

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(NPD) NO.4858 OF 2013
AND M.P.NOS.1 AND 2 OF 2013

C.Sumathi

... Petitioner

Vs.

V.K.Balasubramanian (Died)

1.S.Soundaram

2.Sathish Chandramohan

3.V.B.Krishnakumar

4.Nanjammal

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the judgment and decretal order dated 02.08.2013 passed in I.A.No.665 of 2010 in O.S.No.287 of 2000 by the learned III Additional Sub Judge, Coimbatore.

For Petitioner : Mr.M.Velmurugan

For Respondents 1-3: Mr.C.Veeraraghavan

ORDER

This Civil Revision Petition is directed against the order dated 02.08.2013 passed in I.A.No.665 of 2010 in O.S.No.287 of 2000 by the learned III Additional Subordinate Judge, Coimbatore.

2.Originally, one Mr.V.K.Balasubramanian instituted the suit in O.S.No.287 of 2000 against the petitioner for specific performance of the sale agreement dated 17.03.1999. The suit was decreed exparte on 09.02.2001.

3.Based on the decree, the said V.K.Balasubramanian, who is the father of the respondents 2 to 5 herein, levied an execution petition in E.P.No.238 of 2001. The Court also executed the sale deed in favour of the decree holder on 13.01.2004.

4.While so, the petitioner filed an application in I.A.No.12 of 2010 to set aside the exparte decree. In the affidavit filed in support of the application, the petitioner has averred that a case was registered against her under the provisions of the Tamil Nadu Protection of Interest of Depositor Act and the property was also attached as per the Government Order in G.O.Ms.No.746, Home (Courts 11A) Department, dated 07.08.2001. She was forced to vacate the house and shifted her residence along with her parents. It is

specifically stated that she did not receive any summons in the suit.

5.The petitioner filed an application in I.A.No.24 of 2009 before the Special Court constituted under the Act praying for an injunction not to disturb the physical possession of the property, in which, the plaintiff filed application stating that the Court passed an exparte decree and also executed a sale deed in his favour on 13.01.2004. The petitioner has further stated that she had knowledge about the exparte decree only in the year 2009.

6.Subsequently, the petitioner filed an application in I.A.No.665 of 2010 to condone the delay of 444 days in filing the application to set aside the exparte decree stating that the respondents filed counter affidavit to her interim application in I.A.No.12 of 2010 to set aside the exparte decree, stating that the application under Section 5 of the Limitation Act was not filed to condone the delay. So, the petitioner withdrew the earlier application and filed the application in I.A.No.665 of 2010. The application was resisted by the respondents by filing a detailed counter affidavit stating that the delay was not properly explained by the petitioner.

7.The petitioner examined herself as P.W.1 and marked Exs.P1 to

P9 on her side. On the side of the respondents, the third respondent / plaintiff was examined as R.W.1 and he has also marked Ex.R1. The learned III Additional Subordinate Judge, Coimbatore, dismissed the application vide order dated 02.08.2013. Aggrieved by the order, the present Civil Revision Petition has been filed.

8.Mr.M.Velmurugan, learned counsel for the petitioner has submitted that the police has filed a case against the petitioner and her family members in the year 2000 and therefore, she left the house. It is further submitted that the report of the ameen would show that the petitioner was not residing in the suit property and that the plaintiff did not take substitute service also.

9.The learned counsel for the petitioner has further submitted that the plaintiff has filed the suit for specific performance of the sale agreement dated 17.03.1999, which was denied and disputed by the petitioner. The learned counsel has further submitted that there is no deliberate negligence or inaction on the part of the petitioner in defending her case. Therefore, the delay should be condoned and the petitioner should be given opportunity to contest the suit.

10.The learned counsel for the petitioner has further submitted

that the application in I.A.No.12 of 2010 was withdrawn and the application in I.A.No.665 of 2010 was filed immediately after withdrawal of the earlier application to condone the delay of 444 days.

11.Per Contra, Mr.C.Veeraraghavan, learned counsel for the respondents has submitted that the petitioner has given the address in the bail application and she was not aware of the institution of the suit. It is further submitted that the petitioner has taken different stands that even according to the petitioner, she had knowledge about the suit in the year 2009, but the present application was filed in the month of October 2010. The learned counsel has further submitted that the petitioner has not shown sufficient cause for condoning the delay.

12.It is not in dispute that the father of the respondents namely V.K.Balasubramanian had filed the suit against the petitioner for specific performance. But the bailiff had returned the summon stating that the petitioner was not residing in the address. A perusal of the original record would show that the plaintiff had not taken substituted service on the defendant. The suit was decreed exparte on 09.02.2001. According to the petitioner, she came to know about the exparte decree only on 29.10.2009. The petitioner filed the application in I.A.No.12 of 2010 on 21.11.2009 to set aside the exparte decree

stating that it was filed within 30 days of her knowledge. The respondents have not disputed the criminal case filed against the petitioner in the year 2000 and attachment of property by the Government. The suit property is situated in a prime area in Coimbatore District.

13.It is settled law that the Court has to adopt liberal approach in condoning the delay when there is no material to show that the delay was deliberate and with an intention to drag on the proceedings.

14.Considering the nature of suit, the length of delay and the reasons assigned by the petitioner, I am of the view that the petitioner has shown sufficient cause for condoning the delay.

15.In the result, the order dated 02.08.2013 passed in I.A.No.665 of 2010 in O.S.No.287 of 2000 by the learned III Additional Subordinate Judge, Coimbatore is set aside and the delay is condoned subject to payment of cost of Rs.20,000/- (Rupees Twenty Thousand Only) to the respondents, within a period of two weeks from the date of receipt of a copy of this order. On such compliance, the Trial Court shall dispose of the suit in O.S.No.287 of 2000, on merits and in accordance with law, within a period of six months therefrom.

16.This Civil Revision Petition is allowed accordingly. No costs.

Consequently, connected miscellaneous petitions are closed.

09.02.2015

Index : Yes/No
Internet : Yes/No
TK

To

The III Additional Subordinate Judge
Coimbatore.

K.KALYANASUNDARAM, J.

TK

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