



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.06.2018

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (MD) No.1041 of 2013

1.Pothiraj

2.Seeniammal

... Petitioners

Vs.

Velammal

... Respondent

Prayer : Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the order and decreetal order dated 17.04.2012 made in I.A.No.2272 of 2012 in O.S.No.391 of 2005 on the file of District Munsif Court, Srivilliputtur.

For Petitioners : Mr.V.Sitharanjandas

For Respondent : Mr.M.Ashok Kumar

ORDER

This Civil Revision Petition is filed by the defendants in O.S.No.391 of 2005. Brief facts which are necessary to disposal of this Civil Revision Petition are as follows:

1.1The respondent in this petition filed suit in O.S.No.391 of 2005 for declaration that the first item of the suit scheduled property belongs to the plaintiff alone and for consequential injunction and also for mandatory injunction directing the defendants to demolish the wall described as suit second schedule property referred to as EBCF mentioned in the plaint plan and hand over the vacant possession to the plaintiff.

2.It is not in dispute that the suit was decreed ex-parte on 12.06.2009. Thereafter there was 840 days delay in filing a petition to set aside ex-parte decree. A petition to condone the above said delay filed in I.A.No.2272 of 2012 in O.S.No.391 of 2005 was dismissed by the trial Court on the ground that there is no sufficient explanation offered by the defendants in the affidavit filed in support of the application for condoning the inordinate delay of 840 days.

3.It is stated in the application for condoning the delay that the first defendant was suffering from jaundice and that his wife, who is an illiterate, could not attend the hearing or give instructions to the counsel on record. In the affidavit of the



petitioner before the Court below, absolutely there is no explanation for inordinate delay in filing application to set aside the ex-parte decree.

4.The ex-parte decree was passed on 12.06.2009. The revision petitioner himself admits that the respondent / plaintiff has filed an Execution Petition to execute the decree for mandatory injunction and that the wall constructed by the defendants was also demolished and removed on 30.04.2011. The petitioner has stated before the Lower Court that he knew the ex-parte decree on 01.06.2011. The petitioner admits that he obtained copy of ex-parte decree on 01.07.2011. However, the application was filed only on 09.12.2011. The petitioner was represented by his counsel before Executing Court. No explanation for the delay. The order of Lower Court is perfectly in order.

5.In such circumstances, this Court feels that if this Civil Revision Petition is allowed, it will cause immense hardship to the other side, who has executed the decree granted by the Court below.

6.Though this Court normally takes a lenient view in condoning the delay, the revision petitioner is not entitled to any indulgence from this Court, having regard to the peculiar facts in this case.

7.For the above said reasons, this Civil Revision Petition is dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-III)

To

The District Munsif,
Srivilliputtur.

+1cc to M/S.V.Sitharanjandas, Advocate SR.No. 70191
+1cc to M/S.M.Ashok Kumar, Advocate SR.No. 70398

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gns
JM/RP/SAR 3/24.07.2018/2P/4C