

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED:10.03.2021

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P. No.236 of 2021

and

C.M.P.No.2209 of 2021

Shirajan Venugopalan Menon

...Petitioner

Vs

A.P.Velusamy

...Respondent

PRAYER: Civil Revision Petition filed under Section 115 CPC to set aside the order dated 16.06.2020 made in I.A.No.86 of 2016 in O.S.No.216 of 2008 on the file of the III Additional District and Sessions Judge, Tiruppur at Dharapuram.

For Petitioner : Mr.C.Prabakaran

O R D E R

This Civil Revision Petition has been filed against the order dated 16.06.2020 made by the III Additional District and Sessions Judge, Tirupur at Dharapuram in I.A.No.86 of 2016 in O.S.No.216 of 2008, in and by which, the interlocutory application filed by the petitioner herein seeking to condone the delay of 1268 days in filing the petition to set aside the preliminary decree has been dismissed.

2. The petitioner herein is the second defendant in the suit in O.S.No.216 of 2008 filed by the plaintiff, who is the respondent therein, before the District Court, Erode, for specific performance. The said suit came to be decreed ex-parte. It appears that the petitioner herein has received summons to appear before the Court. Thereafter, he had filed vakalat and written statement in order to contest the suit. However, the petitioner has not proceeded with the suit and allowed the suit being decreed ex-parte. Thereafter, the respondent/plaintiff has filed an execution petition in E.P.No.92 of 2015, whereupon publication of notice in a daily 'General' was caused. The petitioner, after coming to know about the execution proceedings on 04.04.2016, moved the Court below by filing I.A.No.86 of 2016 in O.S.No.216 of 2008 seeking to condone the delay of 1268 days in filing the petition to set aside the preliminary decree passed against him on 27.09.2012.

3. According to the petitioner/second defendant, he was not aware of the suit proceedings. He was in Muscat and only

on 04.04.2016, when he returned from Muscat, he came to know about the publication of notice in a daily General regarding the execution proceedings, in E.P.No.92 of 2016, through his friend. It is further stated that he was the Director of the first defendant's company, which was dissolved, and while he was in crisis, the respondent/plaintiff obtained his signature just to lodge a police complaint, using which, the respondent/plaintiff later created it as an agreement and filed a suit for specific performance. Thereafter, the respondent had fraudulently obtained a preliminary decree. Therefore, the petitioner wants to contest the suit and in this regard, filed a petition in IA.No.86 of 2016, seeking to condone the delay in filing the petition to set aside the ex-parte preliminary decree passed against him. The above said interlocutory application was resisted by the respondent/plaintiff by filing a counter affidavit inter-alia denying the averments made in the affidavit filed in support of the application and stated that the petitioner has made a false statement as if he had no knowledge about the suit proceedings till 04.04.2016. It is stated that along with the suit, the respondent/plaintiff filed I.A.No.562 of 2008 for interim injunction, which was contested by the petitioner herein, by engaging counsel Mr.A.C.Muthusamy. Prior to that on 05.01.2009, the learned counsel for the petitioner herein served a memo on the counsel for the respondent/plaintiff seeking inspection of the original sale agreement dated 12.08.2007 and the said inspection was personally and physically done by the petitioner in the presence of Sheristadar, Fast Track Court-III, Dharapuram on 05.01.2009.

4. Therefore, it is stated that the petitioner was fully aware of the suit proceedings and in fact took active part and thereafter, after dissolving the first defendant's company, he went to Muscat. Therefore, the petitioner has not shown any sufficient cause to entertain the petition to condone the delay. Hence, the respondent herein has sought for dismissal of the application.

5. The Court below, on a consideration of the pleadings made by both the parties and the materials placed on record, by order dated 16.06.2020, dismissed the application with costs. Questioning the same, the petitioner has come forward with this revision petition.

6. The learned counsel appearing for the petitioner while reiterating the averments made in the application would submit that the Court below has not considered the matter in a proper perspective and has erroneously dismissed the petition. The learned counsel would also submit that the respondent has fraudulently filed the suit knowing fully aware that the suit property was already sold. He would submit that the petitioner was not aware of the suit proceedings till he returned from abroad and informed about the public notice published in the daily 'General' on 01.04.2016.

7. Heard the learned counsel for the petitioner and perused the entire materials available on record.

8. On a perusal of the order passed by the Court below, it is seen that the respondent has filed a suit for specific performance against the petitioner/second defendant and another, wherein notices were served on the petitioner and in pursuance of the same, the petitioner/second defendant had appeared through this counsel namely Mr.A.C.Muthusamy before the trial Court and filed a written statement also. The typed set of papers filed by the petitioner herein contains the written statement filed by the petitioner in the suit. But, strangely, the petitioner has mentioned that he has not appointed any counsel on his behalf in order to file any vakalat and also the written statement. It is surprising to note that if the petitioner has not entrusted or engaged any advocate on his behalf, then how a written statement could have been filed on his behalf. It is also pertinent to note that the petitioner has alleged that the plaintiff forged the sale agreement and filed a suit against him. If so, it is not known as to how the petitioner has not taken any action against the respondent/plaintiff in the manner known to law, after coming to know about the same.

9. Therefore, only in order to contest the suit, the petitioner has taken the plea of forgery and, except citing the reason for the delay that after dissolving the company, he went abroad and returned only on 04.04.2016, no sufficient or bona fide reasons have been mentioned by the petitioner, in order to entertain the petition to condone the delay.

10. Therefore, in order to determine an application under Order 9 Rule 13 CPC, a test has to be applied whether the defendant circuitously intended to remain absent when the suit was called on for hearing. Therefore, the petitioner herein has to approach the Court with a reasonable defence. But, as observed earlier, the petitioner has not shown any bona fide or sufficient reasons to entertain the petition to condone delay, which the Court below has rightly dismissed, that too with costs.

11. Therefore, this Court does not find any scope to interfere with the order of the Court below to entertain the present petition.

12. Accordingly, this Civil Revision Petition fails and it is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

To

The III Additional District and Sessions Judge,
Tiruppur, Dharapuram.

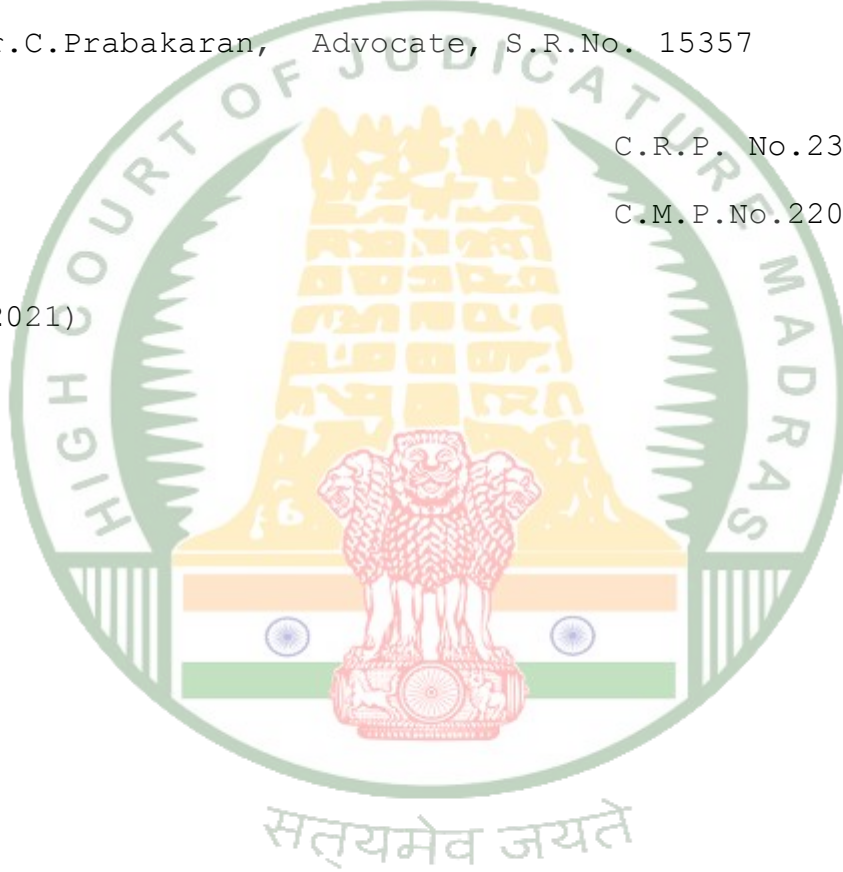
Copy To

The Section Officer,
V.R. Section, High Court,
Madras-104.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No. 15357

C.R.P. No.236 of 2021
and
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GPL (CO)
GN (29/03/2021)



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