

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2020

CORAM:
THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.R.P(NPD).No.2333 of 2017
and
CMP.No.10969 of 2017

Pandarinathan ... Petitioner

Vs.

Somasekar ... Respondent

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India to set-aside the fair and decreetal order dated 28.06.2016 made in I.A.No.174 of 2015 in O.S.No.64 of 2014 on the file of Additional District Judge Court, Hosur .

For Petitioner : Mr. S. Manoharan

For respondent : Mr. G.M.Anantha Kumar

सत्यमेव जयते
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ORDER

The Civil Revision Petition has been filed against the order dismissing the petitioner's application filed under Section 151 CPC to condone the delay in filing a petition to set-aside the exparte decree.

2. The respondent/plaintiff had filed a suit in O.S.No.64 of 2014 on the file of the Additional District and Sessions Court, Hosur for Specific Performance, in which, the petitioner was set exparte and exparte decree has been passed against him on 27.02.2015. Thereafter, the petitioner has filed an application to set-aside the exparte decree with a delay of 151 days in filing a petition to condone the delay in I.A.No.174 of 2015. Since the petitioner did not appear in the said application, the same has been dismissed by the trial Court. Now, challenging the same, the present revision has been filed.

3. The learned counsel for the petitioner would submit that before filing the suit the petitioner has filed a petition to declare him as insolvent. Only thereafter, the suit has been filed and hence, the suit itself is not maintainable. That apart, this petition has been filed only to condone the delay of 151 days and the same has been dismissed for default for non appearance of the counsel. Without issuing notice to the petitioner, the application has been dismissed for non prosecution.

4. The learned counsel for the respondent would submit that the the petitioner has filed a petition to declare him as insolvent, and insolvency proceedings had been initiated only subsequent to the filing of the suit to deprive the petitioner's right as per the sale agreement. Pursuant to the decree, the petitioner had also filed Execution Proceedings and sale deed has also been executed in favour of the respondent. The petitioner is habitual in default and deliberately not appeared before the Court. Hence, the Court has dismissed the application and there is no infirmity in the order passed by the Court below.

5. I have considered the rival submissions and perused the materials available on records carefully.

6. The petitioner has filed a petition to condone the delay in filing a petition to set-aside the exparte decree and the same has been dismissed for default. It is the contention of the petitioner that the the petition to declare him as insolvent has been filed and thereafter only, the suit has been filed, which is not maintainable. From the perusal of the records, it could be seen that this petition has been dismissed for non prosecution. Now, it is stated that the respondent/plaintiff has also filed an Execution Petition and sale deed has also been executed. Admittedly, Exparte decree was passed in the year 2014 and it is not known when the petitioner was declared as insolvent. Considering the fact that now the sale deed has been executed in favour of the respondent/plaintiff. If at all the petitioner has been declared as an insolvent, it is for the parties to work out their remedy before

the appropriate forum, on that ground the revision cannot be allowed. The Court below after considering the entire materials rightly dismissed the application. Hence, I find no illegality or irregularity in the order passed by the Court below and I find no merit in the revision.

7. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

04.02.2020

Index:Yes/No
Internet:Yes
Speaking/Non-speaking order
mrp

Note : issue order copy on 11.03.2020
To

The Additional District Judge Court, Hosur .

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V.BHARATHIDASAN, J
mrp



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