

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2019

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.R.P.(NPD).No.3870 of 2014

&

M.P.No.1 of 2014

M.S.Rathna Kumar

.. Petitioner

..Vs..

Trilokchand

.. Respondent

Prayer: Civil Revision Petition filed under Section 115 of Code of Civil Procedure against the dismissal order of the I.A.No.801 of 2007 in O.S.No.163 of 1995 by the learned Principal Sub Judge, Chingalpattu on 02.07.2008.

For Petitioner : Mr.A.Ilangovan

For Respondent : Mrs.C.A.Sharmila

ORDER

The instant revision has been filed challenging the order dated 02.07.2018 passed by the learned Principal Sub Judge, Chengalpattu in I.A.No.801 of 2007 in O.S.No.163 of 1995.

Brief facts leading to the filing of the instant revision:

2. The petitioner is the defendant in the suit O.S.No.163 of 1995 on the file of the learned Principal Sub Judge, Chengalpattu which was filed by the respondent for specific performance of an agreement for sale. After receiving the suit summons, the petitioner entered appearance through his counsel before the Trial Court. For non-filing of written statement, the petitioner/defendant was set ex parte and thereafter, an ex parte decree dated 13.08.1997 came to be passed in favour of the respondent/plaintiff against the petitioner/defendant. The respondent/defendant also filed E.P.No.29 of 2002 before the Sub Court, Tambaram to execute the ex parte decree dated 13.08.1997 passed in his favour. The petitioner/defendant also received notice in the execution petition and there also he remained ex parte and Subsequently the executing court has also executed the sale deed in favour of the respondent/plaintiff. But before taking delivery of the suit schedule property by the respondent/plaintiff, the petitioner/defendant filed I.A.No.801 of 2007 in O.S.No.163 of 1995 seeking to condone the delay of 2019 days in filing an application to set aside the ex parte decree dated 13.08.1997. The explanation given in the affidavit filed by the petitioner/defendant in support of I.A.No.801 of 2007 is that after

receiving the suit summons, he had engaged an Advocate to enter appearance in the suit and a vakalat was also given to his Advocate. It is the case of the petitioner that after filing the vakalat by his Advocate, no further intimation was given to the petitioner/defendant as to the status of the suit. According to the petitioner, only after the receipt of notice in the execution petition viz., E.P.No.29 of 2002 for hearing on 10.12.2002, he came to know that the suit has been decreed ex parte in favour of the respondent/plaintiff. It is also the case of the petitioner that after receiving the notice in E.P.No.29 of 2002, he had engaged a new Advocate at Chengalpattu and filed his counter in the execution petition stating the above mentioned facts.

3. The petitioner also admits that he has not filed the written statement in the suit O.S.No.163 of 1995. According to the petitioner, only due to his counsels indifference in not intimating the status of the suit, the said suit was not properly defended by him. A counter affidavit was also filed by the petitioner/defendant in I.A.No.801 of 2007. The Trial Court by its order dated 02.07.2008 dismissed I.A.No.801 of 2007 in O.S.No.163 of 1995.

4. Aggrieved by the dismissal of I.A.No.801 of 2007 in O.S.No.163 of 1995, the instant revision has been filed by the petitioner/defendant.

Submissions of the learned counsels:

5. Heard Mr.A.Ilangovan learned counsel for the petitioner and Mrs.C.A. Sharmila, learned counsel for the respondent.

6. According to the learned counsel for the petitioner, the Advocate who was entrusted to defend the suit filed against the petitioner did not inform the status of the suit to the petitioner/defendant after filing the vakalat on behalf of the petitioner and only due to that reason, the suit was not properly defended by the petitioner. Further, he would submit that being a suit for specific performance and the present value of the suit schedule property being more than one crore, the petitioner should be given an opportunity to defend the suit. According to the petitioner, the Trial Court has erroneously dismissed the condone delay application.

7. Per contra, learned counsel for the respondent would submit that there is an inordinate delay in filing an application to set aside the ex parte decree. She would submit that despite Advocate for the petitioner/defendant filing the vakalat in the suit, only due to the non-filing of the written statement, the petitioner/defendant was set ex parte and only thereafter, an ex parte decree dated 13.08.1997 came to be passed against the petitioner/defendant in favour of the respondent/plaintiff. She also submitted that even in the execution petition filed by the respondent/plaintiff, notice was received by the petitioner/defendant and there also he was set ex parte. According to her, only after the sale deed was executed by the Court in favour of the respondent/plaintiff, the petitioner filed an application I.A.No.801 of 2007 in O.S.No.163 of 1995 seeking to condone the inordinate delay of 2019 days in filing an application to set aside the ex parte decree. According to her, no sufficient reasons has been given by the petitioner/defendant for condonation of the inordinate delay and the Trial Court has rightly rejected the said application.

Discussion:

8. This Court has perused the impugned order as well as the affidavit filed in support of I.A.No.801 of 2007 filed by the petitioner/defendant seeking to condone the delay of 2019 days in filing the application to set aside the ex parte decree dated 13.08.1997. Admittedly, the petitioner received the suit summons in O.S.No.163 of 1995 and has also engaged an Advocate to defend the suit. It is also an admitted fact that only due to the non-filing of the written statement, the petitioner/defendant was set ex parte and thereafter, only on 13.08.1997, an ex parte decree came to be passed in favour of the respondent/plaintiff against the petitioner/defendant. It is also an admitted fact, as recorded in the order passed in E.P.No.29 of 2002 that the petitioner received notice in the execution petition who did not enter appearance and remained ex parte there also. It is also an admitted fact that the sale deed was also executed by the executing court in favour of the respondent/plaintiff. The petitioner/defendant has filed the condone delay application only after the sale deed was executed by the executing court in favour of the respondent/plaintiff. The only reason given in the affidavit filed in support of the condone

delay application is that his Advocate did not inform him about the status of the suit.

9. The delay is an inordinate delay and no proper explanation has been given by the petitioner for condonation of such an inordinate delay. The Trial Court, after considering all these factors has rightly rejected I.A.No.801 of 2007 filed by the petitioner seeking to condone the delay of 2019 days in filing an application to set aside the ex parte decree. This Court is of the considered view that there is no infirmity in the said order. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

29.01.2019

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Index:Yes/No

Internet:Yes/No

Speaking/Non-speaking orders

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ABDUL QUDDHOSE, J.

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To
The Principal Sub Judge, Chingalpattu



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