

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 09.07.2021

PRONOUNCED ON: 23.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P. (PD) No. 315 of 2021

And

C.M.P.No. 2743 of 2021

Murugan

... Petitioner/Respondent/Plaintiff

-Vs-

Govi Murugan

... Respondent/Petitioner/Defendant

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, 1908 against the fair and decreetal order dated 13.10.2020 in I.A.No. 728 of 2019 in O.S.No. 27 of 2015 on the file of Principal Sub Court, Perundurai.

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For Petitioner : Mr. S.Kaithamalai Kumaran

For Respondent : Mr. G.Magesh Kumar

ORDER

This Civil Revision Petition has been filed questioning the order dated 13.10.2020 in I.A.No. 728 of 2019 in O.S.No. 27 of 2015. The said Interlocutory Application had been filed by the defendant in the suit under Section 5 of the Limitation Act to condone the delay of 347 days to set aside the exparte order.

2. It has been the contention of the defendant that he had suffered from Jaundice and was bedridden and could not appear before the Court. He came to know about the decree of the suit only when the notice in the execution petition was served on him.

3. A counter had been filed by the plaintiff wherein it had been stated that the suit was decreed on 21.02.2015 and thereafter, E.P.No. 54 of 2014 had been filed. It had been stated that the defendant had also filed a petition in E.A.Nos. 18 & 81 of 2019 which were also dismissed. It was also stated that the sale deed had also been executed in favour of the plaintiff and had also been registered in the office of the Sub Registrar. The

execution petition has already been closed and the matter is now posted for delivery of possession.

4. Heard the learned counsels.

5. I.A.No. 294 of 2017 had been filed by the revision petitioner herein to condone the delay of 238 days in filing the application to set aside the exparte order in the suit. The respondent herein did not raise any objection. Opportunity was granted to file written statement. Written statement was not filed. The revision petitioner was set exparte on 05.04.2018. An exparte decree was passed on 19.07.2018 and thereafter, execution petition in E.P.No. 203 of 2018 had been filed. Subsequently, the revision petitioner contested in the execution petitions. The sale deed had been executed pursuant to orders by the Execution Court and the sale deed has also been registered. A fresh Execution Petition has been filed for recovery of possession. At that stage, the revision petitioner had filed I.A.No. 728 of 2019 to condone the delay of 347 days to set aside the exparte decree.

6. The reason advanced was that he was suffering from Jaundice. However the revision petitioner had not grazed the witness box and had not subject himself for cross examination. Documents had also not been produced. It is seen that every stage, he had successively protracted the judicial proceedings.

7. The Court had been liberal on several occasions. As a matter of fact, the plaintiff had also been very considerate but now has travelled very far pursuant to the decree. Sale deed had been executed and also registered. It would be a traversity of justice if the clock is to be set back once again and the plaintiff is called upon to restart the suit from the beginning.

8. The defendant had deliberately not taken up the opportunities granted to him. I find no justification in the order under revision and the order is set aside and this Civil Revision Petition is allowed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

9. A direction is given to the Principal Sub Court, Kallakurichi, to proceed further in manner known to law with respect to any pending petition before it.

23.07.2021

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Index: Yes/No

Internet: Yes/No.

Speaking / Non speaking



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C.V.KARTHIKEYAN, J.

vsg



Pre-delivery Order made in

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