



C.R.P (NPD). No.911 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **02.11.2021**

CORAM

THE HONOURABLE MRS.JUSTICE **T.V.THAMILSELVI**

C.R.P (NPD). No.911 of 2019
and C.M.P.No.5932 of 2019

P.Mohan

.. Petitioner

Vs

K.Govindasamy

..Respondent

Prayer : Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the docket order passed in I.A.No.273 of 2017 in O.S.No.130 of 2015 dated 12.12.2019 on the file of the Sub Court, Krishnagiri.

For Petitioner : Mr.M.Velmurugan

For Respondent : No Appearance

ORDER

The revision is directed against the docket order dated 12.12.2018 made in I.A.No.273 of 2017 in O.S.No.130 of 2018, dismissing the condone delay petition filed to set aside the ex-parte decree dated 25.09.2015.



2. Learned counsel for the petitioner submitted that as per the conditional order passed by this Court on 07.03.2019, the petitioner has deposited a part of the suit claim of Rs.6,00,000/- before the trial Court on 02.04.2019, for which, a receipt has also been filed to that effect before the Registry.

3. Heard the learned counsel for the petitioner and perused the records. There is no representation on behalf of the respondent.

4. The revision petitioner herein is the defendant in O.S.No.130 of 2015 filed by the respondent/plaintiff for recovery of money. As per the contention of the petitioner/defendant, notice has not been served on him in time to defend the case and it was addressed to the School where he was working. Hence, he was not aware of the suit proceedings, and the suit came to be decreed ex-parte on 25.09.2015 on the file of the Principal Subordinate Judge, Krishnagiri. Thereafter, to execute the decree, the respondent/plaintiff filed E.P.No.5 of 2016, in which, notice was served on the petitioner/defendant along with auction proceedings. On receiving the said notice, the revision petitioner came to know about the ex-parte decree.



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Immediately, he took steps to set aside the ex-parte decree, however, the delay of 493 days occurred. Thereafter, he filed a petition to condone the delay of 493 days in filing the application in I.A.No.273 of 2017 and the same was contested by the respondent herein. On hearing both sides, the trial Court dismissed the said application.

5. The trial Court observed that the property was already auctioned in the execution proceedings in E.P.No.5 of 2016, wherein, the revision petition remained ex-parte and the property was sold to one Dr.Rajasekar for a valid sale consideration and at the stage of confirmation of sale, the revision petitioner has filed R.E.A.No.243243 of 2018 for setting aside the sale and the same is pending. Further, the trial Court found that the petitioner has not given any acceptable reasons for condoning the delay, and accordingly, the said application was dismissed. Aggrieved over the same, the Judgment Debtor/defendant preferred this revision petition.

6. At the time of arguments, learned counsel appearing for the revision petitioner/defendant would submit that the defendant is having a good case to succeed his claim before the trial Court. Since the notice was not served on him with correct address, he remained ex-parte before the trial



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Court and the Execution Court proceedings and his absence on those days is neither wilful nor wanton. The property in question is worth about 4 crores, but it was auctioned for less value. Further, the revision petitioner would also submit that as per the direction issued by this Court, he had deposited a sum of Rs.6,00,000/- into the trial Court and he was always intended to conduct the suit before the trial Court and that the delay may be condoned.

7. Considering the facts and circumstances of the case and also the fact that the revision petitioner is the teacher by profession and the property in question is an agricultural land, which is worth about more than 4 crores, but it was auctioned for less value, in order to give fair opportunity to the revision petitioner/defendant to defend his claim before the trial Court, this Court is inclined to condone the delay to set aside the ex-parte decree. Accordingly, the order dated 12.12.2018 passed in I.A.No.273 of 2017 in O.S.No.130 of 2015 is set aside. It is stated that the petitioner/defendant also filed the written statement. Hence, the trial Court is directed to dispose of the suit in O.S.No.130 of 2015, within a period of 3 months from the date of receipt of a copy of this order.



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8. Accordingly, the civil revision petition is disposed of. No costs.

Consequently, connected miscellaneous petition is closed.

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Internet : Yes/No

Index : Yes/No

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To

The Subordinate Judge,
Krishnagiri.



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T.V.THAMILSELVI, J.

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