



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.09.2021

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

CRP.Nos.1334 & 1335 of 2021
and
C.M.P.No.10385 of 2021

A.Shaffiullah,
S/o.Abdul Ajeez,
No.76, Hakkem Abdul Karim Street,
Pernambut Taluk,
Vellore District.

... Petitioner in both WPs

.Vs.

P.S.R.Gopi,
S/o.Late.Ravi,
No.4th Pandian Street,
T.V.K.Nagar, Pernambut Town,
Pernambut Taluk,
Vellore District.

... Respondent in both WPs

PRAYERS: Civil Revision petitions filed under Article 227 of Constitution of India to set aside the Judgment and Decree passed in I.A.No.2 of 2020 in I.A.No.226 of 2019 in O.S.No.21 of 2017 and I.A.No.3 of 2020 in I.A.No.227 of 2019 in O.S.No.21 of 2017 respectively, by the District Munsif at Gudiyatham, dated 02.03.2021.

For Petitioner : Mr.M.Kalaiyaran
in both Wps

C O M M O N O R D E R

CRP.No.1334 of 2021 has been filed against the order passed in I.A.No.2 of 2020 in I.A.No.226 of 2019 in O.S.No.21 of 2017 by the learned District Munsif at Gudiyatham, dated 02.03.2021 and CRP.No.1335 of 2021 has been filed against the order passed in I.A.No.3 of 2020 in I.A.No.227 of 2019 in O.S.No.21 of 2017 by the learned District Munsif at Gudiyatham, dated 02.03.2021.

2.Learned counsel for the Petitioner submitted that the suit in O.S.No.21 of 2017 was filed by the Respondent seeking to execute the specific performance of the contract against the Petitioner on the basis of sale deed dated 14.02.2014. Since the



Petitioner was not present and he has not filed written statement, the Suit was decreed exparte on 12.02.2018 and hence, the Petitioner filed I.A.No.226 of 2019 for condoning the delay of 451 days in filing the Petition to set aside the exparte decree and I.A.No.227 of 2019 to set aside the exparte decree passed on 12.02.2018. When those petitions were listed for hearing on 28.11.2019, since he was not well, he could not appear before the Court below and therefore, both the Petitions were dismissed for default on 28.11.2019. Against the dismissal of I.A.Nos.226 & 227 of 2019, I.A.Nos.2 & 3 of 2020 have been filed for restoration of I.A.Nos.226 & 227 of 2019 and the same were dismissed by the Court below. The learned counsel for the Petitioner further submitted that he has prepared to settle the matter with the Respondent and prays for giving an opportunity to contest the case.

3.It is seen from the records that notice was sent to the Respondent and the same was served on the Respondent. Eventhough the name of the Respondent was printed in the cause list, no one entered appearance for the Respondent.

4.Scope of this CRP is very limited to the extent that as to whether the orders of dismissal passed in I.A.Nos.2 & 3 of 2020 have to be set aside or not. Before deciding that, it is necessity to know the background of the case. The Suit was filed for specific performance on the basis of the sale agreement entered between the Plaintiff and Respondent on 14.02.2014. As per the sale agreement, the sale consideration was fixed at Rs.75,000/- and a sum of Rs.50,000/- was paid by the Plaintiff to the Defendant on that date as an advance. Since the Petitioner has not come forward to execute the sale deed, the Suit was filed. In the Suit, Petitioner was set exparte for non filing of written statement and exparte decree was passed on 12.02.2018. Petitions filed for condoning the delay in filing the petition to set aside the exparte decree and to set aside the exparte decree were dismissed for default on 28.11.2019 for non appearance of the Petitioner.

5.The attitude of the Petitioner shows that he is not vigilant enough in prosecuting the case against him. Considering the submissions made by the learned counsel for the Petitioner that the Petitioner is prepared to settle the issue with the Respondent, this Court is of the considered view that the Petitioner has to be given an opportunity to contest I.A.Nos.226 & 227 of 2019 filed for condoning the delay of 451 days in filing the petition to set aside the exparte decree and to set aside the exparte decree, respectively.

6.In this view of the matter, order passed in I.A.No.2 of 2020 in I.A.No.226 of 2019 in O.S.No.21 of 2017 and I.A.No.3 of



2020 in I.A.No.227 of 2019 in O.S.No.21 of 2017 by the learned District Munsif at Gudiyatham, dated 02.03.2021 is set aside and the same are allowed. The learned District Munsif at Gudiyatham is directed to dispose of I.A.Nos.226 & 227 of 2019 in O.S.No.21 of 2017 on merits and in accordance with law, after hearing both the parties.

7. Accordingly, these Civil Revision Petitions are allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sai
To

The District Munsif.
Gudiyatham.

+2cc to M/s.T.Magendiran, Advocate Sr.49358 and 49359

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srg 25/10/2021