



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.10.2019

CORAM :

THE HONOURABLE MS.JUSTICE **P.T.ASHA**

C.R.P. (NPD) (MD)No.1752 of 2011

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

P.K.Ananthan ... Petitioner/Petitioner/Defendant

Vs.

M.Meenakshi ... Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decreetal order made in I.A.No.434 of 2010 in O.S.No.150 of 2007 by the Sub Court, Palani, dated 23.02.2011.

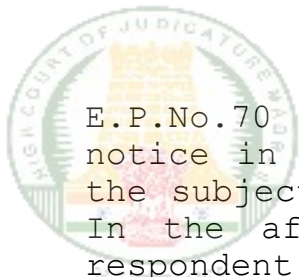
For Petitioner : Mr.D.Venaktash
For Respondent : Mr.S.Sivathilakar

O R D E R

The defendant is the revision petitioner before this Court. This revision has been filed challenging the dismissal order passed in I.A.No.434 of 2010 in O.S.No.150 of 2007 on the file of the Sub Court, Palani. The said interlocutory application was filed by the revision petitioner/defendant for condoning the delay of 194 days in filing the petition to set aside the ex-parte decree dated 02.11.2009.

2.The facts in brief necessary for disposing of this civil revision petition are as follows:

The respondent herein had filed the suit in O.S.No.150 of 2007 for specific performance of a agreement of sale deed dated 14.02.2006. It appears that the defendant had filed the written statement *inter alia* contending that he had not entered into an agreement of sale and he had offered the same as a security for the loan borrowed by him. It is further seen that after P.W.1's chief examination was over, the petitioner has not come forward to cross examine her and ultimately, the decree came to be passed on 02.11.2009. The said ex-parte decree was sought to be executed in



E.P.No.70 of 2010 by the respondent herein. It is after receiving notice in the execution proceedings that the application, which is the subject matter of the Civil Revision Petition came to be filed. In the affidavit filed in support of the said application the respondent would contend that he was suffering from jaundice and it was after he had received the summons in the execution proceedings that he had contacted his counsel who had informed him about the ex-parte decree and he would plead that the delay is only on account of the aforesaid illness. The respondent herein had filed a detailed counter contending that the petitioner is deliberately trying to protract the proceedings and that in the execution proceedings he had entered appearance but thereafter remained ex-parte orders came to be passed on 15.11.2010 and that order has not been challenged by the petitioner.

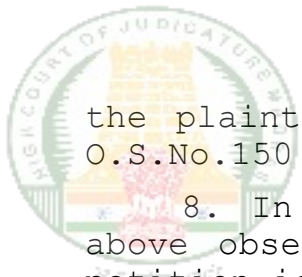
3. Heard the learned counsels on either side and perused the papers.

4. The suit in question is one for specific performance where the petitioner has taken out a plea that the said deed was entered into only as a collateral security for the loan taken by him. The petitioner has also participated in the proceedings upto the stage of evidence and thereafter he has kept away from the proceedings which according to him only on account of illness. It is also informed that the sale deed is yet to be executed in favour of the plaintiff/respondent, though the respondent/plaintiff has deposited the stamp papers necessary for preparing the sale deed.

5. Taking an over all view of the submissions made and the defence that has been raised by the revision petitioner in his written statement, this court is of the view that a chance has to be given to the petitioner to substantiate his case.

6. In the result, the order passed in I.A.No.434 of 2010 in O.S.No.150 of 2007 on the file of the Subordinate Court, Palani is set aside. This Court taking into account the fact that sufficient reasons have been given to condone the delay is setting aside the order passed in I.A.No.434 of 2010 and consequently setting aside the ex-parte decree dated 02.11.2009.

7. However, the learned Subordinate Judge, Palani, is directed to dispose of the suit within a period of two months from the date of receipt of a copy of this order. The parties particularly the defendant is directed to co-operate with the disposal of the above suit. The execution proceedings shall be kept in abeyance considering the fact that the stamp papers have been deposited by



the plaintiff and the same shall await the result of the suit in O.S.No.150 of 2007.

8. In fine, this Civil Revision Petition is allowed with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar(CS)

CM

To
The Sub Judge, Palani.

+1 CC to M/s.S.SIVA THILAKAR, Advocate (SR-91055[F] dated 03/10/2019)

+1 CC to M/s.D.VENKATESH, Advocate (SR-91312[F] dated 04/10/2019)

C.R.P. (NPD) (MD)No.1752 of 2011

and

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

03.10.2019

KK/SAR/23.10.2019/3P-4C/