



C.RP(MD)No1705 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 30.07.2024

CORAM

THE HONOURABLE MR JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P(MD)No.1705 of 2024

and

C.M.P(MD)No.9938 of 2024

K.Prabhu

... Revision Petitioner/
Petitioner/Defendant

Vs.

M.Sivakumar

...Respondent/Respondent/
Plaintiff

Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the impugned fair and decreetal order dated 15.04.2024 passed in I.A.No.1 of 2023 in O.S.No.10 of 2018 on the file of the Sub-Court, Uthamapalayam.

For Petitioner	:Mr.V.Meenakshi Sundaram
For Respondent	:M/s.B.Bhuvaneshwari, for M/s.Legist Law Firm



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ORDER

The Civil Revision Petition is directed against the order dated 15.04.2024 made in IA.No.1 of 2023 in OS.No.10 of 2018. By the said order, the petition filed by the defendant under Section 5 of the Limitation Act, to condone the delay of 1121 days in filing the petition to set aside the ex-parte decree was dismissed.

2.Mr.Meenakshi Sundaram, learned counsel appearing on behalf of the petitioner, by taking this Court through the proposed written statement, would submit that in this case, it is the plea of the petitioner is that initially he borrowed a sum of Rs.1,00,000/- and since he could not repay the amount along with the interest, the present sale agreement was registered. In the suit, the petitioner was not served with any notice and the service was completed by substituted service. Therefore, when the suit summons was not served and when the defence in a specific performance suit being substantially in nature, the trial Court ought to have given an opportunity to the petitioner.



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3.He would submit that even when the earlier execution petition was filed for execution of sale deed, the parties arranged for a talk at the village level and the plaintiff agreed not to proceed further with the suit and agreed to accept the principal and the interest. Even thereafter, clandestinely, the petitioner has proceeded with the execution petition and got a sale deed registered in his name and when the subsequent execution petition was filed for delivery of possession immediately, the present application is filed.

4.He would submit that the trial Court ought to have taken a view by considering the overall facts and circumstances of the case, the background of the parties, the nature of the suit for specific performance. He would submit that on the very face of the sale agreement whereby out of the sale consideration of Rs.2,25,000/-, Rs.2,00,000/- have been paid as advance and the period of three years have been fixed for the payment of the



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balance of Rs.25,000/-, which would show that the transaction is only a loan transaction and not a sale transaction. He would further submit that this Court should take judicial notice of the fact that similar transactions are being carried out in this part of the state whereby as a security for advancing money, sale agreement and the sale deeds are being registered. The parties into their financial difficulty signed into such documents, but however, that should not result in them losing their property itself. He would further submit that the petition can be considered by not setting aside the sale deed and also at the same time directing the party to deposit the entire sum of Rs.2,00,000/- already received by him. By putting the petitioner such stringent condition the prejudice which is caused to the respondent by way of the delay can be redressed by this Court and therefore, he would submit that this Court should interfere in the order of the trial Court.

5.Per Contra, M/s.B.Bhuvaneshwari, learned counsel appearing on behalf of the respondent would submit that in the suit



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repeated attempts were made to serve notice and only because, the petitioner evaded notice substituted service was ordered. Thereafter, ex-parte decree was passed on 06.07.2019. After the ex-parte decree was passed, the plaintiff deposited the balance sale consideration of Rs.25,000/- and filed the execution petition in EP.No.136 of 2019 for execution of the sale deed. In the execution petition, notice was once again served. Vakalat was also filed on behalf of the petitioner herein. Even thereafter, he remained ex-parte in the execution petition and did not contest and the sale deed was also executed. After the execution of the sale deed, when the subsequent EP was now filed for delivery of possession, the present application is filed. The reasons mentioned in the affidavit filed in support of the application are proved to be false and therefore, the trial Court has rightly rejected the petition.

6.I have considered the submissions made on either side and perused the material records of the case.



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7.As far as the reasons mentioned in the affidavit filed in support of the application is concerned, the trial Court rightly considered the averments in the affidavit filed in support of the application. It is mentioned that the petitioner was away at Thanjavur and in the proposed written statement, it is mentioned that the petitioner went to work in Kerala. The trial Court had rightly taken into consideration that even assuming that the petitioner did not evade notice and he was served only through substituted service and even after receipt of notice in the execution petition in the year 2019, the application for setting aside the ex-parte decree was not filed. The same is filed only in the year 2023. Therefore, the trial Court has rejected that the reasons are incorrect and not sufficient to condone such a huge delay of 1121 days and dismissed the petition. I do not find any error in the conclusions arrived by the trial court.

8.While considering the arguments of the learned counsel for the petitioner with reference to the defence that it is only a loan transaction, even for a moment, assuming the defence of the



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defendant, it can be seen that even as per his own averment, he borrowed a sum of Rs.1,00,000/- and did not repay the principal and the interest accumulating to Rs.2,25,000/-. Therefore, he executed the sale agreement. Even thereafter, there is no reason why he did not approach the plaintiff for repayment of the said loan. It can be seen that prior to the filing of the suit, legal notice was issued on 12.04.2017 which was also received by him and he did not send any reply to the said legal notice. Even assuming that after receipt of the execution petition, there was a meeting in the village level to resolve the matter amicably and that the plaintiff agreed to accept the principal and interest, even then it is intriguing that from 2019, he did not approach the plaintiff to repay the principal and the interest. He has now approached the Court only after the receipt of the notice in the delivery of possession. For all the aforesaid reasons, even on an prima facie assumption that the case of the defendant is true, his own conduct proves otherwise. Therefore, this Court is unable to countenance the arguments of the learned counsel for the petitioner and cannot



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come to the rescue of the person for such nature, especially when the delay is 1121 days.

9.Finding that the trial Court has exercised its discretion by affording proper reasons and rejecting the application for condonation of delay, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

30.07.2024

NCC:Yes
Ns

To
The Sub-Court,
Uthamapalayam



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D.BHARATHA CHAKRAVARTHY, J.

Ns

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