



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Tuesday, the Twenty Sixth day of April Two Thousand Twenty Two

PRESENT

THE HON`BLE MRS.JUSTICE S.KANNAMMAL

CMP.NOs.1752 AND 1755 OF 2022

IN AS.NO.823 OF 2012

R.MURUGESAN

[PETITIONER IN BOTH THE PETITIONS]

Vs

1 MALATHY

[RESPONDENTS IN BOTH THE PETITIONS]

2 THE SUB REGISTRAR

SUB REGISTRAR OFFICE, GINEE TALUK,
VILLAGE AND DISTRICT.

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to condone the delay of 776 days in filing application to set aside the exparte Judgement and Decree dated 22.11.2019 passed in AS.No.823 of 2012 on the file of this Hon`ble court (CMP.NO.1752/2022) and;

ii)To set aside the exparte Judgement and Decree dated 22.11.2019 passed in AS.No.823 of 2012 on the file of this Hon`ble court and pass such further or other orders (CMP.NO.1755/2022)

Order : These Miscellaneous petitions coming on this day for hearing upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.S.SENTHILNATHAN, Advocate for the petitioner in both the petitions, the court made the following order:-

Both the petitions have been filed by the petitioner / 1st respondent in the appeal.

2. C.M.P.No.1752 of 2022 has been filed, by the petitioner seeking to condone the delay of 776 days in filing the application to set aside the ex-parte judgment and decree dated 22.11.2019 passed by this Court in A.S.No.823 of 2012.

3. C.M.P.No.1755 of 2022 has been filed by the petitioner seeking to set aside the ex-parte judgment and decree dated 22.11.2019 passed by this Court in A.S.No.823 of 2012.



4. The learned counsel for the petitioner would submit that the petitioner has not been served with any notice and he was not aware of the filing of the appeal. The petitioner came to know about the pendency of the appeal when he received a notice from the trial Court in I.A.No. 69 of 2020 for the hearing on 18.12.2020, which application has been filed by the respondents herein for restitution. Therefore, the learned counsel would submit that since he was not aware of the pendency of the appeal or its disposal, he could not defend the appeal and it was allowed ex-parte. Therefore, the learned counsel would submit that an opportunity may be extended to the petitioner to defend the appeal especially when the suit was filed for specific performance. If an opportunity is not granted, it would affect the valuable rights of the petitioner. The learned counsel would also submit that since the petitioner came to know about the disposal of the appeal when the respondents filed petition for restitution based on the ex-parte judgment and decree passed by this Court there was a delay of 776 days in filing the petition to set aside the ex-parte judgment and decree. He would submit that the delay was not intentional nor wanton since he was not aware of the appeal proceedings. Hence, the learned counsel prays this Court to allow the above petitions.

5. Per Contra, learned counsel appearing for the respondents would submit that it is false to state that no notice was served on the petitioner, but in fact, the petitioner was served notice. Despite receipt of notice he remained absent, therefore, this Court set him ex-parte and allowed the appeal ex-parte. He would further submit that the petitioner has not assigned any acceptable reasons to condone the enormous delay in filing the application to set aside the ex-parte judgment and decree. Therefore, he prays to dismiss both the petitions as devoid of merits.

6. Considering the submissions made by the learned counsel for the petitioner, the suit was filed by the respondents for specific performance and the valuable right of the petitioner will be lost, in order to give a final opportunity to the petitioner to defend the appeal, this Court is inclined to allow the applications upon payment of costs of Rs.5,000/- (Rupees Five Thousand Only) payable by the petitioner to the respondents within the period of two weeks from the date of receipt of copy of this order. Accordingly, these petitions are allowed subject to payment of the cost as ordered above.

-sd/-

26/04/2022

/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.



TO

THE ADDITIONAL DISTRICT JUDGE,
FAST TRACK COURT, NO.1, TINDIVANAM.

Order
in
CMP.NOs.1752 AND 1755 OF 2022

IN AS.NO.823 OF 2012

Date :26/04/2022

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