

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.2010 of 2017

Palani

.. Petitioner

Vs.

Navanidharmal

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C., against the fair and decretal order dated 18.09.2014 made in I.A.No.620 of 2014 in O.S.No.402 of 2006 on the file of the District Munsif Court, Polur, Tiruvannamalai District.

For Petitioner

: Mr.C.Anbu

for Mr.M.R.Thangavel

For Respondent

: No appearance

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).)

Civil Revision Petition is filed against the fair and decretal order dated 18.09.2014 made in I.A.No.620 of 2014 in O.S.No.402 of 2006 on the file of the District Munsif Court, Polur, Tiruvannamalai District.

2.The petitioner is defendant and respondent is plaintiff in O.S.No.402 of 2006 on the file of the District Munsif Court, Polur, Tiruvannamalai District. The respondent filed the said suit for declaration, possession and permanent injunction. The petitioner filed written statement on 22.01.2007. When the suit was posted on 07.03.2013, the petitioner did not appear and he was set exparte. Subsequently also, the petitioner did not appear and the learned Judge passed exparte decree on 23.04.2013. The petitioner filed I.A.No.620 of 2014 to condone the delay of 252 days in filing the petition to set aside the exparte decree dated 23.04.2013.

3. According to the petitioner, he could not appear on 07.03.2013, since he was suffering from ill health for one week and subsequently, he did not meet his Advocate. He thought that his Advocate will inform the date of hearing. While so, he came to know the exparte decree dated 23.04.2013 only while receiving notice in R.E.P.No.78 of 2013. Immediately, the petitioner has filed present I.A. to condone the delay in filing the petition to set aside the exparte decree. The delay is neither wilful nor wanton and prayed for allowing the I.A.

4. The respondent filed counter affidavit and stated that the petitioner was well aware of the Court proceedings. On 07.03.2013, he was present in the Court premises and purposely, he did not attend the suit proceedings. The respondent is aged lady, only to protract the proceedings and prevent the respondent, the petitioner did not proceed with the matter. The respondent further stated that the averment of the petitioner that he came to know about the exparte decree only on receiving notice in the R.E.P. is not correct and prayed for dismissal of the said I.A.

5.The learned Judge dismissed the I.A. holding that the petitioner is not ready to proceed with the enquiry.

6.Against the said fair and decretal order dated 18.09.2014 made in I.A.No.620 of 2014 in O.S.No.402 of 2006 on the file of the District Munsif Court, Polur, Tiruvannamalai District, the petitioner has come out with the present Civil Revision Petition.

7.The learned counsel appearing for the petitioner contended that the petitioner has given reason for the delay. The learned Judge without considering the reason given by the petitioner and without giving fair chance to the petitioner to put forth his case on merits, dismissed the I.A. holding that the petitioner was not ready to proceed with the enquiry. The learned Judge failed to consider that while considering the petition for condoning the delay, there must be liberal approach by the Court. The learned Judge ought to have given sufficient opportunity to the petitioner to contest the case on merits. By allowing the I.A., no prejudice would be

caused to the respondent and prayed for allowing the Civil Revision Petition.

8.Though notice has been served on the respondent and her name is printed in the cause list, there is no representation for the respondent either in person or through counsel.

9.Heard the learned counsel appearing for the petitioner and perused the materials available on record.

10.From the materials available on record, it is seen that the respondent has filed suit for declaration, possession and permanent injunction. The petitioner filed written statement on 22.01.2007, but he did not appear on 07.03.2013 and he was set exparte on 08.04.2013. Exparte decree was passed only on 23.04.2013. According to the petitioner, he was suffering from illness for one week at the time of hearing on 07.03.2013 and hence he could not attend the hearing of the

suit. When the petitioner knew about the date of hearing and did not appear on that date, he ought to have verified with the Advocate about the outcome of the hearing on 07.03.2013 or on subsequent dates. Without doing so, the petitioner cannot say that he thought that the Advocate would inform him about the next date of hearing. The petitioner is not vigilant enough to prosecute the case. Further, the petitioner has not denied the averments made by the respondent in the counter affidavit filed in I.A. that the petitioner was present in the Court premises on 07.03.2013 and purposely did not attend the hearing. Even in the grounds of revision, the said averment is not denied by the petitioner. The learned Judge after extracting the averments made in the affidavit and counter affidavit, dismissed I.A. holding that the petitioner is not ready to proceed with the enquiry.

11.It is well settled that an application to condone the delay must be considered liberally and the parties must be given an opportunity to put forth their case on merits. At the same time, the intention of the

parties must be bonafide and no prejudice would be caused to other side by allowing I.A. filed to condone the delay. The reason given by the parties must be acceptable and the parties must give acceptable and sufficient reason for condoning the delay. In the present case, the reason given by the petitioner is not acceptable and sufficient. The learned Judge has considered all the materials and held that the petitioner is not ready to proceed with enquiry. There is no error or irregularity in the order of the learned Judge warranting interference by this Court.

12.For the above reasons, the Civil Revision Petition stands dismissed. No costs.

18.08.2021

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To

The District Munsif
Polur, Tiruvannamalai.

C.R.P.(NPD)No.2010 of 2017

V.M.VELUMANI, J.

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