

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (NPD) No. 343 of 2018

and

CMP. No.1832 of 2018

Sivalingam

.. Petitioner

Vs

1.Vellai Easwari

2.Palanisamy

3.Muthulakshmi

.. Respondents

PRAYER: This Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, against the fair and decretal order dated 04.08.2017 passed in I.A.No.858/2015 in ASCFR No.10705/2015 on the file of the Principal District Judge, Coimbatore.

For Petitioner :Mr.M.N.Balakrishnan

For Respondents :Mr.K.Sudhakar for R1

ORDER

This Civil Revision Petition is filed against the dismissal order passed in I.A.No.858/2015 in ASCFR No.10705/2015 dated 04.08.2017 on

the file of the Principal District Judge, Coimbatore.

2. The learned counsel for the revision petitioner would submit that the respondents have filed the suit in O.S. No.68 of 2009 for partition and separate possession. In the aforesaid suit, a preliminary decree was passed by the learned Subordinate Judge, Pollachi on 31.08.2010. The petitioner was suffered from jaundice in the month of December 2011 and taking treatment at the native as well as Kerala for more than two years. Thereafter, he was not able to contact his counsel to prefer the First Appeal. In the meantime, the first respondent has preferred a final decree in I.A. No.426 of 2011 and in the same, the petitioner was set ex-parte on 07.01.2013. Pursuant to that, the revision petitioner has filed an appeal in A.S.(CFR) No.10705 of 2015 with the condone delay application in I.A.No.858 of 2015 seeking to condone the delay of 1588 days in filing the said appeal before the appellate Court.

3. Considering the submission of the learned counsel for the petitioner and the reasons stated in the affidavit filed by the petitioner. The application filed by the petitioner in I.A.No.858 of 2015 was dismissed. Challenging the aforesaid order, the petitioner has preferred

the present Civil Revision Petition before this Court.

4. On perusal of the affidavit filed in support of the petition would not disclose the particulars of the inordinate delay in filing the petition to set aside the exparte decree. The learned counsel for the petitioner has contended that a preliminary decree was passed on 31.08.2010, and a final decree was passed on 07.01.2013 in I.A. No.426 of 2011. Thereafter, the Execution Petition filed by the respondent and delivery of possession has ordered. The petitioner has not shown any sufficient cause to condone the inordinate delay to set aside the exparte order. There is no sufficient reasons as stated in the affidavit to consider the inordinate delay in filing the application. In the light of the decision of the Hon'ble Supreme Court, in the case of **H. DOHIL CONSTRUCTIONS COMPANY PRIVATE LIMITED Vs. NAHAR EXPORTS LIMITED AND ANOTHER**, reported in **(2015) 1 SCC 680**, wherein it is held as follows:

" 24. *The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the respondents not deserving any indulgence by the court in the matter of condonation of delay. The respondents had filed the suit for specific performance and when the trial court found that the claim for specific*

performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered."

5. In view of the above facts and the decision cited supra, this Court is not inclined to interfere with the order passed by the Court below. Hence, the Civil Revision Petition fails and the same is dismissed. Consequently, connected Miscellaneous petition is closed. No Cost.

05.02.2018

Index: Yes/ No

Internet:Yes/No

Speaking Order/Non Speaking Order

rkp

To

The Principal District Judge,
Coimbatore.

D. KRISHNAKUMAR J.,

rkp



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