



CRP.No.3341 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.3341 of 2022

and

CMP.No.17722 of 2022

Saravanan

... Petitioner

Vs.

1.Jayalakshmi
2.Sundari
3.Selvakumar
4.Neelavathi
5.Kalyanasundaram
6.Sakthivel
7.S.Rajendran

... Respondents

Prayer: Civil Revision Petition is filed under Section 115 of CPC, to set aside the fair and decreetal order passed in I.A.No.362 of 2019 in O.S.No.118 of 2016 dated 24.06.2022 on the file of the Court of District Munsif, Tiruvallur and allow the said IA by allowing this CRP.



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For Petitioner : Mr.A.Muthukumar

For Respondents : Mr.B.Ramamoorthy

ORDER

This Civil Revision Petition is filed by the second defendant in the suit challenging the order dismissing the petition to condone the delay of 424 days in seeking to set aside the exparte decree passed against him.

2. The respondents 1 to 5 herein filed a suit for declaration of title and for recovery of possession against the petitioner and other respondents. They have also prayed for a declaration that the sale deed dated 29.06.2015 executed by the sixth respondent herein in favour of the revision petitioner is illegal and invalid.



3. According to the revision petitioner, after receipt of summons in the suit, he engaged an Advocate and had been conducting the case. Owing to his failure to file written statement, he was set exparte on 13.03.2017 and subsequently, an exparte decree was passed against him on 06.06.2018. It was his case that he was affected by jaundice during March 2017 and hence, could not contact his counsel and file his written statement. It was further stated that after recovery, he met the counsel on 15.08.2019 and then only he came to know that he was set exparte as early as on 06.06.2018. Thereafter, the petition to set aside the exparte decree was filed on 04.09.2019 with the delay of 424 days.

4. The contesting respondents 1 to 5 filed their counter and resisted the petition for condonation of delay. They averred in the counter that the revision petitioner entered appearance before the Lower Court on 14.11.2016 and took time till 13.03.2017 for filing written statement. Since he failed to file written statement, he was set exparte



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on 13.03.2017.

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5. It was further stated in the counter that the seventh respondent herein filed a written statement and therefore, the suit was taken up for trial from 02.04.2018 onwards and finally judgment and decree was passed on merits on 06.06.2018. Therefore, the judgment and decree passed by the Court below cannot be termed as an ex parte decree as it was passed after hearing the plaintiff and contesting defendants, who filed written statement. The respondents 1 to 5 in their counter also denied the averments found in the petitioner's affidavit that he was suffering from jaundice at the relevant point of time.

6. The petitioner was examined as PW1 and an independent witness was examined as PW2. The judgment and decree passed in the suit was marked as Ex.P1 and Ex.P2. After considering the rival contentions, the Court below refused to condone the delay and dismissed the petition. Aggrieved by the same, the revision petitioner is



before this Court.

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7. The learned counsel for the petitioner assailed the order passed by this Court mainly on the ground that the impugned order was passed by the Court below without properly considering the evidence of the petitioner as PW1 and the evidence of the independent witness examined on behalf of the petitioner to prove his illness as PW2. It was vehemently contended by the revision petitioner that when the petitioner entered box and deposed that he was suffering from jaundice, the Court below ought to have condoned the delay by holding that the petitioner had proved sufficient cause for his non appearance.

8. The learned counsel for the petitioner further submitted that the reason given by the Court below for dismissing the petition as if the decree dated 06.06.2018 is the one passed on merits and hence petition to set aside the exparte decree is not maintainable is an erroneous one. Hence, the impugned order is liable to be set aside.



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9. I have given my consideration to the submission made by the learned counsel for the petitioner and that of the learned counsel for the respondent/caveator. Perused the typed set of papers.

10. Admittedly in this case, the revision petitioner entered appearance on 14.11.2016 by engaging an Advocate. When the suit was posted for filing written statement on 13.03.2017, owing to failure of the petitioner to file written statement, he was set exparte. Subsequently, the exparte decree was passed on 06.06.2018. The exparte decree was passed only after 15 months from the date on which the petitioner was set exparte.

11. In the affidavit filed in support of this petition to condone the delay, the petitioner averred that from March 2017 onwards, he had been suffering from jaundice and after his recovery he met his counsel on 15.08.2019 and acquired the knowledge about the



exparte decree. The reasoning given by the petitioner that he had been suffering from jaundice from March 2017 to August 2019 for nearly 29 months cannot be accepted without any materials to substantiate the same.

12. In order to support his averments regarding the illness the petitioner examined one independent witness as PW2. The close scrutiny of evidence of PW2 would suggest that he did not have knowledge about the illness of the petitioner.

13. PW2 in his cross examination clearly admitted that he did not know anything about the timing of illness pleaded by the revision petitioner. He also deposed about his ignorance regarding the material particulars averred by him in his proof affidavit regarding the manner in which the petitioner had taken a treatment. Therefore, if the evidence of PW2 is taken as a whole it is not useful to support the case of petitioner. Moreover, the petitioner herein, who was examined as



PW1 in his cross examination as PW1, clearly admitted that he had been in touch with the respondents 6 & 7 regarding the status of the case.

14. The fatal admission made by PW1 that he had been in touch with the other defendants namely respondents 6 & 7 would lead to an inference that he is a fence sitter, watching the proceedings of the Court from out side. The said admission clearly proves that there is no bonafide in the claim made by the petitioner.

15. In the light of the discussions made above, I have no hesitation in coming to the definite conclusion that the petitioner failed to explain the delay by establishing sufficient cause within the meaning of Section 5 of the Limitation Act. Therefore, I do not find any illegality or irregularity in the order passed by the Court below warranting interference by this Court.



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16. Accordingly, this Civil Revision Petition is dismissed.

No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes / No
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To

The District Munsif, Tiruvallur.



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