



CRP.No.476 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.476 of 2019
and CMP.No.3153 of 2019

A.Mahalingam

... Petitioner

Vs.

R.Mohanraj

... Respondent

PRAYER: Civil Revision petition is filed under Section 115 of CPC praying to set aside the fair and decreetal order in IA.No.45 of 2016 in OS.No.189 of 2014 dated 18.09.2018 on the file of the Subordinate Judge at Pollachi.

For Petitioner : Mr.Ralph V. Manokar

For Respondent : Mr.R.Nandhakumar

ORDER

This civil revision petition has been filed to set aside the fair and decreetal order in IA.No.45 of 2016 in OS.No.189 of 2014 dated 18.09.2018 on the file of the Subordinate Judge at Pollachi, thereby dismissing the petition filed to condone the delay of 292 days in filing the petition to set aside the exparte decree.



CRP.No.476 of 2019

WEB COPY 2.

The respondent is the plaintiff in the suit filed as against the petitioner for specific performance on the strength of the agreement for sale deed 17.04.2013. According to the respondent, the petitioner intended to sell his property and executed for the total sale consideration of Rs.2,00,000/-. The respondent agreed the same and paid a sum of Rs.1,75,000/- as advance and the petitioner executed agreement for sale dated 17.04.2013 and the same was registered. The remaining balance sale consideration of Rs.25,000/- to be paid within a period of eleven months from the date of agreement for sale. On receipt of the same, the petitioner shall have to execute sale deed in his favour. However, the petitioner failed to execute sale deed even when the respondent was ready and willing to pay the balance sale consideration. Hence, the suit. After receipt of suit summons, the petitioner engaged his counsel. However, he failed to file written statement and as such, he was set exparte and exparte decree was passed as against the petitioner by the judgment and decree dated 16.02.2015. Admittedly the respondent filed execution petition on 28.04.2015 to execute decree. In the execution petition, the petitioner was duly served notice and he entered his appearance through his counsel on 24.06.2015 itself. After period of six months, the petitioner filed petition to set aside the exparte



CRP.No.476 of 2019

decree with delay of 292 days on 04.01.2016. It was dismissed and aggrieved by the same, the present civil revision petition has been filed.

3. The learned counsel for the petitioner would submit that the petitioner has got valid defence to defend the suit since he borrowed a sum of Rs.1,35,000/- as loan and he is being a poor illiterate and executed mortgage deed. However, it was registered as sale agreement utilising the illiteracy of the petitioner. That apart, he suffered with illness and in fact, so many untoward incidents happened in his family. Therefore, he could not able to follow the suit after entering appearance and also could not defend the execution petition. He further submitted that he also paid interest for some period and he has got the evidence to substantiate the same. The suit property is only a dwelling house and he has no other property to reside. He never had intention to sell the property. In fact, at the time of agreement for sale itself, as per the guideline value, the property was valued at Rs.100/- per sq.ft. No prudent man would enter into an agreement for sale less than the guideline value of the property.

4. Per contra, the learned counsel for the respondent would submit that the petitioner willfully and wantonly failed to appear before the trial court



CRP.No.476 of 2019

even after engaging counsel to defend him in the suit. After so many adjournments, the trial court set him exparte and exparte decree was passed on 16.02.2015. In the execution petition also, the petitioner was duly served notice and he engaged counsel and entered his appearance before the execution court on 24.06.2015. Even then, the petitioner did not file any application to set aside the exparte decree. On receipt of notice in the execution petition itself, he had knowledge about the exparte decree passed in OS.No.189 of 2014. However, he filed petition only on 04.01.2016 to set aside the exparte decree with delay of 292 days. He further submitted that he did not even state any valid reason for the delay of 292 days. There was absolutely no explanation for the delay of six months from the date of entering the appearance in the execution court till filing of petition to set aside the exparte decree. In the execution petition also, the petitioner was set exparte and sale deed was executed in his favour on 30.10.2015. Thereafter, main execution petition itself was closed on 05.01.2016 and thereafter on 12.01.2016, the respondent filed petition for delivery of possession and it is pending. Therefore, the court below rightly dismissed the petition to condone the delay of 292 days and it does not warrant any interference of this Court.



CRP.No.476 of 2019

5. Heard, Mr.Ralph V.Manokar, the learned counsel for the petitioner and Mr.R.Nandhakumar, the learned counsel for the respondent.

6. Accordingly to the petitioner, he borrowed a sum of Rs.1,35,000/- and in the name of mortgage deed, the respondent registered agreement for sale. The suit property is situated at Pethanayakanur Village, Anaimalai Taluk in Coimbatore District admeasuring 2300 sq.ft. (213.6 sq.mtrs) comprised in ca.sa.No.245/1. It is a dwelling house of the petitioner. On the date of filing the application to set aside the exparte decree, the petitioner also filed his written statement. On perusal of the written statement, he borrowed a sum of Rs.1,35,000/- and in fact, he also paid interest subsequently for some period. However, he could not able to pay further interest and principle amount since he suffered with so many illness. His wife also suffered with illness and so many untoward incidents happened in his family. Therefore, he could not able to defend the suit and he could not even able to defend the execution petition. It is true that the petitioner received notice in the execution petition and entered his appearance through his counsel on 24.06.2015. However, he filed petition to set aside the exparte decree only on 04.01.2016.



CRP.No.476 of 2019

7. On perusal of affidavit filed in support of the condone delay petition revealed that he was suffered with heart disease and his wife also suffered with heart disease. Only grand daughter also died due to drowning on 01.06.2013. Thereafter, his daughter and his son in law were constrained to file divorce petition. Due to so many mental agony, he could not defend the suit properly. He further stated in the affidavit that the market rate of the property valued at Rs.12,00,000/- and as such, he had no intention to sell the property for a sum of Rs.2,00,000/-. It is also seen from the agreement for sale that the sale consideration was fixed at Rs.2,00,000/- and the respondent paid a sum of Rs.1,75,000/- as advance and for balance payment, time was fixed for eleven months. If at all any sale agreement was executed by the petitioner as alleged by the respondent, time for balance payment would not be eleven months, since the sale consideration itself is Rs.2,00,000/- and the balance sale consideration is only Rs.25,000/-.

8. Considering the above facts and circumstances of the case, the petitioner may be given one more opportunity to defend his suit in the manner known to law. Accordingly, the fair and decreetal order in IA.No.45 of 2016 in OS.No.189 of 2014 dated 18.09.2018 on the file of the Subordinate Judge at



CRP.No.476 of 2019

Pollachi is set aside and this civil revision petition is allowed on condition that the petitioner shall deposit a sum of Rs.2,25,000/- (Rupees Two Lakhs and Twenty Five Thousand only) to the credit of trial court in OS.No.189 of 2014 on or before 30.01.2023, failing which this order shall stand automatically cancelled. It is made clear that the validity of the sale deed executed in favour of the respondent is subject to the result of the suit. The trial court is directed to dispose of the suit in OS.No.189 of 2014 within a period of three months from the date of receipt of copy of this order. In the meanwhile, the respondent shall not encumber further in the suit property. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

13.12.2022

Index : Yes/No
Internet : Yes/No
Speaking order/non-speaking order
lok



WEB COPY



CRP.No.476 of 2019

G.K.ILANTHIRAIYAN, J.

lok

To

The Subordinate Judge
at Pollachi.

CRP.No.476 of 2019

13.12.2022