

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

**C.R.P. (NPD) No. 3838 of 2019 and
C.M.P. No. 25317 of 2019**

Venkatesan ... Petitioner

-Vs-

Magarasan ... Respondent

Prayer : Petition filed under Article 227 of the Constitution of India against the fair and final order dated 03.07.2019 in I.A. No. 267 of 2017 in O.S. No. 25 of 2011 on the file of the Sub Court, Jayankondam.

For Petitioner : Mr. P. Parthikannan

ORDER

This Civil Revision Petition has been filed against the fair and decretal order made in I.A. No. 267 of 2017 in O.S. No. 25 of 2011 on the file of the Sub Court, Jayankondam, by order dated 03.07.2019.

2. Before the trial Court, the petitioner was the defendant against whom, the respondent / plaintiff filed a suit for specific performance in respect of the suit property.

3. In the said suit, the petitioner / defendant was set exparte and the exparte decree was passed on 01.03.2013. In order to set aside the said decree, an application had been filed, where there has been a delay of 1139 days. In order to condone the same, an application under Section 5 of the Limitation Act has been filed, that is how the present I.A. No. 267 of 2017 came to be decided by the trial Court, who having considered the same, has rejected the said application through the impugned order, as against which, the present revision petition has been filed.

4. Heard Mr. P. Parthikannan, learned counsel appearing for the revision petitioner who would submit that, the suit summons have not been served on the petitioner / defendant and thereafter, only in the Execution Proceedings summons was served thereafter, though petitioner entered appearance through his counsel, since he is a villager and he has been suffered with some disease, he could not contact the counsel to pursue the matter further, therefore belatedly, he was able to file an application to set aside the exparte decree made in the year

2013 and that is how, there has been a delay of 1139 days. The said delay has not occurred because of willful action on the part of the revision petitioner / defendant but only due to the aforesaid reasons, therefore the delay should have been condoned, however, the trial Court without considering all these aspects in proper perspective, since has rejected the said application, the impugned order requires interference from this Court.

5. I have considered the said submission made by the learned counsel appearing for the revision petitioner and perused the materials placed before this Court.

6. Even though the said stand was taken by the revision petitioner that, the suit summons was not served, the learned Judge recorded in the impugned order that, the suit summons have been served on him. Nevertheless, it is an admitted case on the part of the revision petitioner that, in E.P. No. 62 of 2014 filed by the respondent against the petitioner, notice has been served on the petitioner and he entered appearance through the counsel on 30.10.2014 and thereafter,

the case seems to have been adjourned for several hearings to file counter, however, the revision petitioner seems to have not chosen to file any counter. Thereafter, in order to file a draft sale deed, time was given and synopsis was also filed. Therefore, it makes clear that, at least in October 2014, the revision petitioner entered appearance in EP through counsel and thereafter several hearings went on in the EP, at that time, the petitioner /defendant had not chosen to file the application to set aside the exparte decree and he had filed only in the year 2016 where there is a delay accordingly it has been numbered in 2017, i.e., I.A. No. 267 of 2017 for condoning the delay of 1139 days.

7. For such huge delay, absolutely there is no reason on the part of the revision petitioner / defendant.

8. Even though it was claimed by the revision petitioner that, the suit summons have not been served, the learned Judge has stated that suit summons have been served, therefore, this Court taken only the findings of the learned Judge.

9. Assuming that, the suit summons have not been served, afterwards notice has been served in the EP in October 2014, the revision petitioner entered appearance through counsel, therefore immediately the revision petitioner could have acted upon and filed an application in the year 2014 itself, however he waited for two or three more years and filed the present application only in the year 2016/2017.

10. All these attitude of the revision petitioner would show the conduct of the party, as absolutely there has been no reason for condoning such a huge delay.

11. Having receipt of the notice from the Court and having entered appearance in the EP stage, the revision petitioner has not chosen to file any petition to set aside the exparte decree and filed this application belatedly that too after the huge delay with absolutely no reason, hence the revision petitioner cannot expect any indulgence from this Court as no sympathy for these kind of litigants can be shown.

R. SURESH KUMAR, J.

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12. In such view of the matter, this Court finds absolutely no error or infirmity in the order passed by the Court below, hence the order, which is impugned herein, does not warrant any interference from this Court.

13. Accordingly, the Civil Revision Petition fails and hence it is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

27.11.2019

Index: Yes / No
Speaking order / Non speaking order
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To
The Sub Court,
Jayankondam.

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