



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.08.2019

CORAM

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THE HONOURABLE MR.JUSTICE **S . S . SUNDAR**

C.R.P. (MD) (NPD)No.2138 of 2011

and

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

S.Mohanraj

:Petitioner/ Petitioner/
Defendant

vs.

A.V.Sivaramakrishnan

:Respondent/ Respondent/
Plaintiff

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the order of the learned Principal District Munsif, Trichy, in I.A.No.22 of 2011 in O.S.No.1552 of 2007, dated 14.09.2011.

For Petitioner
For Respondent

:Mr.S.Muthukrishnan
:Ms.J.Maria Roseline

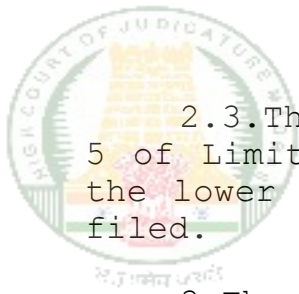
ORDER

This Civil Revision Petition is directed against the order of the learned Principal District Munsif, Trichy, in I.A.No.22 of 2011 in O.S.No.1552 of 2007, dated 14.09.2011. The revision petitioner is the defendant in the suit in O.S.No.1552 of 2007.

2.The brief facts that are necessary for the disposal of this petition are as follows:

2.1.The respondent herein, as plaintiff, filed the suit in O.S.No.1552 of 2007 for permanent injunction restraining the revision petitioner/defendant from interfering with his peaceful possession and enjoyment of the suit property and for a mandatory injunction to direct the revision petitioner to remove the unlawful construction put up by him in the plaint 'B' schedule property.

2.2.The said suit came to be decreed *ex parte* on 23.04.2008. However, a petition was filed to set aside the *ex parte* decree along with the petition in I.A.No.22 of 2011 to condone the delay of 943 days in filing a petition to set aside the *ex parte* decree.



2.3.The petition filed by the revision petitioner under Section 5 of Limitation Act, 1963, to condone the delay, was dismissed by the lower Court. As against the same, the above petition has been filed.

3.The petitioner, in the affidavit filed in support of the petition to condone the delay, has sated that he came to know about the *ex parte* decree only when the execution petition in E.P.No.451 of 2010 and E.P.No.470 of 2010 filed by the respondent. Since notice was served on the revision petitioner in the execution petition, it is stated that the revision petitioner immediately filed an application to set aside the *ex parte* decree.

4.A detailed counter affidavit was filed by the respondent before the lower Court. It is contended by the respondent that the revision petitioner has evaded from service. It is also taking note of the fact that the notice served on the revision petitioner in the suit was returned with an endorsement "Not found". Hence, the trial Court permitted the respondent to serve notice by substituted service. After notice by publication in the local daily, the suit came to be decreed *ex parte*. It was further stated by the respondent that the revision petitioner had knowledge of the *ex parte* decree long back. This fact was also fortified that the criminal complaint given by the respondent as against the petitioner and his wife before the lower court.

5.The lower Court found that the *ex parte* decree was also annexed with the complaint and that therefore, the revision petitioner had knowledge about the *ex parte* decree long prior to the execution petition filed. The lower Court after considering the fact that the revision petitioner has evaded service of notice on several occasions, concluded that the revision petitioner had knowledge about the *ex parte* decree long back. As against the same, the present revision petition is filed.

6.The revision petitioner appears to have done something contrary to the order of decree for injunction granted in favour of the respondent. In the said circumstances, the petitioner need not be shown any indulgence. Though this Court normally takes a lenient view in condoning the delay, in this matter, where the decree was passed *ex parte*. The petitioner has evaded service and the conclusion of the lower Court regarding the conduct of the petitioner cannot be ignored.

7.In the affidavit filed in support of the petition to condone the delay, there was no explanation for the delay. The contention of the petitioner is that he came to know about the *ex parte* decree only when execution petition was filed by the respondent. The said fact was not proved by any material. It was demonstrated before the lower Court that the petitioner had knowledge long prior to the



filing of execution petition. Since there was no explanation for the delay even in the affidavit, this Court is unable to find any error or irregularity in the order passed by the lower Court.

8. Accordingly, the Civil Revision Petition is dismissed and the order passed by the learned Principal District Munsif, Trichy, in I.A.No.22 of 2011 in O.S.No.1552 of 2007, dated 14.09.2011, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

The Principal District Munsif, Trichy.

+1 CC to M/s.J. MARIA ROSELINE, Advocate (SR-83714[F] dated 28/08/2019)

C.R.P. (MD) (NPD) No. 2138 of 2011
27.08.2019

cmr

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