



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2019

CORAM :

THE HONOURABLE MRS.JUSTICE **S.RAMATHILAGAM**

CRP(MD) No.743 of 2019

and

C.M.P. (MD) No.4398 of 2019

Karupaiah

... Petitioner/Petitioner/Defendant

vs.

Vijaya

... Respondent/Respondent /Plaintiff

PRAYER:- Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order dated 13.03.2019 made in I.A.No.32 of 2016 in O.S.No.60 of 2013 on the file of the learned Subordinate Judge, Kulithalai.

For Petitioner : Mr.S.Ponsenthil Kumaran

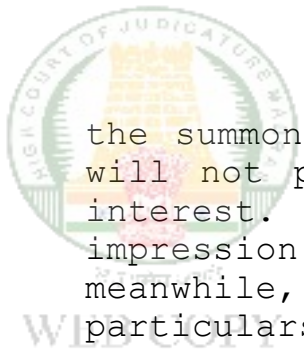
For Respondent : Mr.G.Sridharan

ORDER

This Civil Revision Petition has been filed to set aside the order dated 13.03.2019 made in I.A.No.32 of 2016 in O.S.No.60 of 2013 on the file of the learned Subordinate Judge, Kulithalai.

2.Before the trial Court, the petitioner herein is the defendant and the respondent herein is the plaintiff. For the sake of convenience, the parties will be referred to as per their rank before the trial Court.

3.I.A.No.32 of 2016 was filed by the defendant to condone the delay of 652 days in filing a petition to set aside the ex parte decree. In the said I.A., the defendant contended that he has sold the suit property to the plaintiff and he has borrowed a sum of Rs.2,00,000/- from the plaintiff and for the said sum, the plaintiff fraudulently got the sale deed executed to the value of Rs.15,00,000/- property. It is contended by the defendant that he has paid the interest for the said amount and he has also received the notice at the time, when he intended to sell the property for the purpose of paying the debt. At that juncture, the defendant approached the plaintiff and was instructed by him that he need not worry about the filing of the case, the issuance of notice and



the summons whatever was sent that can be received by him and he will not proceed any more and he was also ready to receive the interest. Hence, the defendant contended that he was under the impression that he can re-pay the entire amount and in the meanwhile, the plaintiff approached the defendant for selling the particulars for a meagre value, which was denied by the defendant.

4.The fact of manipulating a fraudulent sale deed came to the defendant's knowledge only on 01.11.2015 and on that day, the plaintiff and her father measured the defendant's house. Hence, he came to know that the said document was fraudulently made by the plaintiff and her father after getting the ex parte order dated 20.12.2013. Hence, by hopefully believing the words of the plaintiff, the defendant did not contest the suit with the impression that the plaintiff will not proceed any longer and he will be getting the interest and in the meanwhile, he will re-pay the entire amount, but to his great shock, the property was sold to him by the Court below based on the ex parte order. Hence, the delay of 652 days occurred and the decree obtained by the defendant is only by creating the fraudulent document. Hence, the defendant says that he has a very good case.

5.The plaintiff has filed her counter statement and denied the entire averments made in the said petition for not proceeding with the case. Since the defendant was also served with the notice on the Execution Petition, the plaintiff sought for dismissal of the said I.A.,

6.The trial Court after considering the contention raised on either side and also by examining the parties, has given a finding that even the evidence of the defendant was not very clear. The trial Court did not find any reason to consider the said application, which was filed to condone the delay of 652 days by observing the attitude of the defendant and the evidence that was deposed before the trial Court. The only reason placed before the trial Court by the defendant is that the assurance given by the plaintiff that he will not proceed with the suit and even after receiving the notice and summons, the plaintiff has assured that he will not proceed with the suit and when the defendant came to measure the property, he was able to identify the fraudulent act committed by the plaintiff in getting the ex parte decree and also getting the said document.

7.From the records, it is seen that throughout the proceedings, the defendant received the notice and in the Execution Petition also, the defendant received the notice. If his intention is one to prove the case before the Court below, he would have filed the written statement along with the petition to set aside the ex parte decree, whereas, the written statement was not filed. Hence, the intention of the defendant was very much

