



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:08.09.2020

Coram:

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(NPD)MD.No.1628 of 2014

and

C.M.P(MD)No.2 of 2014

P.Balasubramani

... Petitioner /
Petitioner / Defendant

.vs.

R.Chinnasamy

... Respondent /
Respondent / Plaintiff

Prayer:-Civil Revision Petition filed under Section 115 of C.P.C., against the petition and order passed in unnumbered I.A.No. of 2014 in I.A.No.157 of 2009 in O.S.No.102 of 2007 on the file of the District Munsif Court, Nilakottai, dated 05.06.2014, by allowing this Civil Revision Petition.

For Petitioner : Mr.T.Selvan

For Respondent : No Appearance

ORDER

This Civil Revision Petition has been filed by the petitioner / second defendant against the rejection order passed by the learned District Munsif, Nilakottai, in unnumbered I.A.No. of 2014 in I.A.No.157 of 2009 in O.S.No.102 of 2007, dated 05.06.2014.

2. Though notice was served on the respondent / plaintiff, his name is also printed in the cause-title, he has not appeared in person or through counsel. Hence, after hearing the arguments made by the learned counsel appearing for the petitioner and perusing the materials filed along with this petition, this order is being passed in this Civil Revision Petition.



3. The respondent herein has filed a suit in O.S.No.102 of 2007 on the file of the Court of District Munsif, Nilakottai, against one Palanichamy and three others, in which, the petitioner herein has been shown as second defendant, for recovery of Rs.88166.66 on a mortgage. All the defendants including the petitioner herein remained ex-parte and hence, an ex-parte preliminary decree was passed on 21.04.2009. Thereafter, the second defendant / petitioner herein has filed an application in I.A.No.157 of 2009, to condone the delay of 22 days in filing a petition to set aside the ex-parte preliminary decree. The learned District Munsif, Nilakottai, by order dated 28.10.2009 passed a conditional order stating that the said petition will be allowed on payment of cost of Rs.200/- to the respondent / plaintiff on or before 10.11.2009. The petitioner has not paid the cost within the time fixed by the trial Court. On the contrary, he filed an application seeking extension of time for complying the said condition on 22.01.2014. The learned District Munsif, Nilakottai, has rejected the said petition by order dated 05.06.2014 stating that the petitioner has not stated any valid reason for filing the aforesaid petition after 4 $\frac{1}{4}$ years. Aggrieved by the same, the petitioner / second defendant has filed the present Civil Revision Petition.

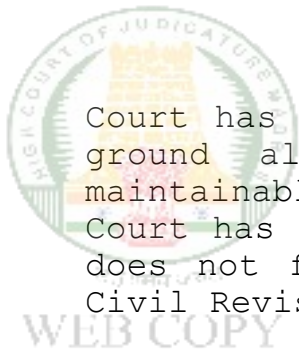
4. The learned counsel for the petitioner has submitted that even though the petitioner has instructed his Advocate's Clerk to pay the cost within the time, he failed to pay the said cost and also failed to inform him and that was the reason for not paying the cost immediately and also not filing the petition to extend the time immediately.

5. A perusal of the affidavit filed by the petitioner shows that he has not stated that he gave any such instructions to his Advocate's Clerk to pay the cost. Further, he has not stated about when he came to know that his Advocate's Clerk has not paid the cost. The petitioner's affidavit does not contain any valid reason for not filing the petition for more than four years for seeking extension of time.

6. At this juncture, it would be relevant to refer to Section 148 of C.P.C, which reads thus:

"148. Enlargement of time:- Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, [not exceeding thirty days in total] even though the period originally fixed or granted may have expired."

7. From the aforesaid provision of law, it is clear that the Court can extend the time not exceeding 30 days in total. But, in this case, already more than four years lapsed. Hence, the trial



Court has no power to extend the period beyond 30 days. On this ground also, the petition filed by the petitioner is not maintainable. Therefore, this Court is of the view that the trial Court has rightly rejected the petitioner's petition and this Court does not find any infirmity in the said order. Accordingly this Civil Revision Petition is liable to be dismissed.

8.In the result, this Civil Revision Petition is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

The District Munsif,
Nilakottai.

C.R.P (NPD) (MD) No.1628 of 2014

08.09.2020

pm

SDS (16.09.2020) 3P-2C