



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 08.07.2021

Delivered On : 26.07.2021

CORAM:

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (NPD) (MD) .No.1684 of 2017

and

C.M.P. (MD) .No.9277 of 2017

Ilangovan

... Petitioner/Defendant

Vs.

Andathal

... Respondent/Plaintiff

PRAYER: This Civil Revision Petition has been filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order dated 01.08.2017, made in I.A.No.728 of 2016 in O.S.No.5 of 2013 on the file of the Sub Court, Sivagangai.

For Petitioner : Mr.V.George Raja

For M/s.Ajmal Associates

For Respondent : Mr.R.Vijaya Kumar

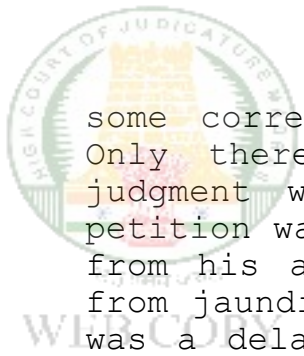
ORDER

This petition has been filed to set aside the order in I.A.No.728 of 2016 in O.S.No.5 of 2013 dated 01.08.2017, on the file of the learned Sub Judge, Sivagangai.

2.The petitioner herein is the defendant and the respondent herein is the plaintiff in the suit. The respondent has filed a suit in O.S.No.5 of 2013, seeking the relief of specific performance of a sale agreement. Pending suit, the petitioner herein has filed a petition in I.A.No.728 of 2016 to condone the delay of 648 days in filing the petition to set aside the exparte decree dated 07.11.2014.

3.Brief substance of the petition in I.A.No.728 of 2016 is as follows:

The plaintiff has filed a suit against the defendant seeking relief of specific performance of a sale agreement. The case was posted on 05.06.2013 for filing written statement. The petitioner fell down in the bathroom and his elbow is dislocated and he was hospitalized and he took traditional treatment at Pudukkottai. He was not able to meet his advocate and he was not able to file the written statement in this time. The petitioner was set exparte on 05.06.2013. Thereafter, the petitioner filed a petition to set aside the exparte order. The petition was returned by the Registry for



some corrections. The defendant received a notice on 09.04.2016. Only thereafter the petitioner came to know that the exparte judgment was passed against him on 07.11.2014 and an execution petition was filed. The petitioner did not receive any communication from his advocate office till 17.09.2016. The petitioner suffered from jaundice and could not contact the advocate immediately. There was a delay of 648 days in filing the petition to set aside the exparte decree dated 07.11.2014 and prayed the delay to be condoned.

4. Brief substance of the counter filed by the respondent is as follows:

The respondent is a 65 years old lady and only to harass the plaintiff, the defendant failed to file the written statement in time and failed to take necessary steps to set aside exparte order. Only after receipt of notice in the E.P. proceedings, he has filed the petition. The petitioner was in good health and he was involved in the criminal case and he obtained anticipatory bail and the reasons stated in the petition are not correct and prayed the petition to be dismissed.

5. After hearing both side counsel, the trial Court dismissed the petition. Against which, the petitioner has come forward with the Civil Revision Petition.

6. On the side of the petitioner, it is stated that the suit is filed for specific performance. The petitioner has filed the petition to set aside the exparte order. The Registry returned the petition for some reason. In between, the petitioner fell down from the bathroom and due to which, the bone dislocated. For which, he took traditional treatment. The plaintiff is residing in Thirupathur. The plaintiff is residing in Pattamangalam. There is no possibility for the plaintiff to know the physical condition of the petitioner. The petitioner has not executed any sale agreement. The plaintiff used to give loan and he used to receive sale agreement as security. After the loan is repaid, the plaintiff used to cancel the sale agreement. There are documents to prove the loan transactions and to prove that the plaintiff used to get sale agreement as security for the loan. To prove all these things, an opportunity for the petitioner to be given in the interest of justice.

7. On the side of the revision petitioner, it is stated that liberal approach has to be taken in condoning the delay. In support of this contention, the following judgments are cited:

(i) Tatanavar Brothers v. Shanmugam reported in **2021 (2) CTC 457**

(ii) State of Haryana v. Chandra Mani and others in **1996 (II) CTC 109**

(iii) Esha Bhattacharjee v. Managing Committee of Raghunathpur and others reported in **2013 (5) CTC 547**



8.On the side of the respondent, it is stated that the petitioner was set exparte on 05.06.2013. The petitioner failed to re-submit the petition to set aside the exparte order. On 07.11.2014, exparte decree was passed. Even then the petitioner has not come forward to set aside the exparte decree. E.P. notice was served on him on 09.04.2016. Knowing the exparte order, the petitioner failed to restore the set aside petition and the petitioner is blaming the Registry and the advocate and that the dislocation of the elbow and jaundice are all imaginary diseases. The reason for each day delay is not properly explained by the petitioner. There was no document to prove the illness. No witness was examined. Already the respondent has paid Rs.8,00,000/- (Rupees Eight Lakhs only) and prayed the petition to be dismissed.

9.It is seen that the trial Court has given three months time for payment of balance amount but the plaintiff filed E.P. proceedings only after the lapse of two years. There is no medical documents to prove that the petitioner was having physical illness, such as dislocation of elbow and jaundice. No witness was examined on the side of the petitioner. But considering the nature of the case, an opportunity for the petitioner has to be given in the interest of justice.

10.In the above circumstances, this Civil Revision Petition is allowed on condition that the petitioner has to deposit a sum of Rs.2,000/- before the trial Court towards costs for the respondent within a period of one month from the date of receipt of copy of this order, failing which this order automatically stands cancelled.

11.The order passed in I.A.No.728 of 2016 in O.S.No.5 of 2013 dated 01.08.2017, on the file of the learned Sub Judge, Sivagangai is set aside. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MRN

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



To

The Subordinate Judge,
Sivagangai.

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Copy to:

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.VIJAYAKUMAR, Advocate (SR-23955[F] dated
27/07/2021)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-23994[F] dated
27/07/2021)

C.R.P. (PD) (MD) .No.1684 of 2017
26.07.2021

KMK (CO)

LR (02.08.2021) 4P 6C