



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 30.07.2019
(Reserved on 17.06.2019)

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CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP (NPD) (MD) No.868 of 2019
and
CMP (MD) No.5093 of 2019

P.Parasuram ... Petitioner/Respondent/Plaintiff
vs.
Ramaraj ... Respondent/Petitioner/Defendant

Petition filed under Section 115 of the Civil Procedure Code, against the fair and decretal order dated 13.02.2019 made in I.A.No.243 of 2018 in O.S.No.24 of 2017 on the file of the Sub Court, Periyakulam.

For Petitioner : Mr.R.Gandhi
For Respondent : Mr.R.Shankar Ganesh

ORDER

The plaintiff is the revision petitioner.

2.The plaintiff filed the suit for specific performance before the Sub Court, Periyakulam, in O.S.No.24/2017.

3.During the pendency of the suit, the defendant/respondent took out an application in I.A.No.243/2018 seeking to set aside the exparte decree passed against him on 06.09.2017 along with the application to condone the delay of 283 days in filing the application to set aside the exparte decree. That application was allowed on 13.02.2019 with a direction to the defendant to pay a sum of Rs.50,000/- as cost on or before 27.02.2018. This order is under challenge in this revision petition.

4.Among other reasons, the defendant/respondent alleged that he was arrested in a criminal case on 17.11.2017 and prior to that, on the date of hearing that is, on 09.06.2017, he became incapacitated to walk and that he was taking treatment. The Court on consideration of the entire facts and circumstances, has chosen to pass a conditional order, saying that subject to payment of Rs.50,000/-, the exparte decree would be set aside. Challenging this order, the plaintiff has filed this revision petition.



5.The main contention raised by the plaintiff/petitioner is that the petition under Section 5 of the Limitation Act filed by the defendant, ought to have been dismissed, as delay of each day has not been explained.

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6.It is not the case of the petitioner that the respondent/defendant was not arrested in the criminal case. Though medical records have not been filed to show that on the date of appearance, he was in hospital as inpatient, however, some documents have been filed to show that the respondent/defendant was under treatment. The Court has also considered the fact that there had been three cases pending against the defendant/respondent under the provisions of Negotiable Instrument Act. In the execution petition, the defendant's wife has received summon, because the defendant/respondent had been in judicial custody. Considering all the circumstances, the Court has passed the order in which there is no infirmity or illegality.

7.Therefore, the revision petition challenging the order of the lower court has no merits and the revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

To

The Sub Judge,
Periyakulam.

+1 CC to Mr.R.SHANKAR GANESH, Advocate (SR-78448[F] dated
30/07/2019)

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