



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.08.2019

CORAM

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (MD) (NPD)No.1599 of 2011

and

M.P. (MD)No.1 of 2011

Hari Krishnan

:Petitioner

vs.

1.Aramvalarthammal @ Darmar
2.Avudiammal @ Ratha
3.Saravanan
4.Muthulakshmi
5.Sudalaimuthu
6.Ramakrishnan

:Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to call for the records pertaining to the fair and decreetal order passed by the learned Subordinate Judge, Ambasamudram, in I.A.No.400 of 2010 in O.S.No.52 of 2007, dated 01.06.2011 and set aside the same and to allow the delay condonation petition for filing ex parte set aside petition.

For Petitioner

:Mr.K.P.Narayanakumar

For R1, R2, R4 to R6

:Mr.D.Nallathambi

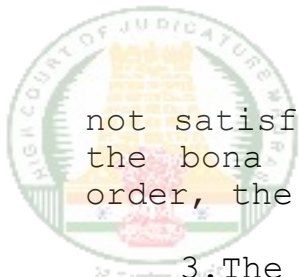
For R3

:No Appearance

ORDER

This Civil Revision Petition is directed against the order dismissing the petition filed by the revision petitioner, who is the defendant in the suit, to condone the delay in filing a petition to set aside the ex parte decree in O.S.No.52 of 2007.

2.The respondents herein filed a mortgage suit for recovery of a sum of Rs.1,23,500/-. The suit came to be decreed ex parte, on 26.08.2008. The revision petitioner, thereafter, filed a petition to set aside the ex parte decree along with the petition in I.A.No.400 of 2011 to condone the delay of 662 days. The said petition was dismissed by the lower Court disbelieving the explanation offered by the revision petitioner. The lower Court was



not satisfied with the reasons stated in the affidavit and doubted the bona fide of the revision petitioner. As against the said order, the present civil revision petition is filed.

3.The learned Counsel for the revision petitioner by referring to the affidavit filed in support of the delay condonation petition, submitted that the petitioner has offered sufficient reasons for the delay in filing the petition to set aside the ex parte decree. It is further contended that the lower Court ought to have seen that an opportunity should be given to the revision petitioner to contest the matter on merits, especially, in a case, where, the petitioner has given sufficient reasons for the delay.

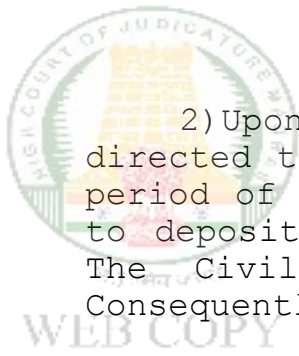
4.From reading of the affidavit filed before the lower Court, it is seen that the revision petitioner has not given relevant dates to complete the narration. The suit was filed on the basis of a mortgage. In the written statement, the revision petitioner admitted the execution of the document, but disputed the passing of consideration. According to him, only a sum of Rs.50,000/- was paid. It is in the said circumstances, the scope of litigation, even according to the defendant/revision petitioner, is confirmed only to the amount advanced whether it was Rs.1,00,000/- or Rs.50,000/-.

5.Though there are several other issues, the case of the respondents that the petitioner has come forward with the present revision petition only to drag on the proceedings cannot be ignored. At the same time, serious prejudice will be caused to the revision petitioner, in case, ex parte decree is not set aside. It is the discretion of the Court to pass an order either condoning the delay or dismissing the petition to condone the delay filed under Section 5 of the Limitation Act, 1963. The Court is expected to pass order judicially. In the present case, the explanation cannot be ignored, even though, the respondents are technically correct in saying that the petitioner has not given the crucial dates. The learned Counsel for the respondents submitted that a sum of Rs.1,88,991/- was due as on the date of decree.

6.This Court is of the view that the petitioner can be given an opportunity. Though the delay is inordinate and this could have been avoided by the petitioner, by taking the lenient view, this Court is inclined to pass the following order:

1)This Civil Revision Petition is disposed of and the order passed by the lower Court in I.A.No.400 of 2010 is set aside and the petition in I.A.No.400 of 2010 in O.S.No.52 of 2010 stands allowed subject to the condition that the revision petitioner deposit the entire sum of Rs.1,35,000/- as per the preliminary decree, less the amount if any already paid, to the credit of the suit in O.S.No.52 of 2008, within a period of eight weeks from the date of receipt of

<https://hcservices.courts.gov.in/hcservices/>



2) Upon deposit of said sum of Rs.1,35,000/-, the lower Court is directed to proceed with the suit and dispose of the same within a period of six months from date of such deposit. In case of failure to deposit the amount, the order of lower Court stands confirmed. The Civil Revision is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

The Subordinate Judge, Ambasamudram.

+1 CC to M/s.K.P. NARAYANA KUMAR, Advocate (SR-82638[F] dated 21/08/2019)

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-82647[F] dated 21/08/2019)

C.R.P. (MD) (NPD) No.1599 of 2011
20.08.2019

cmr

JMN(19.09.2019) 3P : 4C