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C.R.P.No.2007 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.03.2023

CORAM:

THE HONOURABLE Ms.JUSTICE V. BHAVANI SUBBAROYAN

C.R.P.No.2007 of 2020

and

C.M.P.No.12454 of 2020

G.Sarath Chandrabahu

...Petitioner/Petitioner/Defendant

Vs.

K.Gunasekaran

...Respondent/Respondent/Plaintiff

Prayer: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure against the Fair and Decreetal order dated 16.12.2019 passed by the learned Principal Subordinate Judge, Coimbatore, in I.A.No.1376 of 2015 in O.S.No.245 of 2012.

For Petitioner : P.Saravana Sowmiyan

For Respondent : Mr.I.Abrar Md. Abudullah



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ORDER

This Civil Revision Petition has been filed challenging the Fair and Decretal order dated 16.12.2019 in I.A.No.1376 of 2015 in O.S.No.245 of 2012 passed by the learned Principal Subordinate Judge, Coimbatore.

2.The petitioner herein is the defendant in O.S.No.245 of 2012. The suit was filed for Specific Performance directing the defendant to execute a Sale Deed in favour of the plaintiff, failing which, the Court may execute the Sale Deed on behalf of the defendant and put the plaintiff in physical possession of the demised property. The petitioner/defendant filed a Written Statement denying the averments in the Plaint.

3.It is the case of the petitioner/defendant that on 01.04.2014, the suit was posted for trial. The respondent/plaintiff had examined himself as PW1 and Ex.A.1 to Ex.A.6 were marked on his side. Thereafter, the case has been posted for cross examination of PW1 on 08.01.2014. On



the said day, the petitioner/defendant has sought for adjournment and the case has been adjourned to 21.01.2014 for cross examination of PW1. Again the case has been posted on 27.01.2014. On 27.01.2014 also, the petitioner/defendant was not present and hence, an *ex parte* order was passed. Thereafter, the suit has been decreed on 01.02.2014.

4.The petitioner/defendant has claimed that he was suffering from severe illness and he has no knowledge of legal proceedings. Therefore, he could not file the application to set aside the *ex parte* decree in time. Hence, a delay of 560 days has occurred in filing the petition to set aside the *ex parte* decree. Therefore, the petitioner has filed I.A.No.1376 of 2015 to condone the delay of 560 days under Section 5 of the Limitation Act seeking to set aside the *ex parte* decree. The said application was dismissed by the Trial Court on 16.12.2019. challenging the same, the defendant is before this Court.

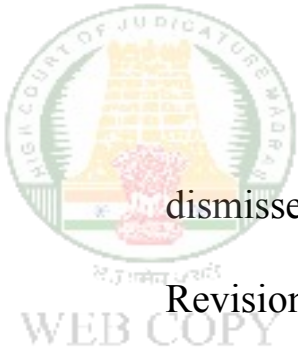
5.Heard the learned counsels appearing on either side and perused the documents placed on record.



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6. Section 5 of the Limitation Act, 1963, enables the Court to condone the delay in filing an appeal or application, if the appellant or applicant satisfies the Court that he had a sufficient cause for not preferring the appeal or application within the specified time. Whether the reason furnished for delay constitute a 'sufficient cause or not' would depend on facts and circumstances of the case. There is no straight jacket formula for accepting or rejecting an explanation furnished to condone the delay.

7. From the averments made in the application, it is seen that the petitioner/defendant has not specified as to what is the illness from which he was suffering. Further, no medical records have been produced by the petitioner to substantiate his claim and hence, the sufficient cause is not proved. Further, on perusal of the records, it is also seen that the respondent/plaintiff had examined himself as PW1 and Ex.A.1 to Ex.A.6 were marked. Thereafter, an Execution Petition has been filed for the execution of Sale Deed and after execution of the Sale Deed, an application was filed seeking delivery of possession and the same is pending. For the above reasons, this revision is liable to be



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dismissed. Hence, this Court is not inclined to allow the above
Revision.

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

Consequently, the connected Miscellaneous Petition is closed.

14.03.2023

Index : Yes/No

Neutral Citation : Yes/No.

Speaking Order / Non-Speaking Order
mps

To

The Principal Subordinate Judge,
Coimbatore.



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V. BHAVANI SUBBAROYAN, J,

mps

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