



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.09.2019**

CORAM :

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

C.R.P. (MD) No.2316 of 2011
and
M.P. (MD) No.1 of 2011

N.Chinnadurai ... Petitioner/Applicant/2nd Defendant

vs.

A.Rajamanickam ... Respondent/Respondent/Plaintiff

Prayer:- This Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order passed in I.A.No.156 of 2011 in O.S.No.81 of 2006 on the file of the Sub Court, Uthamapalayam dated 29.10.2011 by allowing this Civil Revision Petition.

For Petitioner : Mr.H.Velavadhas

For Respondent : Mr.D.Nallathambi

ORDER

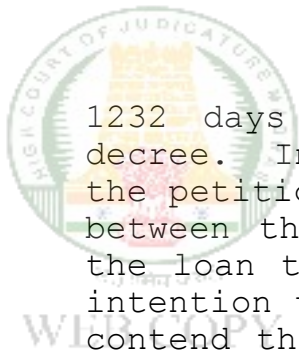
The second defendant is the revision petitioner before this Court.

2.This Civil Revision Petition is filed challenging the dismissal of the application in I.A.No.156 of 2011 for condoning the delay of 1232 days in filing the application to set aside the ex parte decree.

3.The short facts, which are necessary for disposing the above revision petition, are as follows:

3.1.The respondent herein/plaintiff had filed a suit in O.S.No.81 of 2006 on the file of the learned Subordinate Judge, Uthamapalayam for specific performance of agreement for the registration of the sale deed dated 18.02.2002 entered between the plaintiff and the defendants. The suit was decreed ex parte on 17.06.2006 since the defendants had not contested the suit.

3.2.The revision petitioner/2nd defendant has come forward with the application in I.A.No.156 of 2011 for condoning the delay of



1232 days in filing the application to set aside the ex parte decree. In the affidavit filed in support of the above application, the petitioner/2nd defendant would contend that the agreement entered between the plaintiff and the defendants was only as security for the loan that was borrowed by the defendants and that there was no intention to sell the property. Further, the second defendant would contend that he had ceased to have a cordial relationship with the first defendant, who is non-other than his sister in law and therefore, she has not informed him about the summons on account of family dispute.

3.3.Further, the second defendant would contend that in the year 2003, he moved to Chennai. Therefore, he had not received any summons that has been issued to him and he came to know the above fact only at Chinnamanur on 12.10.2010, meanwhile, the suit was decreed. Thereafter, he has immediately filed the application in I.A.No.156 of 2011 for condoning the delay of 1232 days in filing the application to set aside the ex parte decree.

3.4.The said contention was resisted by the respondent herein/plaintiff by *inter alia* contending that the petition is filed only account of a collusion between the petitioner/2nd defendant and his sister-in-law, the first defendant and their only intention is to drag on the proceedings and keep the property out of the reach of the plaintiff, who has paid substantial consideration for purchase of the same. The learned Subordinate Judge, Uthamapalayam, after hearing both parties and perusing the records was pleased to dismiss the said application. Challenging the same, the 2nd defendant is before this Court.

4.Heard the learned counsel on either side.

5.It is seen from the records that the learned counsel for the respondent/plaintiff had served the summons to the petitioner/2nd defendant to his last known address and that the same has been received not by the 2nd defendant but by the first defendant, but the summons had been served on the defendants.

6.Further, the 2nd defendant has come forward with the case that he has only borrowed the money and that the agreement was only by way of security and has not shown any proof whatsoever that the 2nd defendant has taken steps to repay the said loan amount. Therefore, the allegation that the agreement for sale was only a security appears to be an afterthought and an attempt to create a reason for condoning the said delay. The second defendant has not come forward with sufficient reason for condoning the said delay. Therefore, the learned Subordinate Judge had proceeded to dismiss the application in I.A.No.156 of 2011 for condoning the delay of 1232 days in filing the application to set aside the ex parte decree. I do not find any infirmity in the order of the Court below.



7.This Civil Revision Petition is dismissed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(AD-II)

WEB COPY/TRUE COPY/

Sub Assistant Registrar

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To

The Subordinate Judge,
Uthamapalayam.

+1 CC to M/s.H.VELAVADHAS, Advocate (SR-88789[F] dated 24/09/2019)
+1 CC to M/s.D. NALLATHAMBI, Advocate (SR-88801[F] dated 24/09/2019)

C.R.P. (MD) No.2316 of 2011
23.09.2019

JM/16.10.2019/3P/4C