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C.R.P.NPD.No.1820 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.NPD.No.1820 of 2022 and
C.M.P.No.9283 of 2022

R.Devarajan

... Petitioner

Vs.

M.Gnanasekaran

... Respondent

PRAYER: Revision filed under Article 227 of the Constitution of India praying to set aside the fair and decretal order passed by the learned II Additional Subordinate Court at Coimbatore in E.A.No.4 of 2022 in E.P.No.368 of 2017 in O.S.No.1771 of 2010 dated 31.03.2022.

For Petitioner : Mr.M.Raja Sekhar

For Respondent : Mr.N.Selvarajan

ORDER

This civil revision petition arises against the order passed in E.A.No.4 of 2022 in E.P.No.368 of 2017 in O.S.No.1171 of 2010.



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2. O.S.No.1171 of 2010 was filed for specific performance of an agreement of sale. In the alternative, refund of advance amount of Rs.7,50,000/- paid by the plaintiff Gunasekaran to the civil revision petitioner Mr.Devarajan was sought for. The suit was tried by the Principal Subordinate Judge at Coimbatore.

3. The learned Principal Subordinate Judge dismissed the relief of specific performance but granted the alternate relief of refund of advance amount of Rs.7,50,000/- together with subsequent interest at the rate of 24% per annum. This decree has become final.

4. In order to recover the amount that had been paid, an Execution Petition was filed in E.P.No.368 of 2017. The matter had been posted for enquiry on 26.02.2021 and on that date since the civil revision petitioner did not appear, he was set exparte. It resulted in an order of arrest being passed against him. Being aggrieved over the same, the civil revision petitioner moved an application under Order XXI Rule 105(3) of the Code of Civil Procedure seeking to condone the delay of 215 days.



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5. The reason that was given was that the petitioner was suffering from diabetes and hypertension and had undergone an operation. He would state that as his counsel did not inform about the hearing date, he could not present and therefore sought for condonation of delay of 215 days in filing the application to set aside the exparte order. The learned trial Judge dismissed the application against which the present civil revision petition.

6. Mr.M.Rajasekar for the petitioner would submit that strictly speaking the application for condonation of delay would not arise because from 15.03.2020 to 28.02.2022 by virtue of the order passed by the Supreme Court, in exercise of its powers under Article 142 of the Constitution of India, the period of limitation stood suspended. He would further argue that he has given sufficient cause for condonation of delay though delay application itself is strictly not necessary. He would state that being an aged person and since his earlier counsel did not inform him about the exparte order, he moved the trial Court to set aside the same.



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8. As rightly pointed out by Mr.Rajasekar, a condone delay application would not be necessary by virtue of the order passed by the Supreme Court. By that order, Limitation Act stood suspended between 15.03.2020 to 28.02.2022. However, even if I were ignore the fact delay will not be applicable, I still have to see whether good cause has been made out.

9. From a reading of the affidavit filed by the petitioner on 29.10.2021, I am unable to find any sufficient cause for the purpose of



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setting aside the exparte order. The petitioner was well aware that he suffered a decree as early as on 27.09.2016. Though EP had been filed in the year 2017, the petitioner has effectively dragged on the matter till October 2021 and it was only at the Court had passed the order of arrest, he filed the present application. Hypertension and diabetes are not so debilitating a disease that a litigant cannot come before the Court. No medical records have been produced before the trial Court or before me in order to substantiate the pleadings of Mr.Rajasekar's client.

10. In the light of the above, I do not find any reason to interfere with the order. Hence, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

02.04.2024

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes / No
Sgl

To

The II Additional Sub Court,
Coimbatore.



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V.LAKSHMINARAYANAN, J.

Sgl

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