



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2022

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P. (MD)No.1802 of 2017
and C.M.P(MD) No.9602 of 2017

Senthilkumaran ... Petitioner/ Petitioner/ Defendant
-vs-
Karuppaiah ... Respondent/ Respondent/ Plaintiff

Prayer :- Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order dated 29.04.2017 made in I.A.No.56 of 2017 in O.S.No.30 of 2014 on the file of the Additional District & Sessions Court, Theni, at Periyakulam.

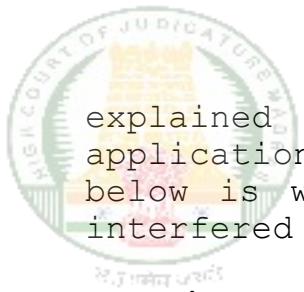
For Petitioner : Ms.N.Shmitha
For Respondent : Mr.Porkodi Karnan
for M/s.Polax Legal Solutions

ORDER

This civil revision petition is filed against the order passed by the learned Additional District and Sessions Judge, Theni, dated 29.04.2017 in I.A.No.56 of 2017. The said interlocutory application was filed by the revision petitioner herein to condone the delay of 475 days in filing the petition to set aside the ex parte decree passed in O.S.No.30 of 2014 dated 29.04.2017. The Court below, after hearing both sides, dismissed the said application stating that the reason was not properly assigned for condoning the delay.

2.According to the petitioner, the suit was filed by the respondent/plaintiff herein for recovery of money and for the sale of mortgaged property towards the security. The mortgage deed was executed by the petitioner herein on 13.02.2006. He came to know about the ex parte decree only when the final decree notice had been served on him. Therefore, there was a delay of 475 days in filing the application to set aside the ex parte decree. All the aspects have not been considered by the Court below in a proper perspective. Further, he would contend that the Court below should have taken a liberal approach in condoning the delay, instead without adopting the same, the Court below has dismissed the condone delay petition. Therefore, the same is liable to be set aside.

3.On the other hand, the learned counsel appearing for the respondent would submit that the delay has not been properly



explained and that is reason why the Court below dismissed application to condone the delay. The order passed by the Court below is well-reasoned order and therefore, the same need not be interfered with.

4. Upon hearing of the both the counsel and perusing the records, it appears that the suit was filed for recovery of money and for the sale of the mortgaged property to secure the debt, the petitioner herein executed the mortgage deed. The reason assigned by the petitioner that he came to know about the ex parte decree only after the receipt of notice in the final decree proceedings. Therefore, there was delay of 475 days. In the interest of justice, the Court below should have taken the liberal approach in condoning the delay, instead it has taken scant approach and dismissed the application to condone the delay. The respondent has taken a plea in the suit that the documents were forged and disputed the dates. In these circumstances, the claim in the suit is to be adjudicated, after hearing both the parties. Hence, this Court is of the view that the delay of 475 is to be condoned.

5. In the result, this Civil Revision Petition is allowed and the order dated 29.04.2017 made in I.A.No.56 of 2017 on the file of the Additional District and Sessions Court, Theni, at Periyakulam, is set aside and the delay is condoned. The learned Additional District and Sessions Judge, Theni, at Periyakulam, is directed to pass orders on the application to set aside the ex parte decree within a period of 30 days from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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 Additional District & Sessions Judge,
Theni at Periyakulam.

+1CC to M/s.POLAX LEGAL SOLUTIONS, Advocate (SR-10871[F] dated 09/03/2022)

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and C.M.P(MD) No.9602 of 2017
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<https://hdservices.courts.gov.in/hdservices>. 3C