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CRP(MD)No.2176 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP(MD)No.2176 of 2018
and
CMP(MD)No.9675 of 2018

Sakthivel : Petitioner

Vs.

Malarkodi : Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to call for the records pertaining to the order dated 31.07.2018 made in I.A.No.714 of 2017 in O.S.No.187 of 2009 on the file of the Principal Sub Court, Karur and set aside the same.

For Petitioner : Mr.M.M.Iqbal

For Respondent : Mr.P.Athimoola Pandian

ORDER

This revision petition is filed as against the fair and decreetal order passed by the learned Principal Subordinate Judge, Karur, in I.A.No.714 of 2017 in O.S.No.187 of 2009, dated 31.07.2018.



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2.The petitioner is the 1st defendant in the suit. The suit was filed by the respondent for partition and the same was decreed *ex-parte* on 29.01.2016, when the case was posted for defendants' side evidence. Challenging the *ex-parte* decree, the petitioner has filed an interlocutory application in I.A.No.714 of 2017 with a delay of 500 days, stating that he suffered with Jaundice and therefore, he could not appear before the trial Court, which is neither wilful nor wanton. However, the trial Court dismissed the interlocutory application stating that the petitioner has not produced any medical records to substantiate his claim. Aggrieved over the same, the petitioner has moved the instant revision.

3.Learned Counsel for the petitioner submitted that the suit is filed for partition and if the petitioner is not provided with an opportunity to put forth his case, he would be greatly prejudiced. The petitioner suffered with Jaundice and took native treatment. Therefore, he was not in a position to produce any medical records.

4.Learned Counsel for the respondent submitted that the suit was originally filed in the year 2009 and when the case was posted for defendants' side evidence,



the petitioner purposely remained absent to drag on the proceedings. He successfully dragged on the proceedings for the past eight years. The reasonings assigned by the petitioner is only vague and in fact, in the execution petition, the petitioner was represented through a Counsel on 29.11.2016, whereas, this interlocutory application to set aside the *ex-parte* was filed only on 22.02.2018.

5.This Court considered the rival submissions made by the learned Counsel on either side and perused the available materials.

6.The suit is filed for partition. The plaintiff's side evidence was completed and when the case was posted for defendants' side evidence, the petitioner / 1st defendant did not appear and was set *ex-parte*. This interlocutory application was filed by the petitioner with a delay of 500 days and the reasoning assigned by him is that he suffered with Jaundice at that point of time, for which, he took some native treatment. The trial Court dismissed this application stating that the petitioner has not substantiated his claim by producing any medical records.

7.The suit was filed in the year 2009 and the *ex-parte* decree was passed in the year 2016. This revision petition is pending before this Court since 2018 and



CRP(MD)No.2176 of 2018

in view of the pendency of this revision, the suit proceedings is stalled for the past seven years. The plaintiff's side evidence has already been completed and only at the cross examination stage, the petitioner was set *ex-parte*.

8. In view of the above, this Court is inclined to provide one more opportunity to the petitioner to put forth his case, however, with an exemplary cost of Rs.50,000/- [Rupees Fifty Thousand only]. Accordingly, this civil revision petition is allowed and the order impugned dated 31.07.2018 is quashed, on condition that the petitioner shall pay a sum of Rs.50,000/- directly to the respondent, within a period of six weeks from the date of receipt of a copy of this order. On producing the proof of payment, the trial Court shall restore the suit and the petitioner shall be permitted to adduce his evidence within a further period of four weeks therefrom. After his evidence, the trial Court shall endeavour to expedite the proceedings and complete the same within a further period of eight weeks therefrom. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
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31.10.2022



CRP(MD)No.2176 of 2018

To
The Principal Subordinate Judge,
Karur.

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CRP(MD)No.2176 of 2018

B.PUGALENDHI, J.

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CRP(MD)No.2176 of 2018

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