



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
RESERVED ON : 20.02.2018  
DELIVERED ON : 23.03.2018  
CORAM

**THE HONOURABLE MRS. JUSTICE R. THARANI**  
C.R.P(NPD) (MD)No.609 of 2006  
and  
M.P. (MD)No.1 of 2006

1.G.Dhanam (Died)

2.K.Govindan

3.Jeeva

4.Babu

.. Petitioners

(Petitioners 2 to 4 are brought on record as legal heirs of the deceased sole petitioner, vide Court order dated 16.11.2017 made in C.M.P. (MD)Nos.12264 to 12266 of 2016 by JNBJ)

Vs.

M.Santhi

.. Respondent

**Prayer** : Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside order and decreetal order dated 13.07.2006 made in I.A.No.45 of 2005 in O.S.No.76 of 2004 on the file of the Subordinate Court, Karur.

For Petitioners  
For Respondent

: Mr.R.Devaraj  
: Mr.V.Balaji

### **ORDER**

The petitioner filed the above Civil Revision Petition, challenging the order dated 13.07.2006 in I.A.No.45 of 2005 in O.S.No.76 of 2004 on the file of the Subordinate Court, Karur.

2.The learned Sub Judge has passed an order in I.A.No.45 of 2005 dismissing the delay excuse petition filed by the petitioners.

3.On the side of the revision petitioner, it is stated that Sub Court has failed to consider that the execution of sale agreement itself is denied by the petitioners and decree is obtained exparte in collusion with the learned counsel appearing for the petitioners.



4. It is further stated that the first petitioner is bed ridden for 3 ½ years and subsequently, she came to know that the learned counsel for the petitioners has not filed vakalath in spite of the instructions given by the revision petitioners. The learned counsel has failed to contest the case and the revision petitioners has to be given an opportunity to contest the case. The revision petitioners came to know of all these things on 17.05.2005 and filed this petition.

5. On the side of the respondent, it is stated that the first petitioner was hale and healthy and she is living along with her sons and she did not file any medical report. Before filing the suit, the respondent has sent a legal notice to the petitioners and the first petitioner sent a reply notice through her Advocate. The respondent has filed suit against the petitioner and filed I.A.No.606 of 2004 and obtained injunction order and the documents regarding the injunction order, copies of plaint and affidavit and other documents were sent to the petitioner through post on 21.02.2004. Even after filing the Execution petition, the same Advocate appeared for the petitioner. Therefore, the petitioner is aware of the proceedings in the case. The respondent deposited a sum of Rs.40,000/- (Rupees Forty Thousand only), which is the balance of the sale consideration on 28.04.2004 and on 12.01.2005 the respondent deposited a sum of Rs.20,160/- (Rupees Twenty Thousand One Hundred and Sixty only) for purchase of non judicial stamp papers and paid a sum of Rs.2,670/- towards registration charges.

6. A perusal of the records reveals that an Advocate proposed to file vakalath and written statement on 18.03.2004 and the case was set exparte on 18.03.2004. Subsequently, on 31.03.2004, exparte judgment was pronounced. When E.P.No.171 of 2004 filed the same advocate appeared, but due to non filing of counter in turn the petitioner was set exparte. Thereby, the respondent obtained the sale certificate through Court on 15.01.2005.

7. In the affidavit filed by the petitioners in support of the delay excuse petition, it is stated that the first petitioner engaged Advocate Venkateshwaran with the hope that he will take up the case and since the first petitioner was bed ridden for 3 ½ years, she is not aware of the exparte decree passed against her and it is stated that the advocate have cheated the petitioners by not appearing in the case.

8. On the side of the petitioners, no document was filed to show that advocate has committed fraud upon the petitioners. The petitioners not denied the fact that these received the notice and the first petitioner has stated that she was bed ridden for 3 ½ years and took treatment for thyroid, sugar and for fracture on her right leg. No medical records were filed before



the trial Court regarding these aliments. Hence, the trial Court has dismissed the delay excuse petition.

9. It is duty of the petitioners to explain the reasons for each and every day delay. Even now the petitioners has not taken any steps to convince the Court regarding the reasons for the delay. No supporting documents is filed by the petitioners. Even after the advocate has failed to appear in the suit, the reason for engaging the same advocate in the execution petition is also not explained by the petitioner. In these circumstances, there is no sufficient ground to interfere with the order passed by the trial Court. Hence, the civil revision petition is dismissed. No Costs. Consequently, M.P.(MD)No.1 of 2006 is closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

The Subordinate Court, Karur.

+1cc to Mr.R.Devaraj, Advocate Sr.No.57759

MRN

VB/SKN/RSK/SAR3/16.04.2018/3P/3C

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