



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.01.2022

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THE HONOURABLE **MS.JUSTICE P.T.ASHA**

C.R.P. (MD)No.569 of 2020
and C.M.P. (MD)No.3570 of 2020

M.P.Subramaniam ... Petitioner/Petitioner/Defendant
Vs.
P.Thirumalaisamy ... Respondent/Respondent/Plaintiff

PRAYER:- Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order 23.04.2019 passed in I.A.No.476 of 2009 in O.S.No.225 of 1999 on the file of the learned Sub Court, Palani.

For Petitioner : Mr.M.P.Senthil
For Respondent : Mr.J.Bharathan,
for M/S.T.Lenin Kumar.

ORDER

The defendant, whose application for condoning the delay of 70 days in filing the application to set aside the ex-parte decree was dismissed, has approached this Court.

2.Brief facts of the case are as follows:

2.1.The respondent/plaintiff had filed a suit in O.S.No.225 of 1999 for specific performance of an agreement of sale dated 22.04.1996. The defendant had entered appearance through counsel but, however, had not taken any steps to file the written statement or participate in the proceedings. Therefore, an ex-parte decree came to be ordered on 02.07.2002. In the month of September 2009, the petitioner has come forward with the impugned application for condoning the delay of 70 days in filing the petition to set aside the ex-parte decree dated 02.07.2002. In the affidavit filed in support of the said petition, he would submit that his counsel, who had been engaged by him to defend him in the suit, had informed him that he would send an intimation as and when he required the defendant's presence. The petitioner would submit that he had believed this statement of his counsel. On 3rd week of June 2009, when the son-in-law of the defendant had come to Trichy on a vacation, in the course of conversation, he had informed about the pendency of the suit. He thereafter, made enquiries and on verifying of records, he came to know that an ex-parte decree had been passed on 02.07.2002 and the plaintiff had also initiated steps to execute the decree. He would therefore come forward with the



petition to condone the delay in filing necessary application to set aside the ex-parte decree. He would calculate the delay only from the date of knowledge, i.e., in the month of July 2009 and he would submit that copies were provided to him on 19.08.2009.

2.2.The respondent filed a detailed counter *inter alia* contending that the delay of 70 days is absurd, since the ex-parte decree had been passed on 02.07.2002 and the application to set aside the same has been filed only on 10.09.2009. Therefore, the delay is not 70 days and it is 2593 days. The respondent would submit that satisfactory reasons have not been given as to why for over seven years the petitioner/defendant had not contacted his counsel to verify about the status of the proceedings. The execution petition was moved by the respondent/plaintiff on 08.09.2010 and even in the execution proceedings, the petitioner herein had remained absent and an ex-parte order came to be passed. That order has been challenged in CRP.(MD)No.2029 of 2017. The respondent/plaintiff would also submit that even in the affidavit filed in support of the condone the delay petition to set aside the ex-parte decree, it is not stated if a written statement had been filed. The respondent would state that the written statement had not been filed. The learned Sub-Judge, Palani by order dated 23.04.2019 was pleased to dismiss the application. Challenging the same, the revision petitioner/defendant is before this Court.

3.The learned counsel appearing for the petitioner reiterated the contents of this petition and also submitted that the judgment is not a judgment as provided under Order XX Rule 4 & 5 CPC.

4.The learned counsel appearing for the respondent would submit that at each stage, the defendant has been protracting the proceedings. After entering appearance in the suit, he, thereafter failed to keep track of the status of the suit and consequently, an ex-parte decree came to be passed on 02.07.2002. Even, the application to set aside the ex-parte decree has been filed with a delay of two years and nine months. In the execution proceedings also, the petitioner has not chosen to appear and was consequently set ex-parte. Thereafter, a sale deed has been executed in favour of the respondent/plaintiff on 13.02.2012. The respondent after execution of the sale deed in his favour, had filed E.A.No.178 of 2014 for delivery of the property. In the said application also the defendant had taken over one year and a month, to file his counter and ultimately, counter was filed on 09.10.2015 and thereafter, the Court had ordered delivery on 08.06.2017. The petitioner had filed CRP.(MD)No.2029 of 2017 before this Court challenging the order of delivery in E.A.No.178 of 2014 and the same was dismissed on 14.11.2018. The delivery of the property could not take place in view of the pendency of CRP.(MD)No.2029 of 2017. He would further submit that even the present revision has been filed with a delay of 13 days. All of this would clearly show the true intent of the defendant in protracting the case and therefore, he would submit



that the Court should not come to rescue of such litigant.

5. Heard the learned counsel on either side and perused the materials available on record.

6. It is no doubt that there is an inordinate delay on the side of the petitioner and he is not interested in genuinely prosecuting the case. However, a mere perusal of the judgment dated 02.07.2002, forces this Court to allow this petition as the said judgment is absolutely non-speaking and the learned Judge has not framed any issues and has not considered whether the plaintiff has proved his readiness and willingness, because it is a suit for specific performance.

7. For this reason alone, this Court is inclined to allow this revision and set aside the order passed in I.A.No.476 of 2009 in O.S.No.225 of 1999. However, this Court cannot close its eyes to the conduct of the petitioner and therefore, imposes cost on the petitioner. The learned counsel for the petitioner fairly conceded and stated that earlier a cost of Rs.1,00,000/- would be imposed and the petitioner had agreed to pay this cost. Taking note of the hardship that has been caused to the respondent, who has not only got decree executed by having sale deed in his name and also got an order of delivery, this civil revision petition is allowed on condition that the petitioner shall pay a sum of Rs.1,00,000/- to the respondent herein on or before 16.02.2022. On such payment, the revision shall stand allowed. A direction is issued to the learned Judge to number and allow the petition for setting aside the ex-parte decree and thereafter, proceed to dispose of the suit on or before 30.06.2022, since the suit is of the year 1999. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar (CS)

gns

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

The Sub Court, Palani.

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-1664[F] dated 19/01/2022)

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SK (CO)

KB (14.02.2022) 4P 3C