

C.R.P(MD)No.596 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.01.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(MD)No.596 of 2024

and

C.M.P(MD)No.2966 of 2024

Anand

... Petitioner / Defendant

Vs

Chandhra Albert Jawahar

... Respondent / Plaintiff

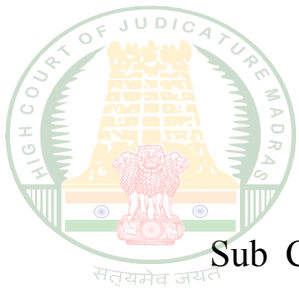
Prayer : This Civil Revision Petition is filed under Section 115 of C.P.C, to call for the records relating to the fair and decreetal order passed by learned II Additional Sub Court, Nagercoil, in I.A.No.1 of 2023 in O.S.No.176/2016 dated 18.01.2024 and the set aside the same.

For Petitioner : Mr.K.P.Narayanakumar

For Respondent : Mr.G.Aravinthan

ORDER

This Civil Revision Petition is filed to to call for the records relating to the fair and decreetal order passed by learned II Additional



C.R.P(MD)No.596 of 2024

Sub Court, Nagercoil, in I.A.No.1 of 2023 in O.S.No.176/2016 dated 18.01.2024 and the set aside the same.

2. The facts in brief is that the suit in O.S.No.176 of 2016 was filed by the plaintiff namely the respondent herein against the revision petitioner seeking the relief of specific performance stating that on 12.12.2014 there was a sale agreement between the parties by which the sale consideration was fixed at Rs.3.25 Lakhs and advance amount of Rs.3 Lakhs was paid and sale agreement was registered. The time for performance of the contract was fixed as 18 months. Since the revision petitioner did not come forward to execute the sale deed the suit was filed. The revision petitioner entered appearance and filed written statement stating that the sale agreement was not really intended to be acted upon sale agreement. It was only a loan transaction. Because of his failure to appear before the trial Court, ex parte decree was passed. To set aside the ex parte decree, he filed a petition in E.A.No.1 of 2023 under Section 5 of the Limitation Act to condone the delay of 2190 days with the following averments:



C.R.P(MD)No.596 of 2024

He was affected by Paralysis and he was completely bedridden.

Only when he received the notice in E.A.No.1 of 2023, he came to know about the passing of the ex parte decree. So because of that there is a delay of 2190 days. That was resisted by the respondent herein by filing counter stating that the entered appearance in E.P.No.91 of 2017 through his advocate. After that only sale deed was executed by the Court in his favour. Since the revision petitioner appeared in the execution petition, even in 2018 itself, the reason assigned is not proper and acceptable. After hearing both sides, the trial Court recorded a finding that having known the passing of the ex parte decree, at the time of appearance, in the execution proceedings, he failed to file a proper petition immediately. Considering the lapses committed by the revision petitioner the execution Court dismissed the petition. Against which this Civil Revision Petition is preferred.

3. Eventhough, learned counsel for the revision petitioner sustained the grounds mentioned in the petition, but he has no answer for not filing petition after entering appearance in the execution petition in 2018 itself.



C.R.P(MD)No.596 of 2024

WEB COPY

4. It is seen from the records that in E.P.No.91 of 2017, the revision petitioner entered appearance through his advocate. He also filed counter. Thereafter only, sale deed was executed by the Court in favour of the respondent. So the fact that he came to know about the passing the decree only on receipt of notice in E.A.No.1 of 2023 which was filed for delivery, is not correct at all on records. Eventhough learned counsel for the revision petitioner would submit that it is the only property available to him and he never intended to sell the property in favour of the respondent herein, but those things ought to have been taken by him after entering into the appearance in the trial process. He completely missed it. Even after coming to know about the passing of the ex parte decree while appearing in execution proceedings itself, he again failed. So the ground on which this Civil Revision Petition came to be filed is not at all acceptable. Simply because a medical certificate is produced, it will not over ride the facts narrated above. So I find absolutely no reason to interfere with the orders passed by learned II Additional Subordinate Judge, Nagercoil, in I.A.No.1 of 2023 in O.S.No. 176/2016 dated 18.01.2024.



C.R.P(MD)No.596 of 2024

WEB COPY

5. Accordingly, this Civil Revision Petition is dismissed . No costs.

Consequently, connected miscellaneous petition stands closed.

07.01.2025

NCC :Yes/No

Index :Yes/No

Internet : Yes/ No

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To

1.The II Additional Subordinate Judge, Nagercoil,

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

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C.R.P(MD)No.596 of 2024

G.ILANGO VAN, J.

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ORDER
IN
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