



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (NPD) (MD) No.2127 of 2013

and

M.P. (MD) No.2 of 2013

Ramar : Petitioner /Petitioner/

Respondent/Defendant

vs.

Madasamy : Respondent/Respondent/
Petitioner/Plaintiff

PRAYER: Civil Revision Petition filed under Section 115 CPC against the fair and decretal order dated 12.11.2013 passed in E.A.No.301 of 2013 in E.P.No.48 of 2011 in O.S.No.286 of 2009 on the file of the Principal District Munsif Court, Tenkasi.

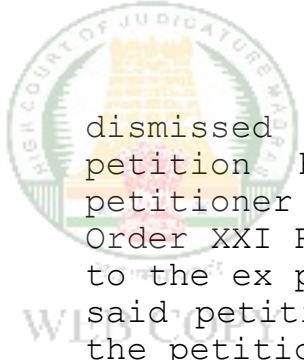
For Petitioner : Mr.V.Meenakshi Sundaram
for Mr.D.Nallathambi
For Respondent : Ms.M.Krishnaveni.

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 12.11.2013 passed in E.A.No.301 of 2013 in E.P.No.48 of 2011 in O.S.No.286 of 2009 on the file of the Principal District Munsif Court, Tenkasi.

2.The brief facts that are necessary for the disposal of this civil revision petition are as follows:

The respondent in this Civil Revision Petition as plaintiff filed a suit in O.S.No.286 of 2009 on the file of the Principal District Munsif Court, Tenkasi, for recovery of possession and also for damages for use and occupation. The suit was decreed as ex parte on 30.11.2009. Thereafter, the decree holder, namely, the respondent herein, filed an execution petition in E.P.No.48 of 2011. The revision petitioner filed an application in I.A.No.1877 of 2012 to condone the delay of 1369 days in filing a petition to set aside the ex parte decree. It is admitted that the petition filed by the petitioner in I.A.No.1877 of 2012 in O.S.No.286 of 2009 was



dismissed and the revision petitioner has filed a civil revision petition before this Court. In the meanwhile, the revision petitioner has filed another application in E.A.No.301 of 2013 under Order XXI Rule 26(1) C.P.C. to stay the further proceedings pursuant to the ex parte decree that was passed in O.S.No.286 of 2009 and the said petition was dismissed by the lower Court on the ground that the petitioner has filed a petition to set aside the ex parte decree after four years and therefore, the petition for staying the further proceedings cannot be entertained. Aggrieved by the same, the present civil revision petition has been filed.

3.The learned counsel appearing for the petitioner submitted that the petitioner has also filed a civil revision petition as against the order dismissing the application to condone the delay in filing the petition to set aside the ex parte decree. Though there is no provision under Order XXI Rule 26 of C.P.C, to enable the judgment debtor to file a stay application, on the ground of pendency of the petition to set aside the ex parte decree, such petition is maintainable under Section 151 C.P.C., for staying further proceedings in the ex parte decree during the pendency of the petition to set aside the ex parte decree for a reasonable period. However, the petition, which was filed by the petitioner, to condone the delay in filing the petition to set aside the ex parte decree, has already been dismissed. Therefore, this Court is not in a position to entertain this Civil Revision Petition. It is open to the petitioner to seek remedy in the civil revision petition filed by him, challenging the order dismissing the application in I.A.No.1877 of 2012, which was filed by the revision petitioner to condone the delay in filing the petition to set aside the ex parte decree. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

The Principal District Munsif, Tenkasi.

+1CC TO Ms.M.KRISHNAVENI,ADVOCATE IN SR.NO.75232.

+1CC TO MR.D.NALLATHAMBI, ADVOCATE IN SR.NO.75270.

CP

DS RSK SAR-4 11.10.2018 2P/4C

ORDER MADE IN
C.R.P. (NPD) (MD) No.2127 of 2013

and

M.P. (MD) No.2 of 2013

26.07.2018