

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 21.02.2018

**CORAM:**

**THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR**

**CRP (PD) No.3446 of 2016**

R.Anandan

.. Petitioner

Vs

M.Chandran

.. Respondent

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India seeking to set aside the order dated 17.12.2015 in I.A.No.1229 of 2015 in O.S.No.93 of 2003 on the file of the learned Subordinate Judge, Udhagamandalam.

For Petitioner : Mr. A.L.Ganthimathi

For Respondent : Mrs.R.Meenal

**ORDER**

This Civil Revision Petition has been filed to set aside the order dated 17.12.2015 in I.A.No.1229 of 2015 in O.S.No.93 of 2003 on the file of the learned Subordinate Judge, Udhagamandalam.

2. The learned counsel for the petitioner submitted that the respondent filed a suit in O.S. No.93 of 2003 under Order VII Rule-

1 of CPC against the petitioner for specific performance. In the said suit, the petitioner was set exparte and an exparte decree was passed on 22.04.2003. As against the said exparte decree, the petitioner filed I.A.No.1229 of 2015 to condone the delay of 4155 days in filing the application to set aside the exparte decree in the aforesaid suit on 06.10.2014. The Court below erroneously dismissed the said application by order dated 17.12.2015. As against the said order, the present Civil Revision Petition has been filed by the petitioner.

3. The learned counsel appearing for the respondent submitted that prima facie there is no satisfactory reason in the affidavit for condoning the inordinate delay of 4155 days in filing the exparte decree. Secondly, the respondent filed E.P.No.33 of 2014 in O.S.No.93 of 2013 on 28.01.2016, wherein sale deed was executed by the learned Subordinate Judge, Udhagamandalam in favour of the respondent. Hence, the said E.P. was closed on 01.02.2016. To that effect, the learned counsel for the respondent filed a memo dated 21.02.2018 along with a copy of the sale deed dated 28.01.2016. Therefore, nothing survives in the Civil Revision Petition for adjudication.

4. Heard, the learned counsel for the petitioner and learned counsel for the respondent and perused the materials available on record.

5. On perusal of records, it is seen that the petitioner has not given any satisfactory reason to condone the inordinate delay of 4155 days to set aside the exparte preliminary decree and to conclude E.P.No.33 of 2014, Memo has also been filed by the learned counsel for the respondent.

6. Considering the facts and circumstances of the case, submissions made by the learned counsel for both sides and in the light of the decision of the Hon'ble Supreme Court in **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."*

7.Hence, this Court does not interfere with the impugned order passed by the Court below. The impugned order passed in I. A. No. 1229 of 2009 in O.S. No.93 of 2003 dated 17.12.2015 by the Subordinate Judge, Nilgiris at Udthagamandalam is confirmed.

In the result, the Civil Revision Petition is dismissed. No order as to costs.

Index: Yes/No  
Speaking/Non Speaking order  
cla

**WEB COPY 21.02.2018**

To  
The the Subordinate Judge, Nilgiris  
Udhagamandalam.



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**D. KRISHNAKUMAR J.**

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**CRP (PD) No. 3446 of 2016**

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**21.02.2018**



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