



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.07.2023

Delivered on : 08.09.2023

WEB COPY

CORAM

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

C.R.P(MD)No.693 of 2023

and

C.M.P(MD)No.3208 of 2023

Perumal

... Petitioner/Petitioner/
/Defendant

Vs.

Ganesan

...Respondent/Respondent
/Plaintiff

Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order dated 06.03.2019 passed in I.A.No.1052 of 2018 in O.S.No.73 of 2013 on the file of the Sub-Court, Thoothukudi.

For Petitioner

:Mr.N.Pragalathan

For Respondents

:Mr.N.Ramesh Arumugam

ORDER

The revision petition is preferred as against the fair and decreetal order dated 06.03.2019 passed in I.A.No.1052 of 2018 in O.S.No.73 of 2013 on the file of the Sub-Court, Thoothukudi.



2.The above suit in O.S.No.73 of 2013 is filed by the respondent/plaintiff for declaration of title and for recovery of possession.

In the above suit, the petitioner/defendant was set ex-parte and the ex-parte decree was passed on 04.04.2014. Immediately, the respondent filed an execution petition in E.P.No.88 of 2014. In such circumstances, the petitioner filed a petition to set aside the ex-parte decree dated 04.04.2014. The said application was returned for compliance. Therefore, the petitioner filed a petition in I.A.No.1052 of 2018 to condone the delay of 789 days represent the application for setting aside the ex-parte decree. The trial Court dismissed the above application by stating that no sufficient reasons attributed by the petitioner/defendant to condone the delay of 789 days in filing the petition for setting aside the exparte decree. Aggrieved over the same, the present civil revision petition is filed.

3.The learned counsel appearing for the petitioner would submit that the trial Court ought to have liberally considered the reason stated in the affidavit for the delay in representing the application. On 04.04.2014, the revision petitioner was set ex-parte for non-filing of the written statement. Thereafter, while filing the E.P, they were trying to settle the issue amicably between the parties, but it was not materialized. Apart from that, the petitioner was suffering from ailments, therefore, the delay of 789 days was occurred.



4. On the other hand, the contention of the learned counsel appearing for the respondent is that it is utterly false that the petitioner was suffering from ailment and there was no settlement talk between them to settle the issue. Further contended that no sufficient cause shown by the petitioner for the delay of 789 days in representing the application for setting aside the ex-parte decree. Hence, he prays for dismissal of the petition.

5. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

6. Admittedly, there are 789 days in representing the application in I.A.No.1052 of 2018 for setting aside the ex-parte decree. It is also not in dispute that the petitioner/defendant was set ex-parte on 04.04.2014 and ex-parte decree was passed in favour of the respondent/defendant. Pursuant to which, the respondent/plaintiff filed an execution petition in E.P.No.88 of 2014 for executing the decree passed in favour of the respondent/plaintiff. Thereafter, the petitioner filed an application in I.A.No.1052 of 2018 to set aside the ex-parte decree. Since the said application was not filed within the 30 days, the Court below returned the said petition for not filing along with Section 5 of the Limitation Act. After a lapse of 789 days the petitioner has preferred an application to condone the delay in representing the application



filed to set aside the ex-parte decree. The said application was dismissed by the Court below by quoting the decision in ***A.Muthusamy-vs-Muniammal and Ors., on 6th December, 2005 Madras High Court***, wherein it was held that:

“9.Contending that condoning the delay in representation is between the Court and the Appellant, the learned Counsel for the Revision Petitioner submitted that the Respondent cannot have any objection for condoning the delay. It is further submitted that the Court should not proceed with the tendency of finding fault with the cause shown and negative the reasons for the delay in a casual manner. Though the condonation of delay in representation is between the Court and the Appellant, the Court should not lose sight of the fact that by not taking steps in representing the appeal within the prescribed time, valuable right has accrued to the Respondents, which should not be lightly be defeated by condoning the delay in a routine-like manner. By condoning the delay in representation, litigation cannot be allowed to be kept alive for a long time.”

7.The observation made in the aforesaid case is squarely applicable to the facts of the present case. Though the petitioner/defendant was set ex-parte on 04.04.2014, he filed an application to set aside the ex-parte decree only on 02.08.20216 with the delay of 683 days, which was returned by the trial Court on 05.03.2016 by stating that Section 5 application was not filed



along with set aside petition. However, the petitioner has represented the said application after the delay of 789 days. The petitioner has stated that since there was a settlement talk between the parties, the said delay had occurred. However, there is no detail as to when the settlement talk was going on between the parties and how long the settlement talk was going on. Therefore, though the delay in representation is between the Court and the petitioner, such delay cannot be condoned in a casual manner.

8.As observed in the decision referred to above, the Court should not lose sight of the fact that by not taking steps in representing the petition within the prescribed time, the right has accrued to the respondent should not be lightly be defeated by condoning the delay in a routine like manner. Therefore, by condoning the delay in representation, litigation cannot be allowed to be kept alive for a long time. Apart from that no sufficient cause shown by the petitioner for the representation delay. No iota of proof for ailment and for the settlement talk. Hence, there is no infirmity found in the order passed by the trial Court. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

08.09.2023

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



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K.GOVINDARAJAN THILAKAVADI, J.

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To

1.The Sub-Court,
Thoothukudi.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

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