



CRP (MD) No.1259 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	17.07.2023
Pronounced on	07.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

CRP (MD) No.1259 of 2023

and

CMP(MD)No.6180 of 2023

P.Thirumalai Nambi

... Petitioner

Vs.

Chithirai

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order dated 02.02.2022 passed in I.A.No.1031 of 2017 in O.S.No.67 of 2011 on the file of the learned Subordinate Judge, Valliyoor.

For Petitioner : Mr.V.Sasikumar

For Respondent : Mr.M.Subbiah



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ORDER

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This Civil Revision Petition is preferred as against the order passed in I.A.No.1031 of 2017 in O.S.No.67 of 2011 on the file of the Sub Court, Valliyoor, dated 02.02.2022.

2. The above suit is filed by the respondent/plaintiff for the relief of specific performance. In the said suit, the petitioner/defendant was set ex parte and an ex parte order was passed on 29.01.2016. Thereafter, the petitioner/defendant filed an application in I.A.No.1031 of 2017 for condoning the delay of 190 days for filing set aside petition. In the said petition, it was stated that due to the ill health of the petitioner's wife, he had to shift from Valliyoor to Thiruvambalapuram and therefore, he could not contact his counsel at Valliyoor. The claim of the petitioner was resisted by the respondent in the above petition by filing his counter affidavit stating that the suit was filed in the year 2011 for the relief of specific performance and the suit was listed on 07.10.2015. The respondent/plaintiff was examined as P.W.1 on 28.10.2015 and thereafter, the same was posted for cross-examination on 04.11.2015 and since there was no representation on the side



of the petitioner/defendant, on 29.01.2016 an ex parte decree was passed against him. Therefore, since no sufficient reason was shown by the petitioner/defendant, the ex parte decree is not liable to be set aside. The trial Court, after considering the averments made in the petition and in the counter affidavit and upon hearing the arguments advanced by respective counsels, dismissed the above application filed by the petitioner for condoning the delay of 190 days in filing the petition to set aside the ex parte decree. Aggrieved by this, the present revision is preferred.

3. The learned counsel appearing for the petitioner would submit that in the plaint, it is contended that the suit property admittedly belonged to the defendant by virtue of the sale deed dated 05.01.2007 and the defendant executed a sale agreement on 11.10.2007 after receiving a sum of Rs.2,90,000/- as advance and agreed to receive a sum of Rs.10,000 at the time of fulfilling the contract, whereas the defendant, in his written statement, denied the factum of receipt of Rs.2,90,000 as advance and agreed to receive a sum of Rs.10,000/- at the time of execution of sale deed. He would further submit that the revision petitioner received a sum of Rs.1,00,000 alone as a



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hand loan from the plaintiff, who insisted him, to execute a general power of attorney to execute the sale agreement in favour of the plaintiff in respect of the suit property and obtained his signature in blank documents and also the signature of his father, namely, Paramasivan. The said amount was paid by the petitioner and thereafter, the respondent cancelled the general power of attorney on 06.07.2009, which was executed by the petitioner/defendant on 11.10.2007. While so, the revision petitioner approached the respondent to cancel the sale agreement and at that time, the respondent/plaintiff threatened revision petitioner/plaintiff to pay a sum of Rs.5,00,000/- and filed the above vexatious suit against him. He would further submit that when the suit was posted for cross examination of P.W.1, the petitioner's wife fell ill and was shifted from Valliyoor to Thiruvambalapuram Village and the same was not intimated to his counsel at Valliyoor. Hence, he was set ex parte due to his non-appearance on 29.01.2016. He would further submit that the petitioner's absence was not willful or wanton. He has good case to establish before the Court and therefore, sufficient opportunity should be afforded to the petitioner. Hence, he prays to allow this petition.



4. On the other hand, the learned counsel for the respondent would submit that the above petition was filed with an intention to drag on the proceedings and the relief claimed by the petitioner is devoid of merits. He would further submit that the trial Court has rightly dismissed the petition to condone the delay, which calls for no interference.

5. Heard the learned counsel appearing on either side and perused the records.

6. During the course of arguments, the learned counsel for the revision petitioner has filed the cost memo, in which, it is stated that as per the direction of this Court in CMP(MD) No.6180 of 2023, seeking an interim stay of all further proceedings in E.P.No.62 of 2022 in O.S.No.67 of 2011 on the file of the Sub Court, Valliyoor, he deposited a sum of Rs.2,00,000/- to the credit of E.P.No.62 of 2022, thereby complying with the order passed by this Court. Though the plea of sickness raised by the petitioner/defendant was not supported by any record or evidence, in the interest of justice and by applying the principles of liberal approach, which had been repeatedly held



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by the Hon'ble Apex Court, while dealing with the application for condonation of delay in filing a petition for setting aside the ex parte decree and also to afford an opportunity to the petitioner/defendant to put forth his defence to have a fair adjudication, I am of the opinion that the delay could be condoned by imposing certain terms. Accordingly, the order passed in I.A.No.1031 of 2017 in O.S.No.67 of 2011 on the file of the Sub Court, Valliyoor, dated 02.02.2022, is set aside and the delay of 190 days in filing the petition to set aside the ex parte decree is condoned subject to the condition that the petitioner pays a sum of Rs.5,000/- (Rupees Five Thousand only) as costs to the learned counsel appearing for the respondent within a period of two weeks from the date of receipt of a copy of this order. The Civil Revision Petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

07.09.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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To
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The Subordinate Judge,
Valliyoor.



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K.GOVINDARAJAN THILAKAVADI

cp

order made in
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