



CRP(PD)(MD)No.1522 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 05.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

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V.Subbiah Pandian

... Revision Petitioner

Vs.

Suzlon Gujarat Wind Park Limited,
registered under Company's Act 1956,
and having office at
Door No.5, Sri Malai Society,
near Krishna Commercial Complex,
Navarangapura, Ahamadabad,
through its Authorised Signatory Iyyakutty,
S/o.Nambi Jeevanantham,
residing at
Door No.85/1B, Plot No.123,
20th Cross Street,
Balabackiya Nagar,
Tirunelveli Junction.

... Respondents

Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the Fair and Decretal order dated 07.04.2014 passed in I.A.No.11 of 2014 in O.S.No.30 of 2012 on the file of the III Additional District Judge, Tirunelveli.



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For Petitioner : Mr.R.J.Karthick

For Respondent : Mr.T.Antony Arul Raj

ORDER

This Civil Revision Petition has been filed as against the fair and decreetal order passed in I.A.No.11 of 2014 in O.S.No.30 of 2012 on 07.04.2014 by the learned III Additional District Judge, Tirunelveli.

2. The said Interlocutory Application was filed under Section 5 of the Limitation Act by the petitioner/defendant to condone the delay of 163 days in filing the petition to set aside the ex-parte decree passed by the III Additional District Court, Tirunelveli, in O.S.No.30 of 2012 dated 11.03.2013. The suit was filed by the respondent for declaration and permanent injunction. For filing written statement, the petitioner/defendant took nine adjournments, but he has not filed any written statement. Therefore, the defendant was set ex-parte on 27.08.2012. Thereafter, the petitioner/defendant has filed a petition to set aside the ex-parte order on 25.09.2012 and the same was ordered. The case was posted for trial on 21.01.2013. On that day, P.W.1 was examined-in-chief, however, the



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defendant did not cross-examine P.W.1 and he took several adjournments.

On 07.02.2013, the counsel for the petitioner herein/defendant reported no instructions and therefore, he was set ex-parte. On 14.02.2013, the trial Court heard the arguments of the plaintiff and decreed the suit in favour of the plaintiff on 11.03.2013. Thereafter, the petitioner has filed an application to set aside the ex-parte decree in I.A.No.11 of 2014 with a delay of 163 days. The said application was dismissed by the trial Court on the ground that the petitioner has not assigned any valid reason for condoning the delay.

3. The learned counsel appearing for the petitioner submits that the petitioner is having a good case, however, he was not provided with an opportunity to defend his suit. P.W.1 was not cross-examined on that day, due to the mistake of the learned counsel, who appeared on behalf of the petitioner and the learned counsel reported no instructions without informing the petitioner/defendant. On the same set of facts, the petitioner was arrested pursuant to a criminal case registered against him. Therefore, he could not contact his counsel and follow up the same.



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4. The learned counsel appearing for the respondent submits that though the delay is 163 days, the Court has to consider the manner in which the matter has been protracted. The learned counsel has drawn the attention of this Court the manner in which the petitioner has created the forged documents, for which, a criminal case is pending against the petitioner/defendant in Crime No.32 of 2012 on the file of the District Crime Branch, Tirunelveli, for the offences under Sections 419, 465, 467, 468, 471 IPC. The Investigation Agency has found materials against the petitioner and filed a final report. The petitioner has created a forged document with regard to the suit schedule property by impersonating a woman and created a power deed in the year 2009. With the strength of power deed, he has also created a subsequent sale deed and as power agent, he has also purchased the property. The petitioner has adopted the tactics to delay the suit proceedings and the reasons assigned in the petition are not genuine. Hence, he prays to dismiss the Civil Revision Petition.



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5. This Court considered the rival submissions made on behalf of the parties and perused the materials available on record.

6. It is seen from the records that the petitioner is the defendant in O.S.No.30 of 2012. Though the trial Court has provided opportunities to the petitioner to defend his case, he has failed to file the written statement, for which, he was set *ex-parte* on 27.08.2012. Thereafter, a petition to set aside the ex-parte order was filed on 25.09.2012 and the same was ordered. The suit was taken up for trial on 21.01.2013. During the trial, the plaintiff was examined in chief, however, the petitioner herein/defendant has not cross-examined the plaintiff/respondent herein. Thereafter, the defendant's counsel reported no instructions. Based on that, the trial Court has recorded further evidence of P.W.1, heard the arguments of the plaintiff and decreed the suit. After the decree, the application has been filed to condone the delay of 163 days in filing the petition to set aside the ex-parte decree and judgment passed by the trial Court on 11.03.2013. Not satisfying with the reasons assigned in the petition, the trial Court has dismissed the application filed by the petitioner. In the present case also, the petitioner has not



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assigned any valid reason to set aside the fair and decreetal order passed in I.A.No.11 of 2014 in O.S.No.30 of 2012 on 07.04.2014 by the learned III Additional District Judge, Tirunelveli. Hence, this Court is not inclined to interfere with the order of the trial Court. However, if the petitioner is having a legal right, he can establish the same in the manner known to law.

7. Accordingly, the Civil Revision Petition is dismissed. No costs.

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ssb

Index : Yes / No

Internet: Yes / No

To

III Additional District Judge, Tirunelveli.



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B.PUGALENDHI, J.

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