

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Civil Revision Petition (NPD) No.3999 of 2011

Kanagarajan

.....Petitioner/defendant

Vs

Jeevanandham

.....respondent/plaintiff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and final orders dated 22.06.2011 passed in I.A.No.113 of 2010 in O.S.No.42 of 2007 on the file of the District Munsif Court, Nagapattinam.

For Petitioner : Ms.Revathy for M/s.R.Nalliyappan
For Respondent : No appearance

ORDER

This Civil Revision Petition has been filed against the fair and final orders dated 22.06.2011 passed in I.A.No.113 of 2010 in O.S.No.42 of 2007 on the file of the District Munsif Court, Nagapattinam.

2. Heard the learned counsel for the petitioner. Despite substituted

service effected, there is no representation for the sole respondent.

3. The petitioner is the defendant in O.S.No.42 of 2007 on the file of the learned District Munsif, Nagapattinam. The respondent herein is the plaintiff. The respondent filed a suit against the petitioner for recovery of money. In the said suit, an ex parte decree was passed and thereafter, an execution petition was filed and the property of the petitioner was also brought for sale, wherein, third party participated in the auction and purchased the property. After that, the petitioner filed an application to set aside the ex parte decree and prayed to condone the delay of 931 days in filing the petition to set aside the ex parte decree and the said petition was dismissed by the trial Court. Challenging the said order, the petitioner is before this Court.

4. The learned counsel for the petitioner would submit that the respondent was running a chit fund and he borrowed a sum of Rs.40000/- from the respondent, for which, the property worth Rs.1 crore was attached and the same was brought for sale by auction and only for total consideration for a sum of Rs.12.36 lakhs, it was confirmed. Since there was a criminal case lodged against the petitioner in regard to chit fund

transactions, he was absconding for some time and later he was in jail for some times and in such circumstances, no suit notice was served to the petitioner. After that, the petitioner came to know that a suit was filed against him by the respondent and it was decreed and execution proceedings were taken, wherein, the property was sold in the court auction for a sum of Rs.12,36,000/- only. After coming to know about this, the petitioner filed the petition praying to set aside the ex parte decree and as there was delay, he filed a petition praying to condone the delay in filing exparte decree set aside petition. However, the trial Court, considering the fact that the petitioner has not properly explained the delay, dismissed the petition.

5. On a perusal of the records, it shows that the respondent filed a suit against the petitioner and the suit was decreed as ex parte. Thereafter, the petitioner filed an application to set aside the exparte decree. There was a delay of 931 days in filing the petition to set aside the ex parte decree. Therefore, he has filed an application to condone the delay of 931 days under Section 5 of the Limitation Act. The said petition was dismissed. Against the said order, the petitioner filed the present revision petition before this Court.

6. As regards the delay, though the petitioner has stated in his affidavit that he was absconding for more than 1 ½ years and subsequently, a criminal case in Crime No.2 of 2009 was filed against him and later he was arrested and sent to judicial custody from 19.05.2009 till 20.07.2009. According to him, he purchased the properties worth more than Rs.1 Crore, was sold in Court auction for only a sum of Rs.12,36,000/-. The petitioner has not examined any witness to substantiate his case. The suit was filed in the year 2007, whereas, he was in jail only from 19.05.2009 till 20.07.2009 and he has stated that he was absconding for more than 1 ½ years. Therefore, though the petitioner stated that the properties worth about Rs.1 crore, but he has not produced any document for the value of the property. Though the reasons for the delay were stated in the affidavit, but they were not convincing and satisfactory. The length of the delay is not a matter for consideration if proper, cogent and convincing reasons are assigned in the affidavit, explaining the delay. But the petitioner has not properly explained the delay in filing an application for setting aside the ex parte decree. Therefore, in the absence of any oral and documentary evidence, the reasons stated by the petitioner without any proof and not satisfactory to condone the delay, this Court is not inclined to interfere with the order of the trial Court.

7. Accordingly, this Civil Revision Petition stands dismissed. No costs.

29.07.2020

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To

1. The District Munsif Court, Nagapattinam
2. The Section Officer, V.R. Section, High Court, Madras



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P.VELMURUGAN,J.
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