



C.R.P.(MD) No.53 of 2020

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.08.2023

CORAM:

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

C.R.P.(MD)No.53 of 2020
and
C.M.P(MD) No.290 of 2020

Ayyavu

... Petitioner

Vs.

1.Manoharan (died)

2.Pasupathi

3.Rajadeepa

4.Rajamanickam

5.Sudha

6.Seeniyammal

... Respondents

(Respondents 2 to 6 are brought on record as Lrs
of the deceased sole respondent vide Court order dated
21.02.2022 made in CMP(MD) Nos.7830 to 7832 of 2021)

Prayer :- Petition filed under Section 115 of the Code of Civil Procedure,
to set aside the fair and Ex-order dated 24.09.2019 made in I.A.No.1050
of 2012 in O.S.No.566 of 2011, on the file of the District Munsif Court,
Thirumangalam and to allow the same.



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For Petitioner : Mr.K.Hemakarthiskeyan

For Respondents : Mr.V.Meenakshi Sundaram
for Mr.D.Nalla Thambi

ORDER

The above civil revision petition is filed as against the order passed in I.A.No.1050 of 2012 in O.S.No.566 of 2011, dated 24.09.2019, on the file of the District Munsif Court, Thirumangalam.

2. According to the revision petitioner, the first respondent herein filed a suit in O.S.No.566 of 2011 for recovery of possession, in which the petitioner was set ex parte for his non-appearance. Thereafter, he moved an application in I.A.No.1050 of 2012 for condonation of delay of 115 days in filing an application to set aside the ex parte decree passed in O.S.No.566 of 2011. In the said application, the petitioner has stated that believing the undertaken given by the first respondent/plaintiff that he would not press the suit, the petitioner did not appear in the suit and thereafter, the respondent was proceeding with the suit and obtained an



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ex parte decree. Due to the above reason, a delay of 115 days occurred in filing of the petition to set aside the ex parte decree. The delay was neither wilful nor wanton. Hence, the ex parte decree passed against him, has to be set aside.

3. The above petition was resisted on the side of the first respondent/plaintiff by stating that the explanation given by the petitioner/defendant is false and inspite of receipt of notice in the execution proceedings, the petitioner failed to appear. Hence, the ex parte decree passed against him, is not liable to be set aside.

4. On perusal of the averments made in the petition and in the counter affidavit and the arguments advanced by the respective counsels for the parties, the trial Court dismissed the above application on the ground that it is devoid of merits, against which, this revision is preferred.

5. The learned counsel appearing for the revision petitioner would submit that the petitioner came to know about the ex parte decree only



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after receipt of the notice in the execution petition and immediately he filed the petition to condone the delay of 115 days in filing an application to set aside the ex parte decree. He would further submit that the Court below ought to have considered the explanation given by the petitioner in the above petition and ought to have given an opportunity to the petitioner to put forth his defence. Hence, he prayed to allow this revision.

6. On the other hand, the learned counsel for the respondent would submit that earlier, a suit in O.S.No.303 of 1992 was filed against the petitioner herein for recovery of money on the basis of registered mortgage and the above suit was decreed in favour of the first respondent/plaintiff. Thereafter, execution proceedings were initiated. In the execution proceedings, the mortgaged property was purchased by the plaintiff with the leave of the Court, in which, sale certificate was issued on 31.08.2000. At that time, the petitioner herein approached the respondent and requested that after cultivation of standing crops he would deliver the property and therefore, the first respondent/plaintiff stopped the execution proceedings for delivery of possession. Since the



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delivery of possession ought to have been claimed within a period of one year, the first respondent/plaintiff was constrained to file the present suit in O.S.No.566 of 2011 for delivery of property, in which, the petitioner was set ex parte for his non-appearance. The present revision is filed by the petitioner only to drag on the proceedings. However, the learned counsel for the respondents would submit that he has no objection in setting aside the ex parte decree passed in the above suit and only seeks for a direction for early disposal of the suit.

7. Considering the fact that the learned counsel for the respondents has not placed any serious objections and in the interest of justice and to give sufficient opportunity to the petitioner herein, the order passed by the learned District Munsif, Thirumangalam, in I.A.No.1050 of 2012 in O.S.No.566 of 2011, dated 24.09.2019, is set aside and the same is allowed. However, considering the request made by the learned counsel and upon perusing the records, it is seen that the litigation between the parties is pending for more than 20 years. Hence, this Court directs the learned District Munsif, Thirumangalam, to dispose of suit in O.S.No. 566 of 2011, as expeditiously as possible, preferably, within a period of



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four months from the date of receipt of a copy of this order, by affording sufficient opportunities to the parties to put forth their contentions and also without giving any unnecessary adjournment.

8. In the result, this civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

14.08.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
cp

To

The District Munsif,
Thirumangalam.



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K.GOVINDARAJAN THILAKAVADI, J.

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