



C.R.P.(MD).No.2246 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 26.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD)No.2246 of 2018

and

C.M.P(MD) No.10103 of 2018

Kathiresan

... Petitioner/Petitioner/
Defendant

-vs-

Mariappan

... Respondent/Respondent/
Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 11.06.2018 in I.A.No.780 of 2017 in O.S.No.200 of 2013 on the file of the District Munsif cum Judicial Magistrate Court, Sivagiri.

For Petitioner : Mr.R.Maheswaran

For Respondent : Mr.N. Adithyavijayalayan



C.R.P.(MD).No.2246 of 2018

WEB COPY

ORDER

The present Civil Revision Petition has been filed by the petitioner under Article 227 of the Constitution of India, against the fair and decreetal order dated 11.06.2018 in I.A.No.780 of 2017 in O.S.No.200 of 2013 on the file of the District Munsif cum Judicial Magistrate Court, Sivagiri.

2. The revision petitioner is the defendant before the trial Court.

3. For the sake of convenience, the parties will be referred to as per the litigative status before the trial Court.

4. It appears that the plaintiff has filed a suit against the defendant for the relief of declaration to cancel the sale deed and the rectification deed stands in the name of the defendant.

5. It appears that when the suit was posted for written statement of the defendant on 09.06.2015, the defendant did not file the written statement. Therefore, he was set *ex-parte*, and when the matter was posted for judgment



C.R.P.(MD).No.2246 of 2018

on 19.09.2017, he filed an application, a day prior to the judgment date qua, 18.09.2017, to set aside the *ex-parte* order. Wherein, he stated that due to his wife's ailment, he was compelled to stay at Coimbatore, so as to earn money for his livelihood, and when he recently came down to his native and when he contacted his counsel, then only he came to know about the *ex-parte* order dated 17.07.2015. Hence, he prayed to set aside the *ex-parte* order.

6. The said application was stoutly contested by the respondent/ plaintiff, on the ground that the reason alleged by the petitioner is unbelievable and that the application to set aside the *ex-parte* order has been filed after a period of 3 ½ of years, and that the limitation period for such an application, is only 90 days. Therefore, the application is devoid of merits. Hence, he prayed to dismiss the application.

7. This Court has given anxious consideration to the submissions of the learned counsel on either side.

8. The learned counsel for the petitioner would submit that for filing an application to set aside the *ex parte* order, there is no limitation, and Article



C.R.P.(MD).No.2246 of 2018

WEB COPY

123 of Limitation Act deals only in respect of the *ex parte* decree. Therefore, he would submit that the very observation of the learned trial Judge that Section 5 of Limitation Act application has to be filed along with condonation of delay of two years and three months, is perverse.

9. It is pertinent to mention that, as rightly submitted by the learned counsel for the petitioner, Article 123 of the Limitation Act, deals only *ex parte* decree and in the limitation Act, there is no provision except the residuary clause contained in Article 137 of Limitation Act, stipulating time frame to file an application to set aside the *ex parte* order.

10. Even according to Article 137 of Limitation Act, the time limit to file an application is three years. Whereas in the present case, the petitioner has filed an application after 3 ½ years. Therefore, the very reasoning given by the learned trial Judge to dismiss the application to set aside the *ex parte* order that no Section 5 of Limitation Act application has not been filed, cannot be countenanced.



C.R.P.(MD).No.2246 of 2018

WEB COPY

11. In respect of the reason assigned by the petitioner, though the learned trial Judge has disbelieved the version, this Court is of the view that as per the affidavit, he referred about the ailment of his wife and his precarious condition which constrained to stay at Coimbatore, though not established by producing documentary evidence, it cannot be simply brushed aside in the back ground of the nature of litigation between the plaintiff and the defendant. In the suit, the respondent prayed a decree to set aside the registered sale deed of the petitioner. Here what the petitioner wants a decree on merits. Further the suit is pending as on date. Therefore, there cannot be any prejudice to the respondent while allowing this application.

12. Therefore, this Court is of the view that the order passed by the learned trial Judge is liable to be interfered with. However, in view of the non-appearance of the defendant and non-filing of the written statement, definitely the plaintiff would have underwent certain hardship. Therefore, the same has to be compensated by imposing cost to the petitioner.



C.R.P.(MD).No.2246 of 2018

WEB COPY

13. In the result, this Civil Revision Petition is allowed on condition that the petitioner shall pay a sum of Rs.1,000/- (Rupees One Thousand only) to the respondent within a period of four weeks from the date of receipt of the copy of this order, failing which, this Revision Petition shall stand dismissed without any further reference to this Court. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

26.07.2023

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

To

1. The District Munsif cum Judicial Magistrate Court,
Sivagiri.



WEB COPY



C.R.P.(MD).No.2246 of 2018

C.KUMARAPPAN,J.

ebsi

C.R.P(PD)(MD)No.2246 of 2018

26.07.2023