

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(NPD)No.2514 of 2018
and
C.M.P.No.15306 of 2018

M.Loganathan ...Petitioner/Defendant
Vs.

R.Duraisamy ..Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 16.03.2018 made in I.A.No. 666 of 2016 in O.S.No. 76 of 2009 on the file of the Court of the Sub-Ordinate Judge, Sankari.

For Petitioner : Mr.Arun Dattan

for Mr.C.Munusamy

For Respondent : Mr.K.Sudhakar

O R D E R

This revision is by the defendant in O.S.No. 76 of 2009, challenging the order dismissing the application to condone the delay of 1826 days in representing the application to set aside the exparte decree dated 09.08.2010.

2. The suit in O.S.No. 76 of 2009 is one for recovery of sum of Rs.2,25,300/-. The suit came to be decreed exparte on 09.08.2010. The defendant filed an application under Order 9 Rule 13 of C.P.C., for setting aside the exparte decree almost immediately i.e., on 07.09.2010. The said application was returned for certain compliance on 29.09.2010. The same was not represented. The decree holder levied execution in E.P.No. 134 of 2013. The judgment debtor / petitioner herein was served with notice in the execution petition on 22.11.2013 and since he did not appear on 29.11.2013 namely, the date of hearing of the execution petition, he was set exparte. Thereafter, he filed an application to set aside the exparte order and the same eventually set aside on 19.06.2014. Thereafter, the petitioner chose to represent the petition filed under Order 9 Rule 13 on 30.10.2015 along with an application to condone the delay of

1826 days in representing the same. The application for condonation of delay in representation was numbered as I.A.No. 666 of 2015.

3. According to the petitioner, after the exparte decree, there was a Panchayat on 09.09.2010 to settle the dispute and during the Panchayat, respondent / decree holder agreed to withdraw the suit and report the settlement to the Court. Therefore, he honestly believed the words of the plaintiff and did not take further steps. He would also aver that in view of the said settlement, he did not represent the application for setting aside the exparte decree. When the above application was taken up for hearing, the petitioner examined himself as P.W.1 and examined one Muniappan as P.W.2 in support of his contention that there was a Panchayat. The evidence of P.W.2 was disbelieved by the learned Trial Judge on the ground that P.W.2 had made contradictory statements and that he was working with the petitioner.

4. The learned Trial Judge was found that the petitioner was guilty of negligence. Even assuming his plea that there was a compromise on 09.09.2010 is plausible, the Trial Court has concluded that the fact that he had not even reacted after receiving the notice on 22.11.2013 would show that the petitioner was wholly negligent in prosecuting the proceedings. The learned Trial Judge has also concurred with the decree holder in his submission that the petition itself is an attempt to delay execution of the decree. On the said findings, the Trial Judge dismissed the application. Aggrieved, this revision.

5. Heard Mr.Arun Dattan for Mr.C.Munusamy, learned counsel for the petitioner and Mr.K.Sudhakar, learned counsel for the respondent.

6. Mr.Arun Dattan, learned counsel for the petitioner would vehemently contend that the Trial Court was not right in dismissing the application for condonation of delay in representation. He would also submit that the Court should always be liberal in condoning the delay in representation. No doubt, the Courts do not apply the same standards as required for delay in presentation to delay in representation but Courts will not aid a person, who has been shown to be negligent in prosecuting the proceedings by condoning huge delay as in this case.

7. The petitioner filed an application to set aside the exparte decree some time in September 2010 but did not chose to prosecute it. The claim is that the Panchayat was on 09.09.2010. If the Panchayat had taken place on 09.09.2010, the petitioner need not have kept quite till 30.10.2015 for

representing the same, since he was served with the notice in execution proceedings on 22.11.2013. Therefore, atleast on 22.11.2013, the petitioner had knowledge of the fact that the decree holder / plaintiff is seeking to execute the decree. He remained exparte in execution proceedings also and on his application the exparte order in execution proceedings was set aside on 19.06.2014. Therefore, the petitioner should have taken steps to represent the Order 9 Rule 13 application atleast on 19.06.2014, when the exparte order in the execution proceedings was set aside. The petitioner has not chosen to represent the application on 19-06-2014 but he has represented the application only on 30.10.2015 that is nearly 1 year 4 months from the date of setting aside the exparte order in the execution petition.

8. The learned Trial Judge has considered the entire material on record and concluded that there is no bonafide in the actions of the petitioner. I am unable to contenance the submission of Mr.Arun Dattan in view of the total absence of deligence on part of the petitioner in prosecuting the proceedings before the Trial Court. I do not see any material irregularity in the order of the Trial Court in order to enable me to interfere with the same. Hence, this revision fails and it is accordingly dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To:

The Sub-Ordinate Judge,
Sankari.

Copy to:

The Section Officer,
V.R.Section, High Court, Madras.

Sv(co)

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