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C.R.P.(MD)No.182 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved : 27/03/2024

Date of Pronounced : 24/06/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

C.R.P (MD) No.182 of 2023

and

CMP (MD) No.884 of 2023

Maharajan : Petitioner/Petitioner/
Defendant

Vs.

Janaki : Respondent/Respondent/
Plaintiff

PRAYER:-Civil Revision Petition has been filed under section 115 of the Civil Procedure Code to set aside the fair and executable order dated 09/12/2022 made in IA No. 1 of 2021 in OS No.23 of 2016 on the file of the Sub Court, Uthamapaayam.

For Petitioner : Mr.R.Suriyanarayanan

For Respondent : Mr.M.Mohamed Sherbudeen

O R D E R

This civil revision petition is filed seeking to set aside the fair and executable order dated 09/12/2022 passed in IA No.1 of 2021 in OS No.23 of 2016 by the Sub Court, Uthamapalayam.



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2.The facts in brief:-

The suit in OS No.26 of 2022 was filed by the respondent herein seeking the relief of specific performance on the basis of the agreement, dated 10/10/2012 and for costs. The petitioner herein is the defendant, remained *ex-parte* before the trial court. An *ex-parte* decree was passed on 11/07/2016. Thereafter, EP No.9 of 2017 was filed by the respondent herein seeking execution of the decree.

3.Pending further process, IA No.1 of 2021 was taken out by the petitioner to condone the delay of 1822 days in filing the petition to set aside the *ex-parte order* dated 11/07/2016.

4.After hearing both sides, the petition came to be dismissed by the trial court, by order, dated 09/12/2022.

5.Against which, this civil revision petition is preferred.

6.The impugned IA is filed with the following averments:-

The suit was posted for filing written statement on 11/07/2016. He sustained fracture injuries in an accident



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and admitted in the hospital for surgery, etc. So he was not able to contact his Advocate and instructed to file a written statement. Passing of the *ex-parte* decree came to his knowledge only when he received the notice in EP No.9 of 2017. Immediately, he contacted his Advocate and informed him about the development.

7.That was resisted by the respondent by filing counter stating that no proper explanation or reason was assigned by the petitioner to condone the delay. A detailed counter is filed setting out the dates and events.

8.Heard both sides.

9.At one point of time, the learned counsel appearing for the petitioner would submit that he is ready to return the advance amount as stated in the suit.

10.A response was sought from the respondent. But he was not willing for the above said proposal. So the matter is decided on merits.

11.The petitioner has simply stated that he suffered fracture and because of that, he was not in a



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position to contact his Advocate and instruct him to file a written statement. Absolutely, no supporting document was filed before the trial court. The trial court noting that subsequent to the decree, EP was filed for execution of the decree by registering the sale deed and it is also registered and now the properties are also delivered. At that point of time, the petition came to be filed, according to the trial court.

12.The learned counsel appearing for the petitioner would further submit that the judgment itself is not legally passed by the trial court in view of the mandatory provisions. In support of his contention, he would rely upon the following judgments:-

*(1) G.K.Suganya Vs. N.P.Sekar
(2019(5) CTC 673);*

*(2) Collector, Land Acquisition,
Anantnag and another Vs. MST.Katiji and
another [(1987) AIR (SC) 1353];*

*(3) Brahmand Farm Lands Ltd. Vs.
K.Venkatesan (2021(3) CTC 387); and*

*(4) Asma Lateef and another Vs. Shabbir
Ahamad and others (2024 SCC OnLine SC 42).*



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13.Now he would contend that in view of the statement of law, since the main judgment itself is *non est* in law, the delay may be condoned and the petitioner may be given opportunity to contest the suit. Further, he would submit that even on merits the original suit is barred by limitation.

14.As per the case of the petitioner, the sale agreement was allegedly entered into between the parties on 10/10/2012 for a sum of Rs.5,25,000/-. Out of that, Rs.5,00,000/- was received as advance. Balance amount is Rs.25,000/-. For payment of balance amount of Rs. 25,000/-, three years time was fixed, which according to him shows that it is a sale agreement at all. So, he would submit that in such circumstances, a fair opportunity must be given to him.

15.To know the nature of discussion made by the trial court, the judgment and decree were called for from the trial court.

16.Perusal of the judgment shows that a detailed discussion has been made. But the learned counsel appearing for the petitioner would submit that no discussion was made with regard to the important aspect



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of readiness and willing. According to him, fixing one year for payment of Rs.25,000/- itself is sufficient enough to show that the agreement was not intended to be acted upon.

17.But this sort of argument cannot be advanced in this matter, since discussion has been made by the trial court on merits.

18.If the petitioner is aggrieved over the findings, then he has to file proper appeal. Merits of the judgment cannot be discussed in this matter, since it is not one like a cryptic judgment. This contention on the part of the petitioner is rejected.

19.Considering the enormous delay, I find no reason to condone the same. We see prolonged latches and lapses on the part of the petitioner. He remained *ex-parte* even in the execution proceedings, a belated stand has been made in the affidavit stating that he suffered fracture and so, he could not contact his Advocate. No medical records were produced. No particulars were also mentioned as to the date of the accident, date of admission in the hospital, date of discharge, etc facts.



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20.This sort of casual manner of filing affidavit cannot be accepted. So, I find no reason to condone the delay.

21.In the result, this civil revision petition is **dismissed**, confirming the impugned order passed by the trial court. No costs. Consequently, connected Miscellaneous Petition is closed.

24/06/2024

Index:Yes/No
Internet:Yes/No
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To,

1.The Sub Judge,
Uthamapalayam,
Theni District.

2.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN, J

er

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