



C.R.P.(NPD)No.1965 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2022

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

C.R.P.(NPD).No.1965 of 2022

Mani

... Petitioner

..Vs..

1. Renukambal

2. Elumalai

...Respondents

Prayer :- Civil Revision Petition filed under Section 115 of CPC, to set aside the order passed by the learned District Munsif Court at Ulundurpettai dated 09.04.2021 in I.A.No.87 of 2019 in O.S.No.186 of 2015.

For Petitioner : Mr.K.Thenrajan

ORDER

This Civil Revision Petition has been preferred challenging the order dated 09.04.2021 made in I.A.No.87 of 2019 in O.S.No.186 of 2015 on the file of the learned District Munsif Court,Ulundurpettai.

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2. Heard the learned counsel for the petitioner and perused the materials available on record.

3. The revision petitioner is the second defendant in the suit. The respondents/plaintiffs filed a suit for declaration and recovery of possession along with mesne profits. There are totally three defendants and they remained *ex parte*. On 21.03.2016, the suit was decreed *ex parte*. The revision petitioner/2nd defendant filed an application to set aside the *ex parte* decree along with an application to condone the delay of 1006 days and the same was dismissed. Aggrieved over the same, the petitioner has preferred this revision.

4. The learned counsel for the revision petitioner submitted that the petitioner was suffering from bad health and that is the reason why he could not make his appearance and that caused the *ex parte* decree; hence, the matter should have been considered sympathetically and the delay ought to have been condoned. Despite the revision petitioner was



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set *ex parte* in the suit, the judgment would only show that it is a non-speaking judgment.

5. On perusal of the records, it seen that the revision petitioner did not even choose to file written statement, after making his appearance. The Affidavit of the petitioner would show that he was not well and that is reason for the inordinate delay of 1006 days. Even the petitioner himself cross-examined P.W.1 in the enquiry of the petition to condone the delay and he had admitted that he did not produce any medical certificate and that he did not take any action to set aside the decree in time. It is further seen that the petitioner's son was in touch with the counsel in another case and he was following the proceedings on his behalf.

6. Under such circumstances, the petitioner cannot say that he was helpless and he could not contact his counsel to know about the further proceedings. On 01.04.2021, the delivery has been given and the



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Execution Petition itself was closed. Now with an after taught, the revision petitioner has filed this petition to check his luck, which cannot be encouraged. The learned trial Judge had dismissed the petition, by properly dealing the issues before him and hence, I feel it does not require any interference.

7. In the result, this Civil Revision Petition is dismissed and order dated 09.04.2021 made in I.A.No.87 of 2019 in O.S.No.186 of 2015 passed by the learned District Munsif, Ulundurpettai is hereby confirmed. No costs.

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Index:Yes No
Speaking Order:Yes/No
ms

To

The District Munsif Court,
Ulundurpettai.

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R.N.MANJULA, J.

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