



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.06.2019

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (NPD) (MD)No.55 of 2019

P.Ravikumar

... Petitioner/Petitioner/
Defendant

vs.

R.Gandhimathi

... Respondent/Respondent/
Appellant

Petition filed under Section 115 of the Civil Procedure Code, against the fair and decreetal order passed in I.A.No.469 of 2015 in O.S.No.23 of 2007 dtaed 24.09.2018 on the file of Subordinate Judge, Kulithalai, Karur District.

For Petitioner : Mr.K.Sivabalan

ORDER

Against the dismissal of the Section 5 application, this revision is filed.

2.The respondent/plaintiff filed a suit for recovery of money based on the pro note. In the suit, an exparte decree was passed on 13.02.2008. The respondent filed execution petition to execute the decree. Thereafter, the petitioner filed the present petition to set aside the exparte decree passed in the suit with the delay of 2765 days. The Court below declined to condone the delay. Hence, this revision petition.

3.Learned counsel for the petitioner would contend that the petitioner also filed O.S.No.266/2007 on the file of the Principal District Munsif, Trichy, for mandatory injunction directing the respondent/defendant therein, to return the pro notes and 10 rupees of Non Judicial Stamp paper and since the respondent had got knowledge of that suit, the petitioner was under the impression that the respondent will not proceed further in O.S.No.23/2007 filed by her, and further due to his mother's illness, the petitioner could not concentrate in the proceedings in O.S.No.23/2007, but by suppressing the filing of O.S.No.266/2007 by the petitioner, the respondent obtained the exparte decree in O.S.No.23/2007. Thus, the learned counsel prays to allow this revision.



4. Heard the learned counsel for the petitioner and perused the records.

5. Perusal of record shows that though the petitioner contended that he was under the impression that the respondent will not proceed further in her suit and further due the illness of his mother, he did not prosecute the suit filed by the respondent thereby, he was not aware of the exparte decree passed in O.S.No.23/2007, the Court below found from the judgment dated 10.01.2011 passed in O.S.No.266/2007 wherein, exparte judgment and decree passed in the present suit O.S.No.23/2007, has been marked as Exs.B1 and B2 and therefore the Court below observed that the petitioner having knowledge of the exparte decree passed in the present suit even as early as on 10.01.2011, chose to file petition to set aside the exparte decree only on 09.10.2015 with 2765 days. The Court also observed that the illness of the petitioner's mother cited as the reason for the delay was also not proved by any medical records and having slept over the matter for more than 4 years, only after the order of attachment of the petitioner's salary in the E.P., to satisfy the decretal amount, the petitioner filed the present petition with the above delay which itself shows the mala fide intention of the petitioner in prolonging the proceedings and therefore, the learned Judge has declined to condone the delay, where, I do not find any infirmity.

Accordingly, this Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

The Subordinate Judge,
Kulithalai, Karur District.

+1CC TO MR.K.SIVABALAN, Advocate Sr. No. 69187

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MT(CO)

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