



C.R.P.(NPD).No.284 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2022

C O R A M

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(NPD).No.284 of 2022

and

C.M.P.No.1362 of 2022

M.Parasuram ...Petitioner/Defendant/Revision Petitioner

-Vs-

Mohamed Jaleel ...Respondent/Plaintiff/Respondent

Prayer: Petition filed under Section 115 of the Code of Civil Procedure against the order dated 02.12.2021 passed in I.A.N.3 of 2020 in O.S.No.34 of 2015 on the file of the learned Subordinate Judge, Uthangarai.

For Petitioner : Ms.AL.Ganthimathi



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ORDER

The defendant is the revision petitioner. Aggrieved by the dismissal of his application to condone the delay of 1929 days in setting aside the *ex parte* decree he is before this Court.

2.The brief facts which are necessary to dispose of this Civil Revision Petition are as follows:

The plaintiff/respondent has filed the suit O.S.No.34 of 2015 on the file of the learned Subordinate Judge, Uthangarai, seeking a decree for Specific Performance. It is the case of the plaintiff that on 28.03.2013, an Agreement was entered into between the defendant and the plaintiff in and by which the defendant/revision petitioner herein had undertaken to sell the suit schedule property for a total sale consideration of Rs.3,10,000/-. On the date of Agreement of Sale, the plaintiff had paid a sum of Rs.3,00,000/- as advance and the balance of Rs.10,000/- was payable within two years from the date of



Agreement. The plaintiff would state that he is always ready and willing to perform his part of contract. However, the defendant did not come forward to execute the Sale Deed, constraining the plaintiff to issue a Legal Notice dated 01.02.2015 calling upon the defendants to execute the Sale Deed.

3.Though, summons were served on the defendants, the defendants did not enter appearance. Consequently, by Judgment and Decree dated 10.07.2015, the suit was decreed as *ex parte*.

4.Thereafter, the plaintiff had filed REP No.17 of 2016 on the file of the learned Subordinate Judge, Uthangarai, for executing the Decree by issuing directions to the defendants to execute and to register a Sale Deed, failing which, the respondent/plaintiff had sought for a direction that the Court should execute the Sale Deed in his favour.



5. Thereafter, the petitioner had filed the impugned petition for condoning the delay of 1929 days in filing of the petition for setting aside the *ex parte* decree. In the affidavit filed in support of the petition to condone the delay, the revision petitioner would contend that he has received summons, however, since he is a Driver by profession he was frequently away from his place. In these circumstances, he was not able to engage a Counsel. However, the plaintiff had assured him that he would not execute the Decree. This commitment was given in a Panchayat organised for resolving the dispute between him and the respondent/plaintiff. Thereafter, on 02.04.2016, he has received summons from the execution Court even at that time negotiations for settling the matter was undertaken. The respondent had assured that he would withdraw the suit. Believing the words, the revision petitioner had not prosecuted the execution petition also. Therefore, in these given circumstances, the delay had occurred.



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6.The plaintiff had filed a detailed counter *inter alia* contending that it is nothing but an attempt to protract the proceedings. The respondent had denied the allegations of settlement/withdrawing the case. The learned Subordinate Judge, Uthangarai, by his order dated 02.12.2021, was pleased to dismiss the said application. The learned Judge had observed that the reasons set out by the petitioner in his affidavit filed in support of the petition has not been proved by him in the manner known to Law and considering the fact that the delay is for over five years and nine months, the petition is liable to be dismissed. Challenging this application, the defendant is before this Court.

7.Heard the learned counsel for the petitioner and perused the papers.



8.The only two reasons given for not participating in the suit is that :

(a)The petitioner is a Driver by profession and therefore, he is traveling outside regularly and

(b)After receipt of the notice, the plaintiff had assured that he would settle the matter and that he had no intention of proceedings with the suit. The same reason is given for not participating in the execution petition.

9.It is seen that the petitioner had received summons in the suit on 06.07.2015. He has not bothered to follow up the case thereafter, till he received the summons in the execution petition on 02.04.2016. Even after that, the petitioner has not immediately taken steps to file the application to set aside the *ex parte* order. The impugned petition has been filed only on 18.11.2020, nearly four years after the receipt of the notice in the execution proceedings and five years and nine months after the *ex parte* decree. The reason given is that the plaintiff



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had assured the revision petitioner that they would settle the issue.

These talks are claimed to have been held in the presence of mediators, however, the petitioner has not thought it fit to examine any one of these mediators to prove his case. Therefore, the reason given are not only insufficient but are also not corroborated with evidence. I do not find any reason as to why the order of the learned Subordinate Judge, Uthangarai, has to be set aside and accordingly, the Civil Revision Petition stands dismissed. No Costs. Consequently, connected Civil Miscellaneous Petition is closed.

08.02.2022

Internet : Yes/No
Index : Yes/No
Speaking / Non-Speaking
mps

To

The Subordinate Judge,
Uthangarai.



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P.T. ASHA, J,

mps

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