

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2019

CORAM

THE HON'BLE Ms. JUSTICE P.T.ASHA

C.R.P.No.1081 of 2018

1.Venkatesh

2.Ramesh

...Petitioners / Defendants

Vs

Selvaraj

... Respondent / Plaintiff

PRAYER: Civil Revision Petition is filed under Section 115 of The Code of Civil Procedure to set aside the order and decreetal order of the learned Subordinate Judge, Perambalur in I.A.No.450 of 2016 in O.S.No.112 of 2015 dated 18.09.2017.

For Petitioners: Mr.M.R.Kuyilan

For Respondent : Mr.N.Suresh

O R D E R

The above Civil Revision Petition is filed, challenging the dismissal of the application filed for condoning the delay of 209 days in filing an application to set aside the ex-parte decree.

2. The suit filed by the respondents is for specific performance and it is seen that an ex-parte order was passed on 01.04.2016. After the execution proceedings had been initiated, the defendant/revision petitioner had come forward with an application to set aside the ex-parte decree. However, in the interregnum, the delay of 209 days had occurred. Therefore, the impugned application was taken out for condoning the delay of 209 days. The reason for delay has been attributed to the ill health of the revision petitioner, which had prevented him from attending the hearing before the Court. The respondent/plaintiff had objected to the same stating that it is only an attempt on the side of the defendant to protract the proceedings and ensure that the respondent does not enjoy the fruits of the decree.

3. The learned Subordinate Judge, Perambalur by order dated 18.09.2017, had dismissed the said application, on the ground that other defendants had not taken steps to set aside the ex-

parte order against them. Challenging the same, the revision petitioners are before this Court.

4. Heard, the learned counsel on either side.

5. It is seen that the suit is one for specific performance where substantial interest of the plaintiff, with reference to the suit schedule property, is involved. The delay has also been explained with sufficient cause. In such circumstances, in the interest of justice, the court below ought to have allowed the application. Therefore, the order of the learned Judge requires to be set aside. Accordingly, the impugned order is set aside.

6. In the result, the Civil Revision Petition is allowed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssb/dua

To

1) The Subordinate Judge,
Perambalur.

+1 cc to Mr.N.Suresh, Advocate, S.R.No.16485

+1 cc to Mr.M.R.Kuyilan, Advocate, S.R.No.16326

C.R.P.No.1081 of 2018

VBA (CO)
SSM(27/03/2019).

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