

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE P.T. ASHA

C.R.P. NPD No.1649 of 2019

and

CMP No.10748 of 2019

Muniappa gounder

..Petitioner

Vs.

P.Dhanasekaran

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 21.12.2018 made in CMA.No.3 of 2016 on the file of the learned First Additional Sub Court (Full Additional Charge of Principal Sub Court), Erode confirming the fair and decreetal order dated 26.11.2015 made in I.A.No.126 of 2015 in O.S.No.122 of 2011 on the file of the learned Second Additional District Munsif Court, Erode.

For Petitioner : Mr.N.Manokaran

For respondent : Mr.C.E.Pratap for Caveator Counsel

ORDER

The above Civil Revision Petition is filed challenging the dismissal of the application filed by the defendant seeking to set aside the ex-parte decree dated 04.02.2015 passed in O.S. No.122 of 2011 on the file of II Additional District Munsif Court, Erode.

2. The suit in O.S. No.122 of 2011 has been filed for declaration and injunction from either obliterating or demarcating North South and East West ridge between the suit property on the defendant's land. When the matter was posted for cross examination of PW1, the defendant did not appear and consequently, the said suit set ex-parte and ultimately an ex-parte decree came to be filed before this Court in the year 2015. The defendant thereafter, came forward with I.A. No.126 of 2015 to set aside the ex-parte decree. In the affidavit filed in support of the said application, the petitioner would submit as follows :-

I submit that I am a senior citizen aged about 77 years. I am suffering from ailments. I submit that I am suffering from Diabetes, high blood pressure and heart ailment as well. Moreover, I have been taking treatment for Kidney problem also. I have been taking treatment for

all these problems at various hospitals like Kovai Medical Center and Hospital Limited, Coimbatore, G.Kuppusamy Naidu Memorial Hospital, Coimbatore, Dr. D. Rajasekaran, Shanthi Hospital, Kalingarayanpalayam and some other private hospitals at Erode for my various ailments. Infact due to block of blood vessels and neural problems, my right toe was amputated in the hospital through a surgery in the year 2013. Inspite of all treatments and medical care taken, I have not recovered fully from these ailments. I submit that on 17.11.2014 when the suit stood posted for cross examination of PW1, I was made bedridden due to high blood pressure, high sugar, kidney problem and due to severe pain in my right leg. I submit that I was unable to stand and walk due to right leg related problems and that I was made bedridden. Therefore, I was unable to come to this Hon'ble Court on 17.11.2014. Further I was unable to contact my counsel and instruct him as well. After that I had been in my house as bedridden and unable to move about due to the aforesaid ailments. I submit that in the meanwhile on 19.01.2015, I was called absent and set exparte. Subsequently exparte decree was passed against me in the suit on 04.02.2015.

3. The said application was objected to by the plaintiff, who would deny the allegations contained in the affidavit filed in support of the petition and the plaintiff would contend that the only attempt was to procrastinate the suit proceedings. The learned District Munsif in his order dated 26.11.2015 proceeded to dismiss the said application by

relying upon various interlocutory applications which have been filed as against the said proceedings. The learned Judge has also stated that the petitioner has not produced any documents to show that till the filing of the petition, he was suffering from any ailment. Challenging the said order, the revision petitioner has filed CMA No.3 of 2016 on the file of the Additional Sub Court, Erode. The learned Judge has also dismissed the appeal and confirmed the order passed by the learned District Munsif, Erode. Aggrieved by the same, the revision petitioner is before this Court.

4. Mr.N.Manokaran, learned counsel appearing on behalf of the petitioner would contend that despite sufficient cause has been shown by the revision petitioner for his absence on the date on which the matter was posted for PW1 cross examination viz., 17.01.2014, the Court below has ignored the same and also ignored the documents that has been filed by him.

5. The learned counsel would also rely on the judgment reported in **(2003) 3 SCC 54 (G.P. Srivastava versus R.K. Raizada and others)** particularly in paragraph 7, wherein it has been held as under :

7. Under Order 9 Rule 13 CPC an ex parte decree passed against a defendant can be set aside upon satisfaction of the Court that either the summons were not duly served upon the defendant or he was prevented by any "sufficient cause" from appearing when the suit was called on for hearing. Unless "sufficient cause" is shown for non-appearance of the defendant in the case on the date of hearing, the court has no power to set aside an ex parte decree. The words "was prevented by any sufficient cause from appearing" must be liberally construed to enable the court to do complete justice between the parties particularly when no negligence or inaction is imputable to the erring party. Sufficient cause for the purpose of Order 9 Rule 13 has to be construed as an elastic expression for which no hard and fast guidelines can be prescribed. The courts have a wide discretion in deciding the sufficient cause keeping in view the peculiar facts and circumstances of each case. **The "sufficient cause" for non-appearance refers to the date on which the absence was made a ground for proceeding ex parte and cannot be stretched to rely upon other circumstances anterior in time. If "sufficient cause" is made out for non-appearance of the defendant on the date fixed for hearing when ex parte proceedings were initiated against him, he cannot be penalised for his previous negligence which had been overlooked and thereby condoned earlier. In a case where the defendant approaches the court immediately and within the statutory time specified, the discretion is normally exercised in his favour,**

provided the absence was not mala fide or intentional. For the absence of a party in the case the other side can be compensated by adequate costs and the lis decided on merits.

6. Per contra, the learned counsel for the respondent would argue that the Court below has rightly found that the respondent is strongly opposing the documents particularly Ex. P8 and therefore, the petitioner herein cannot be shown any indulgence by this Court.

7. Heard the learned counsel and perused the papers.

8. It is seen that the petitioner has shown sufficient cause for his non appearance on 14.11.1993 which is supported by various medical records, apart from the prescriptions, which the appellate Court has found to be objected. The application for setting aside the ex-parte decree has also been filed within a month of the ex-parte decree being passed. Therefore, the petitioner has shown his bonafide and intent to contest the suit. However, this Court is of the view that the delay be condoned on

payment of Rs.5,000/- to the learned counsel for the respondent, which amount has also been paid by the learned counsel for the petitioner to the learned counsel for the respondent.

9. In view of the above, the order of the Court below is set aside.

The Civil Revision Petition is allowed

10. Considering the fact suit is pending at the stage of cross examination of PW1, the learned District Munsif, Erode is directed to dispose of the suit within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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30.04.2019

Internet: Yes/No

Index: Yes/No

Speaking order/Non-speaking order

vsi2

P.T. Asha, J.

vsi2

To

1.The First Additional Sub Court
(Full Additional Charge of Principal Sub Court),
Erode.

2.The Second Additional District Munsif Court,
Erode.



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