



C.R.P.(NPD).No.3891 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD).No.3891 of 2019

M.R.Magapaleswarappa

... Petitioner

VS

M.Krishnamurthi

... Respondent

Prayer: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, praying to set aside the Fair and Decretal order dated 21.01.2019 made in I.A.No.41 of 2017 in O.S.No.51 of 2014 on the file of the Principal District Court, Vellore.

For Petitioner : Mr.S.Santhan

For Respondent : Mr.P.Sankaranarayanan

ORDER

The Civil Revision Petition is filed challenging the order passed by the Trial Court dismissing the application filed by the petitioner seeking to condone the delay of 739 days in filing the petition to set aside the *exparte* decree passed on 23.12.2014.



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2. The respondent herein filed a suit for specific performance and obtained an *exparte* decree on 23.12.2014.

3. The petitioner herein filed an application to set aside the *exparte* decree on 30.01.2017 with a petition to condone the delay of 739 days. In the affidavit filed in support of the condone delay petition, it was stated by the petitioner that there was a mediation between the petitioner and respondent and the petitioner agreed to pay the entire amount received by him from the respondent and the respondent also agreed to withdraw the suit. Believing the assurance given by the respondent, the petitioner failed to follow up the case. It was further averred by the petitioner that after receipt of notice in execution petition, he approached the respondent, again he assured to withdraw the execution petition and hence, he could not file a petition to set aside the *exparte* decree immediately. Thereafter, on 27.01.2017, when he approached his counsel, he acquired knowledge about the *exparte* decree and application was filed to set aside the *exparte* decree on 30.01.2017.



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4. The petitioner herein was examined as PW.1 before the Court below.

During the course of his evidence, he clearly admitted that service of notice in execution petition and the same was marked as Ex.R1. The petitioner, if really interested in setting aside the *exparte* decree, atleast on receipt of notice in execution petition, he should have taken immediate steps to set aside the *exparte* decree. The averments made by the petitioner, as if, he believed the assurance of respondent that he would withdraw the execution petition even after receipt of notice in execution petition is not acceptable to this Court. The petitioner has not examined any independent witness to prove alleged mediation between the parties. The interested testimony of the petitioner is not sufficient to prove alleged mediation between the parties and understanding to withdraw the suit. In such circumstances, I do not find any error in the order passed by the Court below.

5. Accordingly, the Civil Revision Petition stands dismissed. No costs.

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Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm

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S.SOUNTHAR, J.

dm

To

The Principal District Court,
Vellore.

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