



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.02.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.2437 of 2016
and C.M.P (MD) No.11476 of 2016

1.R.Meenakshiammal
2.Chitran @ Chitravelmurugan

... Petitioners/Defendants 2 & 3

Vs.

1.Veeralakshmi
2.Arjunan

... Respondents/Plaintiffs 1 & 2

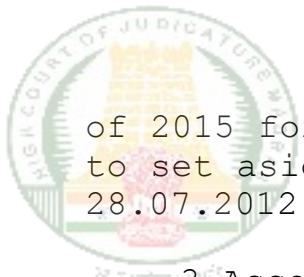
PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order, dated 21.12.2015 made in I.A.No.85 of 2015 in O.S.No.4 of 2012 passed by the learned Sub Judge, Aruppukottai.

For Petitioner	: Mr.S.Suresh Kumar Isaac Paul
For R - 1	: Mr.A.Hariharan
For R - 2	: No appearance

ORDER

The petitioners have filed the above Civil Revision Petition against the fair and decreetal order, dated 21.12.2015 made in I.A.No.85 of 2015 in O.S.No.4 of 2012 on the file of the learned Sub Judge, Aruppukottai.

2.The petitioners are the defendants 2 and 3 and the respondents are the plaintiffs 1 and 2 in the suit in O.S.No.4 of 2012 on the file of the learned Sub Judge, Aruppukottai. The respondents filed the suit for specific performance of agreement of sale, dated 07.10.2010. The said suit was decreed on 28.07.2012. The respondents deposited the balance sale consideration into Court and filed a petition in E.P.No.5 of 2013 for execution of sale deed. In the said Execution Petition, sale deed was executed. The second respondent received money from the first respondent and executed sale deed in favour of the first respondent. Therefore, the first respondent alone has filed the Execution Petition and filed an application in E.A.No.203 of 2013 on the file of the Sub Court, Arupukkottai for taking possession. At that stage, the petitioners filed an application in I.A.No.85



of 2015 for condoning the delay of 941 days in filing the petition to set aside the ex-parte decree passed in O.S.No.4 of 2012, dated 28.07.2012.

3. According to the petitioners, the first defendant, the husband of the second defendant/first petitioner, was conducting the case. The first petitioner was putting her thumb impression wherever her husband requires the same. Her husband died on 24.01.2015. On coming to know the ex-parte decree, she filed the said application in I.A.No.85 of 2015 immediately.

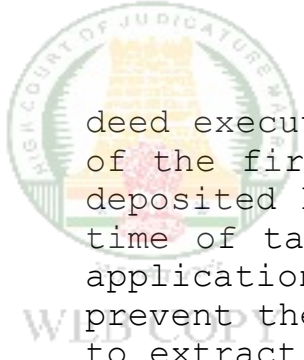
4. The respondents filed counter-affidavit and opposed the said application and denied all the averments made by the petitioners and submitted that the petitioners knowing fully well about the decree passed in the suit has filed the false affidavit. The counsel for the petitioners filed petition for payment of Rs.4,00,000/-, which was deposited by the respondents and the Court has issued cheque in the name of the Advocate, on filing affidavit by the petitioners and the husband of the first petitioner/first defendant. On filing affidavit by the petitioners and the first defendant/husband of the first petitioner, after receiving a sum of Rs.4,00,000/- when the E.A filed by the respondents for taking possession was pending, the first defendant died on 24.01.2015. In order to get more money, the petitioners filed the present application. The petition to condone the delay to set aside the ex-parte decree is not maintainable in view of the fact that the petitioners received amount from the Court's deposit through their counsel.

5. The learned Judge considering the averments made in the affidavit and counter-affidavit and the fact that the petitioners have received a sum of Rs.4,00,000/- from the Court deposit by cheque through their Advocate dismissed the application rejecting the contention of the petitioners that they did not know about the suit and ex-parte decree. Against the order of dismissal, the present Civil Revision Petition is filed.

6. The learned counsel for the petitioners submitted that the learned Judge failed to see that the first petitioner is the house wife and she was ignorant of the suit proceedings and her husband was conducting the case and subsequently, he died on 24.01.2015. She came to know about the ex-parte decree only on 11.02.2015, when she received a notice issued by an Advocate. The learned Judge ought to have seen that the petitioners have not filed the petition with malafide intention or to drag on the proceedings. The learned Judge ought to have considered the application liberally taking into consideration the defence taken by the petitioners.

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7. The learned counsel for the first respondent submitted that the petitioners were aware of the suit and decree and the sale



deed executed by the Court. The petitioners along with the husband of the first petitioner received a sum of Rs.4,00,000/- which was deposited by the respondents into Court deposit by cheque. At the time of taking possession, the petitioners have come out with the application and this petition has been filed with intention to prevent the respondents from enjoying the fruits of the decree and to extract more money from the respondents.

8.The learned counsel for the first respondent also filed typed-set of papers including the sale deed executed by the Court in favour of the respondents and affidavit of undertaking filed by the petitioners and the first defendant, husband of the first petitioner, for withdrawal of the amounts, which was deposited by the respondents.

9.Heard the learned counsel for the petitioners and the learned counsel for the first respondent and perused the materials available on record.

10.From the materials available on record, it is seen that the respondents have obtained decree on 28.07.2012 for specific performance. The respondents deposited balance sale consideration of Rs.4,00,000/- into Court and filed a petition in E.P.No.5 of 2013 for execution of the sale deed. On 07.08.2013, the Court executed sale deed in favour of the respondents. The first respondent filed a petition in E.A.No.203 of 2013 to take possession. The first respondent also contended that the amount of Rs.4,00,000/- was received by the petitioners and the first defendant, husband of the first petitioner, by cheque through Court. The petitioners have not denied this averment. The petitioners are totally denying of having any knowledge of the suit decree, execution petition and receipt of Rs.4,00,000/- by the petitioners and the first defendant. The said contentions are not tenable and acceptable. The petitioners have not given sufficient reason for condoning the delay. It is well settled that the length of delay is not a criteria and the intention of the parties must be bonafide. In the circumstances, only to drag on the proceedings, the petitioners have filed the present application. There is no error or irregularity in the order passed by the learned Sub Judge, Aruppukkottai, warranting interference of this Court. Hence, this Civil Revision Petition is liable to be dismissed.

11.Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(C)

/True Copy/



To
The Sub Judge,
Arupukkottai.

Copy to : The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.
+1cc to Mr.A.HARIHARIN Advocate in SR. No.6184
PS
JS/MR/2.02.2017/4P-4C

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