



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.06.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P. (MD)No.1797 of 2015
and M.P. (MD)No.1 of 2015

Thirunavukarasu

... Petitioner/Petitioner/
1st Defendant

Vs.

K.R.Athiyappan

... Respondent/Respondent/
Plaintiff

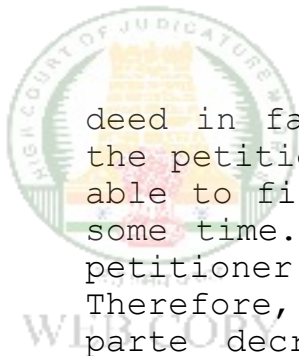
PRAYER: Civil Revision petition filed under Article 227 of the Constitution of India against the fair and executable order made in I.A.No.59 of 2015 in O.S.No.42 of 2009 on the file of the District Munsif Court, Devakottai, dated 19.06.2015.

For Petitioner : Mr.C.Jeyaprakash
For Respondent : No Appearance

ORDER

The petitioner herein is the first defendant in O.S.No.42 of 2009 on the file of District Munsif Court, Devakottai. The respondent herein is the plaintiff in the said suit. The respondent filed a suit against the petitioner herein along with one Mr.Bose for redemption. The petitioner entered appearance through a counsel in the suit. After receiving summons and even after giving sufficient time, neither the petitioner nor the other defendant, who is not a party in this revision, have not filed their written statement. Due to non-filing of the written statement within the stipulated time, the trial Court set the petitioner as ex-parte and ex-parte preliminary decree was passed on 04.09.2013. After passing of ex-parte preliminary decree, the respondent filed an application in I.A.No.501 of 2014 for passing of final decree. In that application, notice was ordered to the petitioner. After receiving the notice, the petitioner has filed an application in I.A.No.59 of 2015 to condone the delay in filing the application to set aside the ex-parte decree. The trial Court has dismissed the said application. Challenging the said order passed by the District Munsif Court, Devakottai, dated 19.06.2015, the petitioner has filed the present Civil Revision Petition.

2. The learned counsel for the petitioner would submit that the respondent does not have any title over the suit property. There is no relationship of mortgager and mortgagee between the petitioner and the respondent and the petitioner has not executed any mortgage



deed in favour of the respondent. He further submits that though the petitioner has entered appearance through a counsel, he was not able to file written statement as he was ill and out of station for some time. After receiving the notice in I.A.No.501 of 2014, the petitioner came to know that ex-parte preliminary decree was passed. Therefore, he wanted to file an application to set aside the ex-parte decree and there is a delay of 460 days in filing the application to set aside the ex-parte and the said delay is neither willful nor wanton. The trial Judge without considering the reasons stated in the affidavit filed in I.A.No.59 of 2015, dismissed the same on the ground that ex-parte decree was passed under Order VIII Rule 10 of C.P.C and therefore, against the judgment of preliminary decree appeal under Order XLI Rule 1 of C.P.C only will lie and application under Order IX Rule 13 to set aside the ex-parte decree will not lie. Hence, the reasons stated by the trial Court is against the principles of law and therefore, it is liable to be set aside and an opportunity may be given to contest the main suit.

3. None appeared on behalf of the respondent, though the name of the respondent's counsel is printed in the cause list.

4. Heard the learned counsel for the petitioner and also perused the records.

5. Admittedly, the petitioner is the first defendant in O.S.No.42 of 2009. Though the petitioner appeared through counsel in the said suit, he has not filed the written statement within the stipulated time and therefore, the trial Court has set the suit as ex-parte and passed the preliminary decree on 04.09.2013. The respondent has filed an application in I.A.No.501 of 2014 for passing of final decree. After receiving notice in I.A.No.501 of 2014, the petitioner filed an application to set aside the ex-parte decree along with an application to condone the delay of 460 days in filing the application to set aside the ex-parte decree. On a careful reading of the affidavit filed by the petitioner in the application to condone the delay, it is seen that the petitioner has not clearly stated the reasons to condone delay. The Hon'ble Apex Court has reiterated that the length of delay is not the matter, but the reason for delay has to be stated specifically and clearly and if the Court is satisfied with the reasons for the delay, then the Court can condone the delay even the delay is too length. If the Court is not satisfied with the reasons to condone the delay, even the delay is short, the Court need not condone the delay. The reasons given by the trial Court that against the preliminary decree, the petitioner should have filed an appeal under XLI Rule 1 of C.P.C. and not filed a petition under Order IX Rule 1, since the preliminary decree was passed under Order VIII Rule 10, is against the principles of law. Though one of the reasons given by the trial Court not to condone the delay is against the principles of law, but at the same time as far as condonation of the delay is concerned, it is purely discretion of the Court. Therefore, this



Court does not find any reason to condone the delay of 460 days in filing petition to set aside ex-parte preliminary decree passed on 04.09.2013. Hence, there is no merit in this Civil Revision petition and it is liable to be dismissed. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. Considering the facts and circumstances, there shall be no order as to costs.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Vsm

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 responsibility of the advocate/litigant concerned.

To

The District Munsif,
Devakottai.

+1 CC to M/s.S.MUTHUKUMAR, Advocate (SR-13093[F] dated 04/06/2020)

C.R.P. (MD)No.1797 of 2015

02.06.2020

SMA/19/06/2020/3P/3C