



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2019

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.R.P. (MD) (NPD) .No.335 of 2018
and
C.M.P (MD) .No.1553 of 2018

Maheswaran

:Petitioner

Vs.

Paulraj

:Respondent

Prayer: The Civil Revision Petition has been filed under Article 227 of Civil Procedure Code to set aside the order dated 13.12.2017, made in I.A.No.89 of 2017 in O.S.No.410 of 2012 on the file of Additional Sub Court, Dindigul.

For Petitioner : Mr.R.Suriyanarayanan

For Respondent : Mr.C.Susikumar

ORDER

This Civil Revision Petition has been filed against the order passed by the learned Additional Subordinate Judge, Dindigul, dated 13.12.2017 made in I.A.No.89 of 2017 in O.S.No.410 of 2012.

2.I.A.No.89 of 2017 has been filed by the petitioner contending that he is the second defendant in the said suit and the suit was posted for trial on 17.02.2016. During the pendency of the suit, he has no knowledge about the same and hence, he could not file a written statement and therefore, exparte decree was passed on 17.02.2016. It is further stated that as he was suffering from jaundice, he was not in a position to convey the details to his counsel and did not get the detail of the stage of the suit. Hence, the delay of 277 days in filing the application to set aside the exparte decree has arisen.

3.The respondent/plaintiff in the counter statement has contended that this petitioner entered his appearance before the Court below on 21.12.2012 and written statement was also filed by the second defendant and the trial was also commenced on 02.11.2015. As the petitioner did not appear before the trial Court, the exparte decree was passed on 17.02.2016 and execution proceedings was also initiated by the plaintiff and in the execution petition also, the petitioner/the second defendant

appeared and sought for adjournment for filing counter and in spite of giving sufficient opportunity from 07.09.2016, 19.10.2016 and 04.11.2016 and 18.11.2016 was given to him, the petitioner did not file any counter statement. Hence, an order was passed and thereafter, execution proceedings was also completed on 25.04.2017. This petitioner has filed the petition to set aside the exparte decree with a delay of 283 days and the reason assigned by the petitioner is that he could not contact his counsel and he was also suffered from illness and he could not file any written statement.

4.The trial Court has observed that in spite of several adjournments given to the petitioner, the petitioner has not filed the written statement and therefore, an exparte decree was passed and subsequently in the execution proceedings also, after making appearance before the Court, the petitioner has not filed any counter statement and the Executing Court has also ordered for part of sale deed and execution of sale deed and E.P also terminated on 25.04.2017. The petitioner claims that he has purchased the property on 05.03.2012 but he has not filed any document along with the petition claiming possession and enjoyment over the said property from the date of purchase.

5.In such view of the matter, the order passed by the learned Additional Subordinate Judge, Dindigul dated 13.12.2017, made in I.A.No.89 of 2017 in O.S.No.410 of 2012 is confirmed. The Civil Revision Petition is accordingly dismissed. No costs. Consequently, C.M.P(MD).No.1553 of 2018 is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

vsg

To

The Additional Subordinate Judge, Dindigul.

COPY TO

The Record Keeper, V.R.Section, Madurai Bench of Madras High Court, Madurai. (2 copies)

+1CC TO MR.R.SURIYANARAYANAN, Advocate Sr. No. 54025

Order Made in
C.R.P. (MD) (NPD).No.335 of 2018
and C.M.P(MD).No.1553 of 2018

GRL (CO)