civil Revision Petition and setting aside the order passed by the learned Principal District Munsif Court, Trichy in I.A.Nos.46 of 2006 & I.A.Nos.47 of 2006 in O.S.No.780 of 2002.

For Petitioner : Mr.I.Irulappan (In both petitions)
For Respondent : Mr.R.Subramanian
(In both petitions)

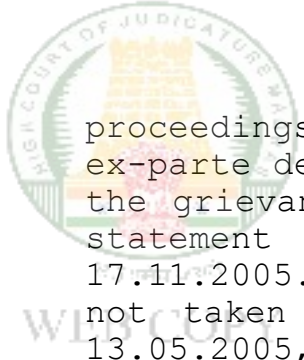
COMMON ORDER

These petitions have been filed to set aside the orders passed by the learned Principal District Munsif Court, Trichy in I.A.Nos.46 and 47 of 2006 in O.S.No.780 of 2002.

2.The suit was filed for recovery of possession, in which, the defendant was set ex-parte. The petitioner/defendant came to know about the ex-parte decree passed only after receiving notice in the Execution Proceedings. There is delay in filing the petition to set aside the ex-parte order and that petition was filed before another forum and further delay of 670 days is caused in preferring the petition to set aside the ex-parte decree.

3.I.A.No.46 of 2006 was filed by the defendant to condone the delay of 670 days in filing the petition to set aside the ex-parte decree dated 23.12.2003. I.A.No.47 of 2006 was filed for interim stay of operation of ex-parte decree. The trial Court after analyzing the fact and also the arguments made by both sides has dismissed the said petition. Against which, the present Civil Revision Petition have been preferred by the petitioner/defendant.

4.The petitioner herein as a defendant has stated that he filed the petition to set aside the ex-parte decree with the delay of 257 days only. It is stated that the Execution proceedings has been initiated by the plaintiff/respondent. It is also the admission of the petitioner that even during the time of execution



proceedings, the petition filed by the petitioner to set aside the ex-parte decree neither was taken on file nor returned. It is also the grievance of the petitioner that when he tried to file counter statement in the execution petition, delivery was ordered on 17.11.2005. The petition was filed by him on 16.19.2004 and it was not taken on file by the Court. It is further stated that on 13.05.2005, the petitioner has filed vakalat in the execution petition and the Trial Court also observed that only to cause delay and to defeat the rights of the respondents in obtaining the fruits of the decree the petition has been filed with such a delay.

5. The argument of the petitioner is that he has a very good case and he seeks an opportunity to put forth his case under Section 123 of the Limitation Act.

6. The learned counsel for the respondent submits that the trial Court has rightly dismissed the applications and he prays for dismissal of the Civil Revision Petitions.

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

8. It is observed that the petitioner herein has not filed the written statement on 23.12.2003 and there was no representation on the side of the petitioner on 29.12.2003. Further, the petitioner has filed this petition only after passing the order for delivery in the execution petition. Hence, the petitioner has not filed the petitions with a real grievance and with proper explanation for the huge delay. There is no merit in the applications. In the considered opinion of this Court, the trial Court has rightly dismissed the applications.

9. In the result, the Civil Revision Petitions are dismissed. No costs. Consequently, M.P.(MD)No.1 of 2011 is closed.

Sd/-

Assistant Registrar (RTI)

/True copy/

Sub Assistant Registrar

To

1. The Principal District Munsif, Trichy.

2. The Record Keeper, V.R. Section, **(2 COPY)**

Madurai Bench of Madras High Court, Madurai.

+1CC TO M/S.I. IRULLAPPAN, ADVOCATE, SR NO.57541

+1CC TO M/S.R. SUBRAMANIAN, ADVOCATE, SR NO.57339

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