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CRP(NPD).No.3956 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2022

CORAM:

THE HONOURABLE Mrs.JUSTICE T.V.THAMILSELVI

CRP(NPD).No.3956 of 2019

N.Rangasamy

.. Petitioner

Vs

Ponni

.. Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order passed in I.A.No.58 of 2016 in unnumbered C.M.A.SR.No.2110 of 2016 dated 10.07.2017 on the file of the Principal Subordinate Judge, Chengalpattu and allow this Civil Revision Petition.

For Petitioner : Mr.V.Sivalinkam

For Respondent : No Appearance



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ORDER

This Civil Revision Petition is filed challenging the order passed in I.A.No.58 of 2016 in unnumbered C.A.M.S.R.No.2110 of 2014 on the file of the Principal Sub Court, Chengalpet. The defendant has preferred this revision.

2. Originally, the suit in O.S.No.20 of 2010 was filed by the respondent herein / plaintiff for the relief of declaration and permanent injunction in respect of the B Schedule property and injunction relief in respect of C Schedule property as described in the plaint schedule. The defendant also appeared through Advocate and filed written statement. Then the matter was posted for trial. During the cross examination of the witness, due to lack of communication, the defendant remained absent and was set ex parte on 13.06.2013. Immediately, he took steps to set aside the ex parte decree but, there was a delay of 98 days. To condone the delay, he filed I.A.No.46/2014. On merits that application was allowed by the trial Court, directing the defendant to pay a sum of Rs.750/- to the plaintiff on or before 27.01.2015. Again due to lack of communication, defendant was not



able to pay the cost in time. Hence, I.A.No.46/2014 was dismissed on 28.1.2015. Against that dismissal order, the defendant counsel filed I.A.No.32/2015 to restore I.A.No.46/2014. As that application as such was not maintainable, the trial Court dismissed the said application stating instead of preferring an appeal, the restore application is not maintainable. Challenging that finding, the defendant preferred CMA, but there was a delay of 64 days. To condone the said delay, he filed an application in I.A.No.58/2016. But that application was dismissed by the first appellate Judge, holding that within 90 days, revision has to be preferred and the petitioner did not show sufficient cause for the delay in preferring the appeal. Challenging the same, the defendant preferred this revision.

3. Despite notice served on the side of the respondent, there is no representation.

4. Learned counsel for the revision petitioner argues that from the inception of the ex parte decree, the defendant is knocking at the doors of Court to set aside the ex parte decree, but due to erroneous application filed



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by his counsel, he is unnecessarily harassed. In fact, the plaintiff approached the Court for declaration and to take possession of the property which is said to be encroached by this defendant. In fact, she is in enjoyment of the property. As a rightful owner, to prove his right over the suit property, he was not given fair opportunity and based upon ex parte decree, the plaintiff attempted to dispossess this defendant by executing ex parte decree. If at all, she is permitted to execute the same, his right over the property would be defeated. Hence, he prayed to set aside the findings of the lower Court.

5. On perusal of the records, it is revealed that immediately after the ex parte decree, the defendant approached the Court to set aside the ex parte decree but there was a delay of 98 days alone. But the trial Court allowed the application on condition to deposit a sum of Rs.750/-. Due to lack of communication, the defendant was not able to deposit the amount, hence, the petition was dismissed. Instead of filing an application to extend the time under 148 C.P.C., his counsel erroneously filed the application to restore the application in I.A.No.32/2015 as such, clearly indicates that it is



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a mistake committed by the counsel, for which, the litigant should not be put to hardship. But the trial Judge, without appreciating those facts, erroneously dismissed the application, against which, the defendant preferred CMA. While preferring the CMA, there was a delay of 64 days. But the lower appellate Judge has also not appreciated the entire facts and erroneously dismissed the said application. Hence, he preferred this revision.

6. Though the reason assigned by the defendant may not be sufficient, but on seeing the entire facts, from the year of 2013 onwards, the defendant approached the Court to set aside the ex parte decree but there was a meager delay of 60 days and 90 days. In fact, he is an illiterate man who is hailing from a remote village and if, an opportunity is not given to defend the case, his right to have the property would be defeated. Therefore, this Court is inclined to set aside the order passed by the lower appellate Court in I.A.No.58/2016.



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T.V.THAMILSELVI, J.

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7. Accordingly, this Civil Revision Petition is allowed by setting aside the order passed in I.A.No.58 of 2016 in unnumbered CMA.SR.No.2110 of 2014 dated 10.07.2017 on the file of the Principal Sub Court, Chengalpet. The trial Judge is ordered to take up the CMA on file within two months from the date of receipt of copy of this order.

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AT

Index : Yes/No

To

The Principal Subordinate Judge,
Chengalpet.

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