



C.R.P.(NPD).No.3050 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD).No.3050 of 2021
and CMP.No.21535 of 2021

R.Alamelu

... Petitioner

vs.

S.P.Natarajan

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and final order passed in I.A.No.891 of 2016 in O.S.No.580 of 2009, dated 30.08.2018, on the file of the First Additional Subordinate Judge, Coimbatore.

For Petitioner
For Respondent

:Mr.K.S.Jeyaganeshan
:No Appearance



WEB COPY



C.R.P.(NPD).No.3050 of 2021

ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the application filed by the petitioner to condone the delay of 1641 days in filing the application to set aside the ex-parte preliminary decree dated 16.07.2013, the petitioner is before this Court.

2. Heard the learned counsel appearing for the petitioner and there is no representation for the respondent.

3. The respondent herein filed a suit for recovery of money based on mortgage against the petitioner in the said suit, the respondent filed a proof affidavit and attempted to mark mortgage deed relied on by him and the same was opposed by the petitioner herein. At this stage the suit was dismissed for default on 22.02.2012. Thereafter, the respondent appeared to have filed a petition to restore the suit and the same was allowed and



C.R.P.(NPD).No.3050 of 2021

thereafter ex-parte decree was passed on 16.07.2013. The petitioner herein filed a petition to set aside the ex-parte decree along with petition to condone the delay in filing the application to set aside the ex-parte decree. In the affidavit filed in support of the petition. It is stated by the petitioner that after dismissal of the suit for default. He had gone to his native place, Cuddalore and no notice was served on his counsel before the restoration of the suit. The fact of the restoration of the suit as well as ex-parte decree came to his knowledge only after receipt of notice of the final decree of the petition.

4. The Court below on perusal of records found in the petition for restoration of the suit filed by the respondent. Notice was received by the petitioner counsel and he also appeared before the Court and took time for filing counter. Therefore, the Court below came to the conclusion that the averment made in the affidavit of the petitioner as if no notice was given to his counsel was not correct and as a consequence the petition condoned the delay was dismissed.



C.R.P.(NPD).No.3050 of 2021

5. The learned counsel for the petitioner by relied on his averment in the affidavit that at the relevant point of time, the petitioner had gone to his native place, Cuddalore and thereafter has not received any notice regarding restoration of the suit or intimation of his counsel. Taking into consideration the suit was dismissed for default of the respondent and thereafter, the suit was restored to the file without personal service on the petitioner, this Court is inclined to take liberal approach in considering the request of the petitioner to condone the delay.

6. Accordingly, the Civil Revision Petition is allowed by setting aside the order passed by the Court below on condition that the petitioner shall pay a sum of Rs.10,000/- as costs to the respondent. The said payment shall be made within a period of four weeks from today. In case, the payment is not paid the time limit stipulated and the Civil Revision Petition stand allowed and the Court below is directed to take up the petition filed by the petitioner to set aside the ex-parte preliminary decree dated 16.07.2013 to dispose of the same in accordance with law on merits.



WEB COPY



C.R.P.(NPD).No.3050 of 2021

7. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

23.01.2024

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

To

The First Additional Subordinate Judge,
Coimbatore.



WEB COPY



C.R.P.(NPD).No.3050 of 2021

S.SOUNTHAR, J.

ub

C.R.P.(NPD).No.3050 of 2021

23.01.2024