

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

C.R.P NO.466 of 2015

Mr.Ellappan

..Petitioner

vs.

1. Mr.K.Srivas,

2. Sri Vinayaga Agencies,
(Reg.Firm by) its partner and
Agent S.Veeraraghavan,
No.9/13, Gokulam Colony,
Pammal,
Chennai-600 075.

..Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 07/04/2014 passed in I.A.No. 2391 of 2013 in O.S.No.653 of 2008 on the file of District Munsif Cum Judicial Magistrate at Sriperumbudur.

For Petitioner : Mr.T.Thiyagarajan

For Respondents : Mr.M.Sridhar for R1

Non-appearance for R2

ORDER

The order under challenge in the present Civil Revision Petition is rejection of the petitioner's application to condone the delay of 700 days in filing an application to set aside the ex-parte decree. The reason adduced by the petitioner in his application is that he was unaware of the exparte decree passed, since the suit came to be transferred from the District Munsif Court, Kancheepuram to District Munsif Court, Sriperumbudur and no notice was served on him. The knowledge of the ex-parte decree was revealed only when he had received the notice in the Execution proceedings filed by the respondent herein. In view of his ignorance about the ex-parte decree, he had filed an application to condone the delay.

2. The learned counsel for the petitioner submitted that the suit is one for declaration of title, wherein he is a bonafide purchaser for a valid sale consideration through a registered sale deed dated 27.12.2001. At the time of his purchase, he had no knowledge about the earlier sale deed which is alleged to have been executed in favour of the plaintiff herein, since the same was not reflected in the encumbrance certificate. Since, he has triable and arguable issues before the trial Court and in view of the reasons of his ignorance about the ex-parte decree, the trial Court ought to have taken a lenient view and hence was not justified in rejecting his application filed under Section 5 of the Limitation Act.

3. Learned counsel appearing for the respondents, on the other hand submitted that the petitioner herein, was set ex-parte on 05.10.2007 itself and the suit came to be transferred only five months thereafter, since the petitioner was conscious of the fact that he was set ex-parte on 05.10.2007 itself, the reason given for condoning the delay is not correct. Learned counsel also submitted that since the petitioner has failed to properly explain the cause for each and every day's delay, the order of the trial Court should not be interfered with.

4. I have given careful consideration to the submissions made by the respective counsel. It is true that the petitioner herein was set ex-parte on 05.10.2007 and the suit came to be transferred to the learned District Munsif Court, Sriperumbudur only thereafter. As such, the finding of the trial Court that the petitioner was not ignorant of this, cannot be found fault with. Nevertheless, this Court as well as the Apex Court in various decisions has held that whenever a issue with regard to condoning an inordinate delay arises for consideration, the Court should also look into the merits of the case as evidenced in the pleadings, for the purpose of giving an opportunity to the defaulter, instead of shutting the doors at the threshold itself. It is also held in those judgments that the proof of delay alone should not be the reason for rejection of an application. In one such decision of the Apex Court reported in (2001) 6 SCC 176 (M.K.Prasad Vs. P.Arumogam), the following observations were made.

In the instant case, the appellant tried to explain the delay in filing the application for setting aside the ex-parte decree as is evident from his application filed u/s 5 of the Limitation Act accompanied by his own affidavit. Even though the appellant appears not to be as vigilant as he ought to have been, yet his conduct does not, on the whole, warrant to castigate him as an irresponsible litigant. He should have been more vigilant but on his

failure to adopt such extra vigilance should not have been made a ground for ousting him from the litigation with respect to the property, concededly to be valuable. While deciding the application for setting aside the ex-parte decree, the court should have kept in mind the judgement impugned, the extent of the property involved and the stake of the parties. We are of the opinion that the inconvenience caused to the respondent for the delay on account of the appellant being absent from the court in this case can be compensated by awarding appropriate and exemplary costs. In the interests of justice and under the peculiar circumstances of the case we set aside the order impugned and condone the delay in filing the application for setting aside ex-parte decree. To avoid further delay, we have examined the merits of the main application and feel that sufficient grounds exist for setting aside the ex-parte decree as well.

5. In the light of the above decisions, the averments in the written statement, which the petitioner intends to file before the trial Court was looked into. It is the intended defence of the petitioner herein that, he was a bonafide purchaser for a valid sale consideration through a sale deed and that the sale deed in favour of the plaintiff is invalid. It is also their defence that at the time of the purchase, the encumbrance certificate did not reflect the sale transactions alleged to be that of the plaintiff. While that be so, it can be said that the petitioner herein, has triable and arguable defence before the Court.

6. Insofar as the reason adduced by the petitioner for the delay is concerned, it cannot be said that the petitioner was conscious of the passing of the set ex-parte decree. All that is seen is that the petitioner was set ex-parte on 05.10.2007 and the ex-parte decree came to be passed only after the suit was transferred in the year 2008. Since the petitioner had specifically stated that he had no notice about the subsequent transfer, there is a possibility that he may not have been aware of the ex-parte decree passed against him also.

7. Nevertheless, it is seen that the petitioner was not vigilant enough to follow up the case wherein he was represented by a counsel before the earlier Court also. In view of such lethargic attitude, findings of the trial Court also cannot be found fault with. However, in view of the meritorious defence which he intends to take before the trial Court, the trial Court could have taken a lenient view and put the petitioner on terms, instead of rejecting the application.

8. In the light of the foregoing reasons, the order passed in I.A.No.2391 of 2013 dated 07.04.2014 is set aside on a

condition that the petitioner pay a sum of Rs.10,000/- to the respondent herein within a period of 15 days from the date of receipt of copy of this order. Consequently, the delay of 700 days in filing the application to set aside the ex-parte decree stands condoned. The Civil Revision Petition is ordered accordingly.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssb/bga

To

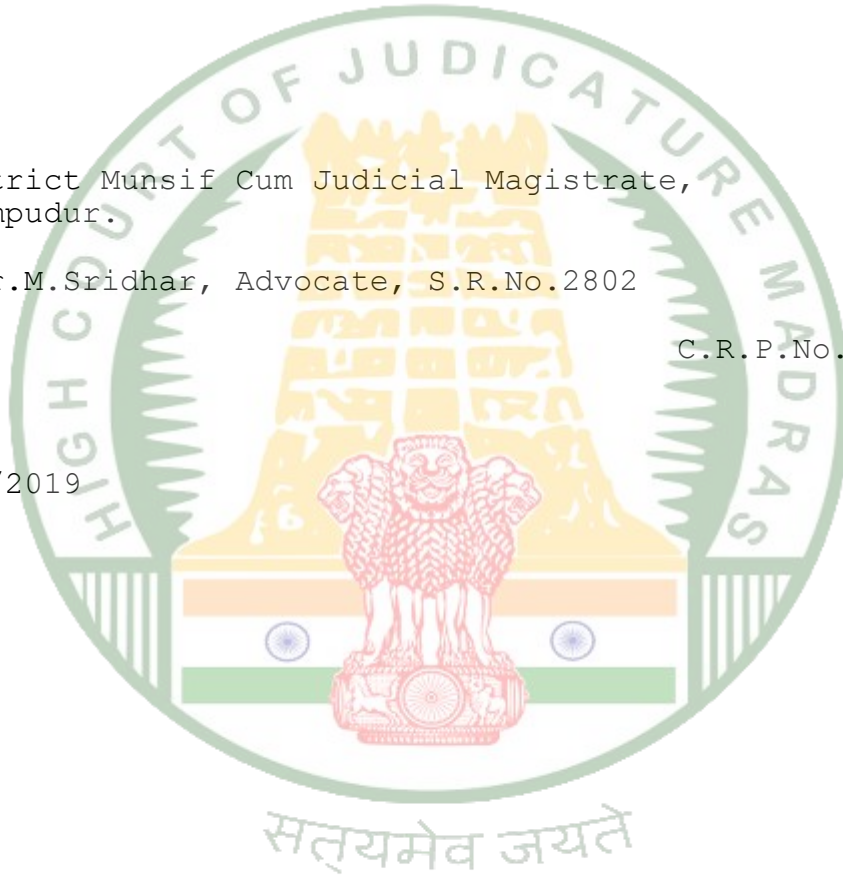
1.The District Munsif Cum Judicial Magistrate,
Sriperumpudur.

+lcc to Mr.M.Sridhar, Advocate, S.R.No.2802

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SPD(CO)

rrs 05/02/2019



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