

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

C.R.P.(NPD).No.928 of 2016

and

C.M.P.No.5150 of 2016

Kandavel

... Petitioner/Respondent/Plaintiff

Vs.

Sundarpillai

... Respondent/Petitioner/Defendant

PRAYER : The Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the fair and decretal order made in I.A.No.451 of 2012 in O.S.No.25 of 2011 dated 12.04.2013 passed by the learned Subordinate Judge, Chidambaram.

For Petitioner : Mr.G.Pugazhenth

For Respondent : Mr.P.Mani

ORDER

(Heard through video conferencing)

This Civil Revision Petition has been filed by the petitioner, challenging the order of the trial Court passed in I.A.No.451/2012 in O.S.No.25/2011 dated 12.04.2013, which condoned the delay of 408 days in filing the petition to set aside the ex parte decree.

2. The Petitioner is the plaintiff. The petitioner has filed the suit for specific performance. Since the respondent remained ex parte, an ex parte decree dated 20.04.2011 was passed in favour of the plaintiff for specific performance. In the mean while, the respondent/defendant filed a petition to set aside the ex parte decree along with the petition to condone the delay of 408 days. The learned Trial Court considered the petition and allowed the same.

3. The learned counsel for the petitioner submitted that after the decree was passed, he had deposited the balance sale consideration in the Court and got the sale Deed executed through Court. He has further submitted that he also took possession of the suit property and the respondent has filed the petition to condone the delay with unacceptable reasons, just in order to harass him.

4. It is seen from the records that the respondent has stated the reason of his illness for the delay. Though the reason stated by the respondent is not fully acceptable to condone the inordinate delay, the learned trial Judge appears to have taken a liberal view in allowing the petition in the interest of justice and in order to give an opportunity for the respondent/defendant to contest the matter on merits. However, the hardship suffered by the petitioner cannot be overlooked because of the delay caused by the respondent. The petitioner has not only filed the execution petition for executing the decree, but he had also purchased the required stamp duty for getting the sale deed executed in his

favour. If the ex parte decree is set aside, then the expenses so met by the petitioner would be a loss for him. Because of the callous attitude of the respondent, the interest of the petitioner in getting an early disposal of the suit is also affected. However the order of the lower court cannot be totally found fault, since it was passed in the interest of justice and by taking usual liberal view in this type of petitions.

5. In the above circumstances, I feel that the order of the trial Court can be modified in a balanced way in order to protect the interest of both the parties.

Accordingly, the present Civil Revision Petition is **allowed** and the order of the trial Court in I.A.No.451 of 2012 in O.S.No.25 of 2011 dated 12.04.2013 is modified that the respondent shall pay a cost of Rs.25,000/- (Rupees Twenty Five Thousand only) to the petitioner within a period of two weeks from the date of receipt of order of this petition, failing which the benefit granted to the respondent vide this order will automatically cease to operate. The said amount so paid towards cost shall not be returned to the respondent even in case the suit is dismissed. No costs. Consequently connected civil miscellaneous petition in C.M.P.No.5150 of 2016, is also closed.

01.07.2021

Speaking/Non-speaking

Index : Yes/No

Internet : Yes/No

jrs

<https://www.mhc.tn.gov.in/judis/>

R.N.MANJULA,J.

jrs

To

- 1.The Subordinate Judge, Chidambaram.
- 2.The Section Officer,
V.R.Section,
High Court, Madras.



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