



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.12.2020

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD) No. 2008 of 2015
and M.P. (MD) No. 2 of 2015

Sukumar ... Petitioner/Petitioner/1st Defendant

vs.

Kamatchi ...Respondent/Respondent/Plaintiff

PRAYER : Petition filed under Section 115 of Civil Procedure Code, against the Fair and Decreetal Order in I.A. No.1056 of 2012 in O.S. No. 109 of 2005, dated 17.02.2014 on the file of the learned District Munsif, Musiri.

For Petitioner : Mr. R. Vijayakumar
For Respondent : Mr.K.S. Sankar Murali

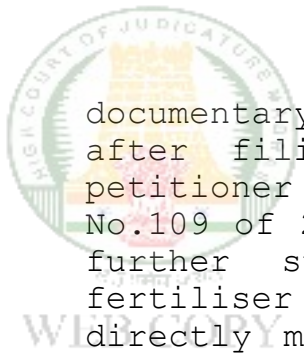
ORDER

This petition has been filed against the Fair and Decreetal Order in I.A. No.1056 of 2012 in O.S. No. 109 of 2005, dated 17.02.2014 on the file of the learned District Munsif, Musiri.

2. The ground raised by the revision petitioner is that he has got a good defence in the specific performance suit. The learned counsel for the petitioner has not informed about the next date of hearing of the suit and hence, the petitioner could not appear before the Court on the said date. The Court below failed to see that the petitioner was suffering from jaundice on 10.07.2007. The reasons assigned by the Court below for dismissing the application are unsustainable in law and hence, liable to set aside.

3. The learned counsel appearing for the revision petitioner/1st defendant submitted that he had filed a petition in I.A. No. 1056 of 2012 in O.S. No.109 of 2005 to condone the delay of 1805 days in filing the petition to set aside the exparte decree, and the same was dismissed by the learned District Munsif, Musiri on 17.02.2014. Against the aforesaid order, the Civil Revision Petition has been filed.

4. The learned counsel appearing for the respondent herein submitted that the revision petitioner has not proved his illness and where he has taken treatment for his illness through oral or



documentary evidence. He further submitted that the respondent after filing a petition in E.P. No.9 of 2012, the revision petitioner has filed the petition in I.A. No.1056 of 2012 in O.S. No.109 of 2005 is only for the purpose of drag on proceedings. He further submitted that the revision petitioner was running fertiliser shop and cement shop in so many places and he only directly managed the shops for the past five years. Hence, he prayed for dismissal of the Civil Revision Petition.

5. The Court gave due consideration to the submissions of the learned counsel.

6. It is seen from the records that the revision petitioner/1st defendant had stated in I.A. No.1056 of 2012 in O.S. No.109 of 2005 that he suffered in jaundice for three months from 4th week of June 2007. Therefore, he could not contact his counsel. After, he went to Karur, when he contacted his counsel in the month of May 2012, he came to know that the suit was decreed as exparte. After that, he has filed a petition in I.A. No.1056 of 2012. Suit was decreed as exparte on 10.07.2007. He suffered jaundice in the Month of June, 2007. Even as per his petition, he came to know about the decree in the year 2012 and filed the petition under Section 5 of Limitation Act. He suffered jaundice from June 2007 for three months. But, the delay is 1805 days. Each and every delay should be explained. If, he really interested in adjudicating the case, he might have contacted his counsel much earlier.

7. As per Judgment reported in **2010 (5) LW 27**, the reason that the party could not contact counsel is not genuine. Further, the suit was filed for specific performance. Sale deed also executed.

8. The reason for the delay in filing the petition is not sufficient and genuine. Therefore, the Court below rightly dismissed the petition in I.A. No.1056 of 2012 in O.S. No. 109 of 2005. This Court has no valid reason to interfere with the order passed by the Court below.

9. In fine, the Civil Revision Petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

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To

1. The District Munsif Court, Musiri.

2. The Section Officer,

V.R.Section,

Madurai Bench of Madras High Court,

Madurai. (2 COPIES)

+1 CC to Mr.K.S.SANKHAR MURALI, Advocate SR.No. 26151

Order made in

C.R.P. (MD) No. 2008 of 2015

18.12.2020

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KMK (CO)

TR (07.01.2021) 3P 5C