



C.R.P.No.4038 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.4038 of 2017
and C.M.P.No.18878 of 2017

Krishnan

... Petitioner

Vs.

1. Parasuraman
2. Perumal
3. Jaisankar

... Respondents

Prayer :- Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the order passed in I.A.No.1082 of 2015 in O.S.No.117 of 2012 dated 28.08.2017 on the file of the Additional District Munsif Court, Cheyyar, Thiruvannamalai District.

For Petitioner : Mr.K.G.Senthil Kumar

For Respondents : Mr.S.Makesh



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ORDER

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This Civil Revision Petition has been filed as against the fair and decreetal order dated 28.08.2017 passed in I.A.No.1082 of 2015 in O.S.No.117 of 2012 dated 28.08.2017 on the file of the learned Additional District Munsif, Cheyyar, Thiruvannamalai District, thereby dismissing the petition seeking condone the delay in filing the petition to set aside the exparte decree.

2. The respondents are the plaintiffs and the petitioner is the defendant. The respondents filed suit in O.S.No.117 of 2012 for specific performance. After filing the written statement by the petitioner, P.W.1 was examined. When the matter was posted for cross-examination of P.W.1, the petitioner failed to cross-examine P.W.1 even after giving so many opportunities. Therefore, he was set exparte and exparte decree was passed on 17.10.2014. Thereafter, the petitioner did not take any steps to set aside exparte decree and to restore the suit.



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3. In pursuant to the decree dated 17.10.2014 passed in O.S.No.177 of 2012, the respondents filed the execution petition in E.P.No.40 of 2015. In the execution petition, the petitioner was duly served with notice. On receipt of the notice, the petitioner engaged Advocate and he entered appearance on 08.07.2015, before the execution Court. In the execution petition, he was given opportunities to file counter. Even then, the petitioner did not file any counter and he was set exparte 25.09.2015. In the execution petition, the petitioner filed petition to set aside the exparte decree in O.E.A.No.94 of 2015 and the same was also dismissed by an order dated 05.09.2017. However, it was not challenged by the petitioner before any Court of law.

4. In the meanwhile, the petitioner also filed petition in I.A.No.1082 of 2015 to condone the delay of 57 days in filing the petition to set aside the exparte decree in the suit in O.S.No.117 of 2012. It was returned for certain compliance and again it was again re-presented with the delay of 100 days. It was allowed and the condone delay petition was taken for enquiry. During the enquiry, the petitioner failed to explain the proper



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reasons for 57 days in filing the petition to set aside the exparte order. It is pertinent to note that in the execution petition, the petitioner was duly served with notice and in fact, he entered appearance before the execution Court on 08.07.2015. Though the petitioner filed petition to set aside the exparte decree in suit in O.S.No.117 of 2012, he failed to pursue the said application.

5. It is also seen that the petitioner appeared in the execution application and sought for time for filing the Court. However, he failed to file any counter in the execution Court. The condone delay petition to condone the delay in filing the petition to set aside the exparte decree was returned on 30.04.2016. Further it was re-presented with the delay of 100 days in re-presenting the petition to condone the delay in filing the petition to set aside the exparte decree.

6. On a perusal of the affidavit revealed that the petitioner was suffered with jaundice and as such he could not met his counsel to give proper instructions to file a petition to set aside the exparte decree



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immediately. However, he had engaged the Advocate to appear before the execution Court and he contested the execution petition by seeking time to file counter. Therefore, the trial Court dismissed the condone delay petition as against which the present Civil Revision Petition.

7. The learned counsel appearing for the petitioner submitted that under Section 144 of C.P.C., the petitioner is entitled the relief of restitution of property and he may be given one more opportunity to contest the suit. In this regard, he relied upon the judgment reported in **AIR 2004 MADRAS 425** in the case of **Kandan and ors Vs. Periaswamy**, in which this Court held that the provision under Section 144 of C.P.C., contemplates that where a property was received by a decree holder in execution of a decree which, on appeal, either in whole or in part thereof, is subsequently reversed or varied, the Court is empowered to restore to the judgement debtor what has been lost to him in execution of the decree and it is the consequence of the erroneous decree. Therefore, he prayed to allow this Civil Revision Petition.

8. Heard Mr.K.G.Senthil Kumar, learned counsel appearing for



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the petitioner and Mr.S.Makesh, learned counsel appearing for the respondents.

9. On a perusal of records revealed that originally the sale agreement dated 05.08.1993, entered between the respondent's father and the petitioner's father. Subsequently both were died and the petitioner made endorsement on 13.04.1994 & 25.12.1994 on receipt of balance amount of Rs.47,675/-, in pursuant to the agreement for sale dated 05.08.1993. While pending the suit, the petitioner also filed petition in I.A.No.632 of 2013 under Section 47 of the Indian Evidence Act, to get expert's opinion in respect of the subsequent endorsement made in the agreement for sale dated 05.08.1993. Though it was allowed in favour of the petitioner, subsequently the petitioner failed to take any steps for getting any expert's opinion and therefore, it was dismissed. It shows that the petitioner had no interest to proceed with the suit and also shows his lethargic attitude. Therefore, the decree passed against him cannot be set aside as erroneous.

10. That apart, after dismissal of the condone delay petition, the



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execution petition was ordered and accordingly the sale deed was executed in favour of the respondents herein. The sale certificate was also issued in their favour by the execution Court and they are put in possession of the suit schedule property. Further, the petitioner also failed to explain the delay with proper and sufficient reasons in the condone delay petition as such the Court below rightly dismissed the petition and this Court finds no infirmity or illegality in the order passed by the Court below.

11. In view of the discussion, this Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

03.01.2023

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
rts

To

1. The Additional District Munsif,
Cheyyar, Thiruvannamalai District.



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