

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.11.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAM

C.R.P.No.1772 of 2018 and

C.M.P.No.9922 of 2018

K.P.Singaram ...Petitioner

Vs

C.Natarajan ...Respondent

Prayer : Civil Revision Petition is filed under Section 115 of Civil Procedure Code to set aside the order and Decreetal order dated 21.03.2018 of learned II Assistant Judge, City Civil Court, Chennai passed in I.A.No.15776 of 2017 in O.S.No.1594 of 2016.

For Petitioner :Mr.M.Rajaraman

For Respondent :Mr.S.Rajakumar

O R D E R

The plaintiff in O.S.No.1594 of 2016 challenges an order of the trial court condoning the delay of 197 days in filing an application seeking to set aside the decree for redemption passed in the said suit. The suit was laid by the plaintiff seeking redemption of mortgage dated 16.09.2009. The mortgage was for principal amount for Rs.5,00,000/- . Claiming to have paid certain amounts in partial discharge of the mortgage, the plaintiff sued for redemption. Earlier, the plaintiff had filed a suit for an injunction restraining defendant, namely, mortgagee from bringing the property for sale and also seeking a declaration that the notice issued by mortgagee for sale under Section 69 of the Transfer of Property Act is invalid in O.S.No.590 of 2011 in the said suit. The trial court decreed the suit directing the defendant to pay a sum of Rs.3,80,000/- together with interest at 6% per annum from 05.03.2009 till the date of the suit.

2. The plaintiff did not pay the money as directed by the said decree, but choose to initiate a fresh suit for redemption basing the calculation of the mortgage money on the decree granted in O.S.No.5590 of 2011. The defendant had entered appearance. Since he failed to file the written statement, the defendant was set exparte and a decree for redemption came to be granted on 02.03.2017. Pursuant to the said decree, the plaintiff has sent a sum of Rs.4,49,100/-, being the amount found due under the preliminary decree for redemption on 30.05.2017 and the same was en cashed by the decree holder, namely, mortgagee on 08.06.2017. Subsequently on 09.09.2017, the defendant/mortgagee filed an application seeking condonation of delay of 197 days in filing an application to set aside the exparte decree.

3. The mortgagee / defendant had claimed that he was suffering from jaundice and was taking native treatment at Trichy, therefore, he could not contact the counsel. The trial court had accepted the said reason and concluded that the defendant had satisfactorily explained the delay and hence, he is entitled to condonation of delay.

4. I have heard Mr.M.Rajaraman, learned counsel appearing for the petitioner and Mr. S.Rajakumar, learned counsel appearing for the respondent.

5. Mr.M.Rajaraman, learned counsel appearing for the petitioner would vehemently contend that having accepted the payment of Rs.4,49,100/- on 08.06.2017, the petitioner / defendant cannot seek to set aside the exparte decree. He would also contend that there was no sufficient explanation for the delay.

6. The delay is only 197 days. No doubt, the defendant had accepted the payment of Rs.4,49,100/- paid as per exparte preliminary decree, but that by itself would not prevent him from seeking to set aside exparte decree and claim monies on the basis of the contract. The very fact that the plaintiff in his redemption suit has chosen to value suit on the basis of the decree, which he did not choose to comply, raises a triable issue in the suit.

7. I am therefore of the considered view that the trial court was justified in exercising its discretion in favour of the defendant and condoning the delay of 197 days in filing the application to set aside exparte decree. The trial court has also imposed cost so as to compensate the plaintiff.

I therefore do not find any illegality or material

irregularity in the order of the trial court. The Civil Revision Petition fails and it is accordingly dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-VII)

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Sub Assistant Registrar

Ssd

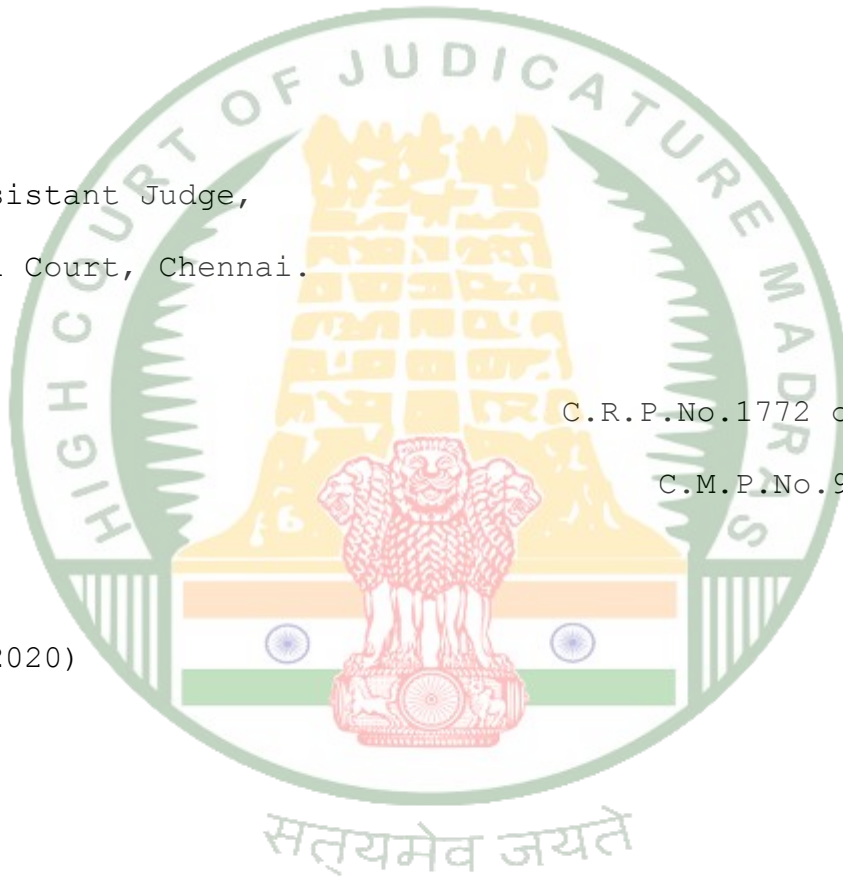
To

The II Assistant Judge,
City Civil Court, Chennai.

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KV (CO)
GN(22/12/2020)



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