



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 19.02.2019

PRONOUNCED ON: 21.03.2019

CORAM

THE HONOURABLE MRS. JUSTICE S. RAMATHILAGAM

CRP (MD) .No.1190 of 2018 (NPD)

and

C.M.P. (MD) .No.5029 of 2018

WEB COPY

A.Amalraj

Petitioner/Petitioner/1stDefendant

Vs.

K.Chandra

... Respondent/Respondent/Plaintiff

**PRAYER:** Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the order dated 21.02.2018 passed in I.A.No.163 of 2017 in O.S.No.1128 of 2003 on the file of the I Additional Sub Judge, Madurai (Camp at Melur).

|                |                          |
|----------------|--------------------------|
| For Petitioner | : Mr.K.Mahendran         |
| For Respondent | : Mr.P.T.S.Narendravasan |

### **O R D E R**

This Civil Revision Petition has been preferred against the decreetal order passed in I.A.No.163 of 2017, which has been filed by the petitioner, who is the first defendant, to condone the delay of 1385 days in filing the petition to set aside the exparte decree passed on 01.02.2011.

2.The respondent/plaintiff has filed a counter statement stating that the petitioner has not filed written statement in the suit till 2011, when he appeared through his counsel in the year 2003. The respondent in the said application has stated that already a preliminary decree was passed on 09.01.2013, by which, 1/4th share was allotted in favour of the respondent/plaintiff. Based on the said preliminary decree, the respondent also filed final decree application. In such circumstances, the petitioner, who was not aware of the proceedings even after four years, has filed the petition only to drag on the proceedings and also depriving the respondent from obtaining the fruits of the decree.

3.The petitioner, in the said I.A., has stated that the said case was posted on 01.02.2011 for filing written statement and on that date, he could not appear before the Court because of his ill



health and hence, an exparte order came to be passed, which is not known to him and hence, in that process, the delay has been occurred. The said delay of 4 years was not properly explained by the petitioner, who was very much careless and lethargic for all these years and filed the petition at a very belated time with an ulterior motive to delay the proceedings.

4.The trial Court, taking into account the relief sought by the respondent/plaintiff, the date of decree and the attitude of the petitioner and the fact that the the suit was filed in the year 2003 by the respondent/plaintiff and only after 10 years, a decree was passed and the respondent/plaintiff has also filed final decree application in I.A.No168 of 2013 and the said petition is also pending for nearly 5 years, this petitioner has now filed the present I.A., with an abnormal delay of 1385 days and the reason stated by the petitioner is also not satisfactory, found that as there is no sufficient reason stated by the petitioner for such an enormous delay, dismissed the said I.A. Aggrieved against the said order of dismissal, the petitioner has preferred the present Civil Revision Petition.

5.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

6.It is contended by the petitioner/1<sup>st</sup> defendant that only due to his illness, he could not able to appear before the Court on the date of hearing and when it was posted for filing his written statement and he was also not aware of the passing of the preliminary decree and also the subsequent proceedings in the suit. The reason stated by the petitioner was not proved by him before the trial Court by producing documentary evidence and hence, the reason stated by the petitioner was properly considered and the said petition was dismissed.

7.The learned counsel appearing for the respondent/plaintiff has argued that the plaintiff has filed the suit in the year 2003 and only in the year 2011, he has filed his written statement along with the petition to set aside the exparte decree. It is further argued by the respondent that after 10 years of passing of the preliminary decree, the final decree application was filed. It is further contended that the suit in O.S.No.1128 of 2003 was filed by the plaintiff for partition claiming 1/4th share in the suit property and the petitioner herein has not contested the suit and an exparte decree was passed on 09.01.2013 and based on the decree, the petition in I.A.No.163 of 2017 was filed for passing of final decree. In the said final decree petition also, the petitioner herein entered his appearance, but he has not filed any petition to set aside the exparte preliminary decree. Further, the petitioner has also remained exparte in the final decree proceedings, as he has not filed any counter, after passing of the



final decree. Subsequently, the petitioner has preferred the petition in I.A.No.163 of 2017 to condone the delay in filing the counter statement in the final decree application. Hence, the petitioner filed two petitions, one is to set aside the exparte preliminary decree and the second one is to set aside the final decree application and both the applications were dismissed by the trial Court.

8.The contention raised by the respondent/plaintiff is that the petitioner herein has not preferred any appeal against the said dismissal order in the said two I.As relating to preliminary decree as well as final decree. In the present petition filed by the petitioner there is no mentioning about the dismissal of the said petition and he has not mentioned anything whether he has preferred any C.M.A., against the dismissal order passed in these two petitions. Hence, the contention raised by the respondent that the present C.R.P., is not maintainable, since he has not preferred any appeal against the dismissal of I.A.No.163 of 2017 regarding the application to set aside the petition preferred against the exparte preliminary decree and final decree.

9.In the grounds, the petitioner has contended that the trial Court ought to have considered the bonafide reasons assigned by the petitioner for condoning the delay of 1385 days and without giving an opportunity to contest the suit on merit, the condone delay petitions were dismissed by the trial Court is erroneous. It is further contended that there would not be any change of cause of action or there would be any alteration in the character of the suit, if the petition to condone the delay is considered and the suit is restored to file. It is the grievance of the petitioner that in the interest of justice, the trial Court ought to have condoned the delay, when the petitioner was residing only at Paramakudi, for which no evidence was adduced by the respondent. The trial Court has considered the respondent's contention, without any proof or evidence. Hence, the dismissal of the petition preferred by the petitioner for condoning the delay is to be set aside.

10.On hearing both sides and also on perusal of records, it is observed that the respondent has preferred the suit in the year 2003 for partition and in spite of sufficient time being granted by the trial Court, the petitioner herein has not filed any written statement and hence, an exparte decree was passed. The petitioner filed a petition to set aside the exparte decree only at a later point of time, when the preliminary decree was passed. Based on the preliminary decree, the respondent also filed an application in I.A.No.163 of 2017 to set aside the exparte decree and application also, the respondent entered his appearance and he has not filed any counter statement and final decree was also passed. Instead of preferring appeal against the



dismissal of those petitions, the present Civil Revision Petition has been filed.

11. It is the grievance of the petitioner that when the trial Court has not considered the petition filed to set aside the exparte decree and the same was dismissed by the trial Court, without giving an opportunity to hear the said application. But there is no ground raised by the petitioner. It is his grievance further that the trial Court again dismissed the exparte decree petition along with condone delay petition. When the delay in preferring the petition to set aside the exparte decree was not considered by the trial Court, automatically, the petition filed to set aside the exparte decree can also be rejected. When the application was dismissed, there is no rule for entertaining the other application, which was filed for the consequential relief.

12. In view of the attitude of the petitioner herein, when he claims that it is a suit for partition and he is very much aware of the suit and the description of the property, he could very well approach the trial Court at the earliest point of time. The non appearance of the petitioner before the trial Court at various stage, which proves that he has purposely evaded the process of the Court and only after passing of the final decree, he has preferred the application which shows that he has appeared before the Court not on bonafide and genuine ground. If he has aggrieved against the said order, immediately, he would have approached the Court at the earliest point to seek remedy. Further, no reason has been stated by filing of such delay petition. In the absence of sufficient reasons for such a huge delay, the grievance of the petitioner cannot be considered and hence, the order of the trial Court seems to be very much reasonable and does not require any interference by this Court.

13. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

To

The Additional Sub Judge,  
Madurai (Camp at Melur).



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

+1 CC to M/s.K.MAHENDRAN, Advocate ( SR-55703[F] dated  
21/03/2019 )

+1 CC to M/s.PT.S.NARENDRAVASAN, Advocate ( SR-55591[F] dated 21/03/2019 )

ns

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**and**

**C.M.P. (MD) .No.5029 of 2018**

**21.03.2019**

KM/ (03.04.2019) 5P/6C