



CRP No.1579 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 22.11.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

C.R.P.No.1579 of 2023

and

CMP.No.10344 of 2023

Balakrishnan

...
/vs/

Petitioner

P.Murugaiyan

...

Respondent

PRAYER: Civil Revision Petition has been filed under Section 115 of Civil Procedure Code against the Fair and Decretal order dated 12.01.2023 passed in I.A.No.261 of 2019 in O.S.No.54 of 2015 on the file of the Additional District Munsif, Tiruvannamalai.

For Petitioner : Ms.S.Suseela Devi

For Respondent : No appearance

ORDER

Challenging the impugned order dated 12.01.2023 passed in I.A.No.261 of 2019 in O.S.No.54 of 2015 on the file of the Additional District Munsif Court, Tiruvannamalai, the present civil revision petition has been filed.



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2. Before the trial Court, the revision petitioner/defendant filed an application under Section 5 of limitation Act to condone the delay of 1231 days in filing the petition in order to set aside the ex-parte decree dated 26.08.2015 passed in O.S.No.54 of 2015 against him. The reason assigned in the petition was that the suit summons were not properly served and on receipt of the notice in the execution proceedings only, he came to know about the ex-parte decree. Immediately, he had taken steps but there was a delay. Hence, the condone delay application was filed but the trial Judge, on hearing the objection raised by the plaintiff, dismissed the condone delay application stating that the reason assigned in the condone delay application has not been accepted and notice in the execution proceedings was served in the year 2016 but the revision petitioner/ defendant filed an application only in the year 2019 such conduct shows that only drag on the proceedings, he has not taken steps to file the application in time. Aggrieved by the same, the present civil revision petition has been filed.

3. The learned counsel appearing for the petitioner submitted that the learned counsel, who is appearing in the suit, is a close relative and he ensured that he will follow the case but he has not communicated the status of the proceedings. Only on receipt of the attachment notice in the execution



proceedings, he came to know about the ex-parte decree. Immediately, he engaged another counsel and instructed him to file necessary application to set aside the ex-parte decree. Hence, the delay in filing the application to set aside the ex-parte decree is neither wilful nor wanton. Now, written statement has also been filed before the trial Court. If the ex-parte decree is executed, the revision petitioner/defendant has caused irreparable loss and hardship. Therefore, the present civil revision petition has to be allowed.

4.I have considered the submission made by the learned counsel appearing for the petitioner and perused the materials available on record.

5.On perusal of the materials available on record, it is seen that admittedly the suit in O.S.No.54 of 2015 has been filed for recovery of money based on the promissory note. In that suit, due to lack of communication between the counsel and the revision petitioner, the revision petitioner was not able to appear before the trial Court, hence, an ex-parte decree was passed. Based on the ex-parte decree, an execution petition was filed and steps have been taken to attach the property. The contention of the revision petitioner/defendant is that already a panchayat was held between them and due to lack of communication and negligence on the part of the learned counsel, he was not able to proceed with the case. Now the written

<https://www.mhc.tn.gov.in/> statement has been filed before the trial Court along with an interim



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application to set aside the ex-parte decree but the trial Judge, not satisfied with the reason assigned in the petition, dismissed the same.

6.Considering the abovesaid facts and circumstances of the case and to give one more opportunity to the petitioner to proceed with the case, this Court is inclined to set aside the order dated 12.01.2023 passed in I.A.No.261 of 2019 in O.S.No.54 of 2015.

7.In view of the above, the order dated 12.01.2023 passed in I.A.No.261 of 2019 in O.S.No.54 of 2015 by the Additional District Munsif, Tiruvannamalai, is hereby set aside and the civil revision petition is allowed with a condition to pay a cost of Rs.5,000/- to the respondent/plaintiff within a period of three weeks from the date of receipt of a copy of this order and on such a payment, the trial judge is directed to proceed with the case in the manner known to law. No costs. Consequently, the connected miscellaneous petition is closed.

Index : Yes/No
Internet: Yes/No
sms

22.11.2023

To
The Additional District Munsif,
Tiruvannamalai.



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T.V.THAMILSELVI, J.

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