

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRP(NPD) No.3140 of 2017
in
CMP.No.14753 of 2017

1.T.S.Bellam S/o.Salai Gowder
2.Lakshmi Ammal W/o.Linga Gowder

... Petitioners / Defendants / Petitioners

Vs.

Indian Bank, Conoor Branch
Rep. by its Branch Manager
Indian Bank
Conoor Branch

... Respondent/Plaintiff/ Respondent

PRAYER in CRP(NPD) No.3140 of 2017: Civil Revision Petition filed under Article 227 of Constitution of India seeking to revise and set aside the fair and decretal order dated 04.09.2015 in I.A.No.352 / 2014 in O.S.No.138 of 2012, on the file of the Sub-ordinate Judge of the Nilgiris at Udthagamandalam.

For Petitioners
For Respondent

: Mr.Surya Teja
: Mr.Rajendran Raghavan

ORDER

(This case has been heard through video conference)

The Petitioners are defendants in O.S.No.138 of 2012, the mortgage suit in which, the application for condonation of delay of 414 days in filing the application to set aside the exparte decree was dismissed by the trial Court. Against which the present revision has been filed.

2. **Brief facts of the case:** The mortgage suit was filed by the respondent/plaintiff/ Bank seeking for a direction to the first defendant to pay the plaintiff/bank a sum of Rs.6,99,076/- with subsequent interest at the rate of 11.75% per annum with monthly rests and overdue interest @ 2% from the date of suit to till the date of realization, to pass a mortgage degree directing the defendants to pay the said sum of Rs.6,99,076/- with subsequent interest at the rate of 11.75% per annum with monthly rests and overdue interest @ 2% from the date of suit to till the date of realization within a stipulated time that may be fixed by the Court and if the same is not paid within the stipulated time, directing sale of the mortgaged property by passing a final degree for sale of the schedule mentioned property and appropriate the sale proceeds towards the suit claim and in case of proceeds of sale are insufficient to cover the dues, to recover the same from the

defendants personally out of their assets. The suit was taken on file on 03.08.2012 and summons were ordered to be issued to the defendants on 05.09.2012 for hearing and summons were served on the defendants. The defendants appeared through their counsels. However, they have not filed their written statement and they were called absent and set ex-parte and the suit was decreed on 26.02.2013. The defendants filed a petition in I.A.No.352 of 2014 in O.S.No.138 of 2012 seeking to set aside the ex-parte decree, however there was a delay of 414 days in filing the petition seeking to setting aside the ex-parte order. The reason for the delay was that certain documents were missing and thereby the petition to set aside the exparte order could not be filed within the period of limitation. The trial Court upon consideration of facts and circumstances of the case dismissed the petition stating that no sufficient cause was shown by the petitioners and the period was not calculated properly. Further the trial Court has also held that no documentary proof has been filed by the petitioners. Against which the revision has been filed.

3. Mr.Surya Teja, learned counsel appearing for the petitioners/defendants would submit that the petitioners are poor farmers and that they had misplaced certain documents which were necessary for contesting the case and also to file the petition and thereby, they were unable

to file the petition to set aside the ex-parte order within time and that was also the reason for not filing the written statement on time. He would submit that the property has been mortgaged with the bank and the interest of the bank is also protected. He would further submit that though the petitioners/defendants have not given reasons with regard to each days delay, the petitioners being farmers have shown sufficient cause in not filing the petition within the period of limitation. He would further submit that the valuable rights of the parties would be affected if the petition is not allowed. Now the Government has come to the aid of the farmers and has also come out with various schemes for one time settlement and if the exparte decree is not set aside and if the petitioners are not permitted to negotiate with the bank, the petitioners would be put to severe hardship. He would further submit that the Court should not adopt a very strict approach in matters of delay particularly when the valuable rights of parties are affected. He would reiterate that the interest of the bank is also sufficiently protected since the documents belonging to the petitioners are withheld by the bank.

4. Mr.Rajendran Raghavan representing the sole respondent Bank would vehemently oppose stating that there had been a grave delay and the petitioners/defendants have not shown any sufficient cause for condoning the delay.

5. The learned Counsel for the petitioners/defendants would reiterate that various schemes have been brought in by the Government to help the farmers and that the petitioners will take aid of the available schemes to settle the matter with the bank at the earliest or else in the event of there being no settlement, a date may be fixed to the trial Court to complete the trial within a specified period and the petitioners will co-operate in completing the trial at the earliest.

6. The Honorable Apex Court in *University of Delhi vs. Union of India reported in (2020) 13 SCC 745* has held that the Court should not adopt a very strict approach in matters of delay particularly when the valuable rights of the parties are affected. The Honorable Apex Court after referring to the Judgment in *Collector, Anantnag Vs. Katiji, reported in 100 LW 676*, has held that if the reason offered is plausible and is not shown to be false or malafide, the Court should always lean in favour of condoning the delay as the opposite party cannot claim a vested right in justice.

7. Applying the above said principles laid down by the Hon'ble Apex Court, if we look at the explanation offered by the petitioners/defendants for the delay, this Court can conclude that the delay has been satisfactorily explained.

8. The petitioners are poor farmers and that their documents have been withheld by the bank and the interest of the bank is also protected. Therefore, this Court is of the opinion that the petitioners can be given a chance to contest the suit on imposition of cost and terms.

9. Accordingly, the Civil Revision Petition is allowed. The order dated 04.09.2015 passed in I.A.No.352 of 2014 in O.S.No.138 of 2012, on the file of the Sub-Ordinate Judge of the Nilgiris at Udhagamandalam, is set aside and I.A.No.352 of 2014 stands allowed on condition that the petitioners/defendants to pay an amount of Rs.10,000/- as cost to the respondent/Bank within a period of two weeks from the date of receipt of copy of this order.

10. Since the suit is of the year 2012, the trial Court shall endeavour to dispose of the trial in O.S.No.138 of 2012 as expeditiously as possible preferably within a period of six months from the date of receipt of copy of this order.

11. With the above observations, this Civil Revision Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

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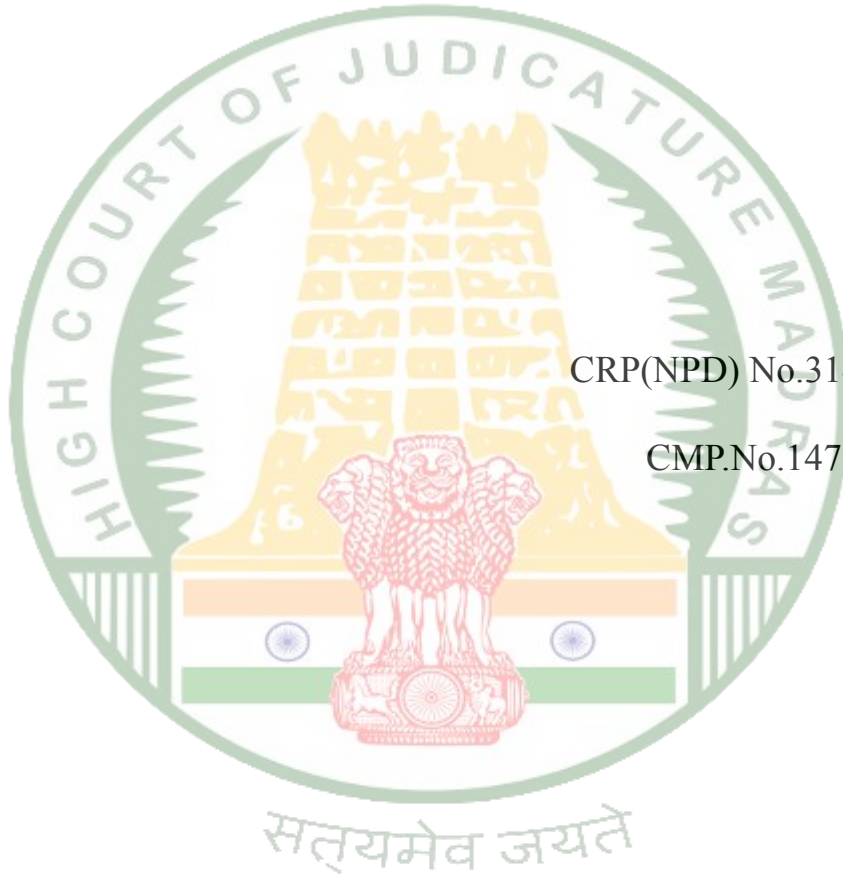
To
The Sub-ordinate Judge of the Nilgiris,
Udhagamandalam.



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A.D.JAGADISH CHANDIRA,J.

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