WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :	**28.06.2022**
PRONOUNCED ON :	**14.10.2022**

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.No.1846 of 2019
and C.M.P.No.12220 of 2019

G. Subramaniya Achari .. Petitioner

Versus

R. Vishnubalan .. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order made in I.A.No.857 of 2018 in O.S.No.300 of 2011 vide order dated 28.01.2019 on the file of District Munsif Judge, Tiruvallur.

For Petitioner :Mr.M.Aswin

For Respondent :Mr.S.Janarthanan

****

O R D E R

This Civil Revision Petition has been filed challenging the order made in I.A.No.857 of 2018 in O.S.No.300 of 2011, dated 28.01.2019 on the file of learned District Munsif Judge, Tiruvallur.

https://www.mhc.tn.gov.in/judis

WEB COPY

2. The brief facts of the case are as follows:-

The respondent herein filed a suit against the petitioner in O.S.No.300 of 2011 on the file of the District Munsif Court, Tiruvallur, seeking for declaration and consequential injunction in respect of the suit schedule property. The said suit was decreed ex-parte on 19.01.2017. Subsequently, the respondent filed an execution petition wherein also an ex-parte order came to be passed on 24.01.2018. Thereafter, the petitioner filed an application to set aside the ex-parte decree, dated 19.01.2017, however with a delay of 381 days. The said application in I.A.No.857 of 2018 was dismissed by the Court below vide order, dated 28.01.2019. Aggrieved by the said order, the petitioner has filed the present Civil Revision Petition.

3. The learned counsel for the petitioner would submit that the petitioner has received summons in the suit. However, due to his old age and illness, he could not contact his counsel to proceed further in the matter. Therefore, an ex-parte decree came to be passed in the suit. Subsequently, in the Execution Petition, summons were served on the petitioner in the year 2018. Immediately, on coming to know about the ex-parte decree, the petitioner filed an application to set aside the ex-parte decree along with condone delay application. However, the said application was dismissed by the Court. According to the petitioner, the delay is neither willful nor wanton. However, the Court below without considering

https://www.mhc.tn.gov.in/judis

WEB COPY

the case of the petitioner, dismissed the application and therefore, the order passed by the Court below is to be set aside.

4. Per contra, the learned counsel for the respondent would contend that sufficient opportunity has been given to the petitioner to prove his case. However, the petitioner slept over the matter for a long number of years and now, seeks to set aside the ex-parte decree passed against him. After considering all these facts, the Court below has rightly dismissed the condone delay application filed by the petitioner and therefore, this Civil Revision Petition is liable to be dismissed.

5. I have heard the submissions made by the learned counsel for the petitioner as well as the respondent and also gone through the materials available on record.

6. It is to be seen that the suit is of the year 2011. The suit was decreed ex-parte in the year 2017 and thereafter, execution petition was also filed in the year 2017; summons were also issued to the petitioner. However, it could be seen that at every stage, the petitioner has been prolonging the matter unnecessarily. Further, the reasons adduced by the petitioner are not sufficient to condone such a

https://www.mhc.tn.gov.in/judis

WEB COPY

long delay of 381 days. The Court below after considering all these circumstances, has rightly dismissed the application filed by the petitioner and therefore, the order passed by the Court below does not warrant interference by this Court.

7. In the result, this Civil Revision Petition is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

14.10.2022

Index : Yes / No
Internet : Yes

sts/pm

To:

1.The District Munsif Judge, Tiruvallur
2.The Section Officer, V.R.Section, High Court, Madras.

https://www.mhc.tn.gov.in/judis

WEB COPY

J.NISHA BANU, J.,

sts

Order made in
C.R.P.No.1846 of 2019

Dated:
14.10.2022

https://www.mhc.tn.gov.in/judis