

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP (NPD) No.1374 of 2017
and CMP.No.6407 of 2017

K.Gandhi

..Petitioner

Vs.

1.The Superintendent Engineer,
Tamil Nadu Electricity Board,
Perambalur & Perambalur District.

2.The Executive Engineer,
Tamil Nadu Electricity Board,
Raja Nagar, Perambalur,
Perambalur District.

3.The Assistant Executive Engineer,
Tamil Nadu Electricity Board,
Siruvachur, Perambalur,
Perambalur District.

4.The Junior Engineer,
Tamil Nadu Electricity Board,
Kolakka Natham Village,
Alathur Taluk,
Perambalur District.

..Respondents

Prayer: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the fair and decreetal order dated 24.01.2017 made in I.A.No.766 of 2015 in O.S.No.269 of 2010 on the file of the District Munsif Court, Perambalur.

For Petitioner : Mr.R.Veeramani
For Respondents : Mr.V.Viswanathan
Senior Counsel

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 24.01.2017 made in I.A.No.766 of 2015 in O.S.No.269 of 2010 on the file of the District Munsif Court, Perambalur, thereby allowing the petition to condone the delay in filing the petition to aside the ex-parte decree.

2. The petitioner is the plaintiff and the respondents are the defendants. The petitioner filed a suit for mandatory injunction to remove the electrical post laid in the land belongs to the petitioner and shift the electric line in an alternative way. On receipt of the suit summons, the respondents instructed the Government Pleader to appear before the Trial Court. Thereafter, they failed to file any written statement and also set ex-parte and ex-parte decree was passed on 14.07.2011. Thereafter, the petitioner filed an Execution Petition in E.P.No.61 of 2012. In the Execution Petition also the respondents were duly served notice. On receipt of the same, they failed to appear before the Execution Court and again they were set ex-parte. Thereafter, the respondents filed a petition in E.A.No.15 of 2013 to set aside the ex-parte order in the

Execution Petition and the same was allowed. Even then, the respondents failed to file a counter on various occasions before the Execution Court, as such, they were also set ex-parte and directed to remove the electrical post situated in the petitioner's land. Only then, the respondents filed a petition to set aside the ex-parte order passed in the Execution Petition in E.A.No.32 of 2015 simultaneously, they also filed a petition to set aside the ex-parte decree in the suit with a delay of 1353 days in filing the petition to set aside the ex-parte decree. The Execution Court has dismissed the petition in E.A.No.32 of 2015 to set aside the ex-parte order passed in the execution petition. On the other hand, the same Court allowed the petition to condone the delay in filing the petition to set aside the ex-parte decree.

3. On a perusal of the order passed by the Court below, it is seen that even in the year 2015, the respondents came to know about the ex-parte decree and infact they appeared before the Execution Court in the year 2011 itself. Thereafter, they failed to file counter and they were set ex-parte. As such, they filed an Execution Petition in E.A.No.15 of 2013 to set aside the ex-parte order. However, it was allowed and thereafter, they were given several opportunities to file their counter in the execution petition. Because of the non-filing of the counter and execution petition, they were set ex-parte. Till then, they did not

file any petition to set aside the ex-parte decree passed in the suit. Only in the year 2015, they have chosen to file a petition to set aside the ex-parte decree with a delay of 1353 days. Even then, the Court below allowed the petition to condone the delay of 1353 days only for the reason that the respondents are Government and they did not drag the proceedings. They have no intention to drag the proceedings and allowed the petition.

4. A perusal of the affidavit filed in support of the condone delay petition reveals that when the suit was posted for hearing on 16.12.2010, they could not able to engage their counsel and failed to file the written statement and counter and thereafter they were set ex-parte on 14.07.2011. Except the reason, no other reasons were mentioned in the petition. The respondents viz., Electricity Board ought to have correctly drafted the affidavit, that too, in the petition to condone the delay of huge number of days. That apart, when the respondents are able to file a petition to set aside the ex-parte order passed in the execution petition in the year 2013 itself, the respondents ought to have filed a petition to set aside the ex-parte decree in the suit also. Therefore, even after coming to know that they did not take any steps to set aside the ex-parte decree within time and failed to show sufficient cause for the delay in filing the petition to the ex-parte decree, the order passed by the trial Court is liable to be interfered with.

5. Accordingly, the order of the trial Court dated 24.01.2017 made in I.A.No.766 of 2015 in O.S.No.269 of 2010 on the file of the District Munsif Court, Perambalur, is set aside and the Civil Revision Petition is allowed. No costs. Consequently connected miscellaneous petition is closed.

30.03.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No
lpp

To
The District Munsif,
Perambalur.



WEB COPY

G.K.ILANTHIRAIYAN.J,

lpp



CRP (NPD) No.1374 of 2017
and CMP.No.6407 of 2017

WEB COPY

30.03.2021