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C.R.P.(NPD)No.4196 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:22.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD)No.4196 of 2019

and

C.M.P.No.27330 of 2019

Srinivasan

.. Petitioner

/versus/

Krishnamoorthy

.. Respondent

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the fair and final order dated 22.10.2019 passed by the learned Sub Judge of Ariyalur in E.A.No.1 of 2019 in E.P.No.112 of 2015 in O.S.No.136 of 2012 by allowing this Civil Revision Petition.

For Petitioner

:Mr.R.Gokulakrishnan

For Respondent

:Mr.P.Valliappan,
Senior Advocate for
Mr.T.Deeraj



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ORDER

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2. The respondent herein obtained a decree for Mandatory Injunction to fix turns in respect of suit property and for a direction to the petitioner to hand over the same and to pass a decree for profits. The said suit was decreed *exparte* and thereafter, the *exparte* decree was put in to execution in E.P.No.112 of 2015. The petitioner received notice in the Execution Petition on 12.01.2016 and subsequently, he was set *exparte* on 28.01.2016. Now, the petitioner has filed a petition to set aside the *exparte* order passed against him along with a petition to condone a delay of 1059 days in filing petition to set aside *exparte* order. The Execution Court having not satisfied with the reasons assigned in the application filed by the petitioner, dismissed the application. Aggrieved by the same, the petitioner is before this Court by filing the present Civil Revision Petition.



3. In the affidavit filed in support of the condone delay petition, it was stated by the petitioner that due to his ill-ness he could not conduct the case before the trial Court and suffered the *exparte* decree. It is further stated by the petitioner that even in the execution proceedings, he could not appear and contest the same, due to his illness and hence, he was set *exparte* on 28.01.2016. It was further stated by the petitioner that he came to know the fact through his son that an order was passed against him. Therefore, immediately, the present Civil Revision Petition has been filed to set aside the *exparte* order with a delay of 1059 days.

4. It is seen from the impugned order that the petitioner received the notice in the execution petition on 12.01.2016 and he was set *exparte* on 28.01.2016. For non-appearance of the petitioner, he produced a medical document and the same was marked as Ex.P1. A perusal of the same would reveal that the petitioner had taken treatment in Vinodhagan Memorial Hospital, Thanjavur, as in-patient from 20.05.2013 to 30.05.2013, 22.10.2015 to 26.10.2015 and 25.11.2016 to 26.11.2016. Therefore, it is clear that after receipt of the notice in the Execution Petition, the petitioner



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was in-patient only for two days i.e. on 25.11.2016 and 26.11.2016. The

petitioner was examined as PW-1 and he admitted that he used to go to the hospital at Thanjavur by bus from his village. Therefore, it is clear that the petitioner used to go to Thanjavur by bus to take treatment and there is no explanation on his part as to what prevented him from attending the Court at Ariyalur, which is located in his own District. It is also seen from the impugned order that the petitioner in I.A.No.486 of 2016 filed a petition to condone the delay of 251 days in filing the petition to set aside the *exparte* decree in the suit and the same was allowed to go for default. Thereafter, he filed another application in I.A.No.1 of 2019 to restore the same. In such circumstances, it is clear that during the interregnum period, the petitioner had taken steps to set aside the *exparte* decree. However, he has not taken steps to set aside the *exparte* order in Execution Petition.

5. In such circumstances, the reasons assigned by the petitioner for his failure to appear before the Execution Court from January 2016 to January 2018 is not at all acceptable by the Court. The petitioner failed to give proper reasoning for his non-appearance before the Execution Court for nearly three



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years and hence, the Court below rightly dismissed the application seeking
condonation of the delay.

6. In such circumstances, I do not find any error in the order passed by the Court below dismissing the condone delay petition. Accordingly, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

22.02.2024

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

The Sub Judge of Ariyalur.



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S.SOUNTHAR, J.
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