



CRP.No.3846 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

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S.S.Lakshmana Shankar

... Petitioner

Vs.

1.S.S.Rama Shankar

2.S.Sulochana

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 11.11.2022, passed by the Principal Judge, City Civil Court, Chennai, in I.A.No.2 of 2022 in ASSR.No.13241 of 2021 and allow the ASSR.No.13241 of 2021 to be numbered.

For Petitioner : Mr.J.Ramesh



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ORDER

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This Civil Revision Petition is filed, challenging the order passed by the Court below dismissing the petition filed by the revision petitioner seeking to condone the delay of 1145 days in filing the first appeal challenging the exparte decree dated 02.01.2017.

2. The respondents herein filed a suit in O.S.No.2521 of 2013 on the file of the XIII Assistant City Civil Judge, Chennai and obtained an exparte decree that deed of revocation executed by the first defendant in the suit dated 12.02.2013 and subsequent settlement executed by the first defendant in favour of the second defendant namely, the revision petitioner were null and void and not binding on the plaintiff and also for delivery of possession.

3. Pursuant to the exparte decree against the petitioner passed on 02.01.2017, the petitioner herein filed an application under Order IX Rule 13 of CPC, to set aside the exparte decree and the said



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petition came to be dismissed and challenging the same, the revision petitioner herein filed CRP.No.737 of 2019 and the same was dismissed by this Court and the said order is said to have been challenged in the SLP.

4. In the affidavit filed in support of the condone delay petition, the petitioner has stated that after dismissal of the revision by the High Court, the petitioner was constrained to file an appeal challenging the exparte decree as he was entitled to challenge the same in law.

5. The petitioner also contended that continuous steps have been taken by him in prosecuting a petition to set aside the exparte decree by filing the same under Order IX Rule 13 of CPC.

6. Against the decree, the petitioner is entitled to file either petition under Order IX Rule 13 of CPC to set aside the exparte decree



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or a regular appeal under Section 96 of CPC, both the remedies are available to the petitioner and he is entitled to prosecute the remedies simultaneously. However, it is not open to him to explore one remedy and after failing in that remedy, to explore the other remedy.

7. Therefore, the reason given by the revision petitioner for condoning the delay of 1145 days is not convincing and it cannot be treated as sufficient cause to condone the delay under Section 5 of the Limitation Act. Hence, I do not find any error in the order passed by the Court below.

8. Accordingly, this Civil Revision Petition is dismissed. No costs.

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Index : Yes / No

Internet : Yes / No

dna

Note: Issue order copy on 28.11.2022



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To

The Principal Judge, City Civil Court, Chennai.



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S.SOUNTHAR , J.

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