



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.06.2021

PRONOUNCED ON : 02.07.2021

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

**CRP(MD)No.658 of 2012
(Through Video Conferencing)**

A.Selvaraj ... Petitioner / Defendant

Vs

1. M/s.Tamil Nadu Handloom Development Corporation Limited
through its Branch Manager, Kuralagam, Chennai

2. Sundaravalli ... Respondents

Prayer:- This Civil Revision Petition has been filed U/S 115 of C.P.C., to set aside the order and decreetal order, dated 10.12.2011, made in EA.No.399 of 2010 in EP.No.123 of 2004 in OS.No.260 of 2002, by the I Additional Sub Court, Nagercoil.

For Petitioner	: Mr.C.Godwin
For Respondent	: Mr.V.Janakiramulu-R1 Mr.V.Meenakshisundaram for Mr.D.Nallathambi-R2

ORDER

1.This Civil Revision Petition has been filed, to set aside the order and decreetal order, dated 10.12.2011, made in EA.No.399 of 2010 in EP.No.123 of 2004 in OS.No.260 of 2002, by the I Additional Sub Court, Nagercoil.

2.The facts of the case, in a nutshell, are that the Defendant is the Petitioner and the Plaintiff is the 1st Respondent and the 2nd Respondent is the auction purchaser. In 2002, the suit was filed for a preliminary decree for money with interest or in the alternative, for sale of the suit property in a court auction to realise the money and in case, the sale proceeds is not sufficient, for proceeding against the other properties of the Defendant for realisation of the balance amount and for costs. The suit was decreed exparte, by the judgement and decree, dated 21.07.2003. EP.No.123 of 2004 was filed for execution of the decree on 04.11.2004. The Plaintiff had sold the suit property to the 2nd Respondent herein in the auction on 20.09.2007. In the EP, in 2010, the Defendant had filed EA.No.399 of 2010, to



the auction sale and it was resisted by the 2nd Respondent/auction purchaser by filing a counter. In and by the impugned order, the said EA was dismissed. Hence, this Civil Revision Petition has been filed by the Defendant.

3. The learned counsel for the Petitioner has submitted that without effecting proper service of notice, the suit was decreed and that only a substitute of service by way of paper publication was effected and that he remained exparte, which is neither wanton nor willful and that when even the half of the suit property would fetch the decretal amount, the suit property was sold for a sum more than the decretal amount and that the court below erred in relying on Ex.P1 to Ex.P15, which are xerox copies, marked without objection and that the Petitioner is willing to pay the decretal amount with interest and all expenses and in such circumstances, the impugned order is liable to be set aside.
4. The learned counsel for the 1st Respondent would advance arguments in support of the impugned order, by contending that the Petitioner allowed the suit to be decreed exparte, by wantonly remaining exparte and that without setting aside the exparte decree, the auction sale cannot be set aside and therefore, this Civil Revision Petition is liable to be dismissed.
5. The learned counsel for the 2nd Respondent has submitted that he is the auction purchaser and that the Petitioner wantonly and deliberately remained exparte in the suit proceedings and hence, the suit was decreed exparte and that without challenging the exparte decree, the Defendant cannot seek to challenge the auction sale conducted by the Court and that the decree holder had withdrawn the decretal amount from and out of the sale consideration and that if the sale is set aside, he would be put to irreparable loss and injury and for such reasons, this Civil Revision Petition is liable to be dismissed.
6. This court heard the learned counsel on either side and considered their submissions and also carefully perused the materials placed on record.
7. The suit was decreed exparte, by the judgement and decree, dated 21.07.2003. EP.No.123 of 2004 was filed for execution of the decree on 04.11.2004. The Plaintiff had sold the suit property to the 2nd Respondent herein in the auction on 20.09.2007. In the EP, in 2010, the Defendant had filed EA.No.399 of 2010, to condone the delay of 924 days in filing the petition to set aside the auction sale.
8. The reason assigned by the Petitioner for condoning the delay in filing the application to set aside the auction sale is that since he was working in Bangalore, he did not know about the Court proceedings and he came to know about the exparte decree only on the date when the court auction was scheduled on 26.04.2010.
9. Where there is sufficient cause shown with supporting materials and the application for condonation of delay has been moved bona fide, the court would normally condone the delay, but in cases where the delay has not been explained at all by valid evidence, the discretion of the court in such cases would



normally tilt against the applicant, who seeks to condone the delay.

10. In this case, for want of materials, the court below had not accepted the reasons assigned by the Petitioner for condoning the delay, as untenable. This Court also finds no proper and satisfactory explanation given by the Petitioner for each and every day of delay, by producing valid material evidence.

11. It is also pertinent to point out that pursuant to the exparte decree, the auction sale was conducted by the Court. Without challenging the exparte decree, the auction sale conducted by the Court cannot be put under challenge. The decree holder had also withdrawn the decretal amount from and out of the sale consideration and if the auction sale is set aside, Respondents would be put to irreparable loss and injury. Even if the auction sale is set aside, no purpose would be served to the Petitioner.

12. To sum and substance, as stated above, the reasons assigned by the Petitioner for condoning the delay given are in usual and casual terms. Unless the reasons assigned are bona fide and unless it is shown that there were bona fide efforts, there is no necessity to accept the usual explanations. There is no proper and satisfactory explanation offered by the Petitioner for each and every day of delay and as such, this Court is of the view that the court below was right in refusing to condone the delay in filing the application to set aside the exparte decree, by the impugned order, which warrants no interference.

13. In fine, this Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Srcm

To

The I Additional Sub Court, Nagercoil.

+1 CC to M/s.C.GODWIN, Advocate (SR-21111[F] dated 05/07/2021)

+1 CC to M/s.V.JANAKIRAMULU, Advocate (SR-21102[F] dated 02/07/2021)

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-21103[F] dated 02/07/2021)

CRP (MD) No. 658 of 2012

02.07.2021

RC (16.07.2021) 3P-5C