



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.03.2018

CORAM:

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THE HONOURABLE MRS.JUSTICE J. NISHA BANU

C.R.P(MD)No.308 of 2015 (PD)
and
M.P.(MD).No.1 of 2015

R.M.Ananthan

.. Petitioner /
1st respondent/ 1st respondent

Vs.

1.Shanthi
2.Minor Saranya
3.Minor Manikandan
4.Manickam

... Respondents/
Petitioners / Appellants

(minor respondents 2 and 3 are represented by
their mother viz., the 1st respondent herein)

(R4 herein remains *ex parte* and therefore, notice is given up)

PRAYER: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, against the fair and decreetal order of the Principal District Judge, Pudukkottai in I.A.No.43 of 2013 in A.S.Sr.No.523 of 2013, dated 17.09.2014.

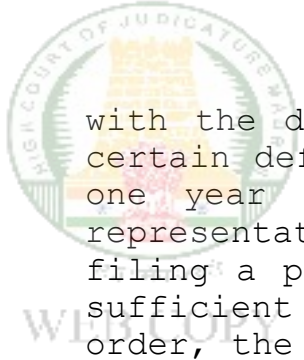
For petitioner : Mr.D.Rameshkumar
For respondents 1 to 3 : Mr.K.Vamanan

ORDER

This civil revision petition has been filed by the revision petitioner / plaintiff as against the order condoning the delay of 1416 days in filing appeal against the judgment and decree passed in the suit.

2.The brief facts, which are necessary to decide the present civil revision petition, are as follows:-

The revision petitioner had filed the suit in O.S.No.28 of 2005 for specific performance of contract in respect of the sale agreement executed by the deceased Janarthanan, who is the husband of the first respondents and father of the second and third respondents. The suit was decreed in *ex parte* on 03.11.2008 and the respondents filed an application to set aside the *ex parte* decree



with the delay of 86 days, but the same was returned pointing out certain defects and for representing the same, there was a delay of one year and four months. Though the Court below condoned the representation delay, it has dismissed the application for delay in filing a petition to set aside the *ex parte* decree as there is no sufficient reason assigned for condoning the same. Aggrieved by that order, the respondents 1 to 3 have approached this Court by way of a civil revision petition and this Court has allowed the said civil revision petition on payment of cost of Rs.10,000/- to the revision petitioner on or before 21.11.2012, in default the revision petition shall stand dismissed automatically. But, on request of the respondents 1 to 3, vide order dated 23.11.2012, this Court has extended the time till 30.11.2012. Even then, the respondents did not comply with the order of this Court. Seeking further extension of time, the respondents 1 to 3 had filed an interim application in the said civil revision petition and the same was, subsequently, withdrawn by the respondents 1 to 3. Again, the respondents 1 to 3 filed another interim application seeking extension of time to comply with the said conditional order passed in the civil revision petition, but the same was dismissed on merits. During the interregnum period, the sale was executed by the trial Court. Thereafter, the respondents 1 to 3 had filed I.A.No.43 of 2013 seeking condonation of delay of 1419 days in filing appeal against the judgment and decree passed in the suit and the same was allowed by the first appellate Court, against which the present civil revision petition has been filed by the revision petitioner / plaintiff.

3.The learned counsel for the revision petitioner would submit that knowing fully well that an *ex parte* order passed against her, the respondents 1 to 3 has contested the execution petition and after some time, she left the execution petition for *ex parte* and file a petition for setting aside the *ex parte* order and the same was dismissed, against which she had filed a civil revision petition and the same was allowed on terms. But, the respondents 1 to 3 purposefully dragged on the matter for about one year and failed to comply with the conditional order and thereafter, without assigning any valid reason, the respondents 1 to 3 have filed an application seeking to condone the delay of 1419 days in filing the appeal. The first appellate Court, without considering the fact that the respondents 1 to 3 have purposefully dragged on the matter and they did not assign any valid reason, has erroneously condoned the enormous delay and therefore, the said order may be set aside. Thus, he prayed to allow this civil revision petition.

4. The learned counsel for the respondents 1 to 3 would submit that due to financial crisis and ill-health, the respondents could not comply with the order passed in the earlier civil revision petition and file the appeal in time and that the delay is not a willful one. He would further submit that in order to give one more opportunity, the first appellate Court below has condoned the delay and the same need not be interfered with. Thus, he prayed for



dismissal of this civil revision petition.

5. Heard the learned counsel for the revision petitioner and the learned counsel for the respondents and perused the materials available on record.

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6. For condoning the huge delay of 1419 days, the first respondent has stated that due to ill-health, financial crisis and pendency of the case before this Court, she could not file the appeal in time. As far as the ill-health is concerned, except the word "ill-health" she did not aver in the petition about the same and she did not produce any document in support of the same.

7. As far as the financial crisis is concerned, the first respondent has stated that she could not mobilize the fund for paying a sum of Rs.10,000/- to comply with the conditional order passed by this Court, dated 30.10.2012 and to pay the Court fee for filing the appeal. It is seen from the record that as the respondents 1 to 3 did not assign any valid reason for condoning the delay of 86 days, the Court below has dismissed the same, but this Court, in order to give one more opportunity, has condoned the delay subject to the payment of Rs.10,000/- to the revision petitioner on or before 21.11.2012. Subsequently, only at the request of the first respondent for grant of one week time to comply with the conditional order, dated 30.10.2012, this court, vide order dated 23.11.2012, has extended the time till 30.11.2012. Even thereafter, the first respondent did not comply with the order. While so, the first respondent had filed an interim application for extending the time and the same was withdrawn by her on 05.08.2013 stating that she would file appeal. But, again, the first respondent has filed another application seeking extension of time granted in the conditional order dated 30.10.2012 and the same was, after detailed discussion, dismissed by this Court on 20.11.2013. Even assuming that due to financial crisis, she could not mobilize the fund, she could have very well filed pauper petition, but she did not do so. The act of the respondents 1 to 3 would go to show that in order to drag on the matter, they have purposefully filed the petition after petition before this Court. The Court cannot tolerate such kind of attitude of the respondents 1 to 3. After successfully dragging on the matter, now they cannot be permitted to say that in view of the pendency of the matter before this Court also, the huge delay of 1419 days has occurred.

8. It is also seen from the record that knowing fully well that an *ex parte* order has been passed against them, the respondents 1 to 3 have contested in the execution petition and after some time, they, leaving the said petition for *ex parte*, had filed a petition for setting aside the *ex parte* order with the delay of 86 days, however, the said petition was returned pointing out certain defects and the same was represented after a delay of one year and four months. It would go to establish that the respondents 1 to 3, at every stage, has purposefully caused the delay. The huge delay of



1419 days has not been properly explained by the respondents 1 to 3. The first appellate Court, without considering the same, has erroneously condoned the huge delay of 1419 days and hence, the same warrants interference of this Court.

9. In the result, this civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Principal District Judge,
Pudukkottai.
2. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.K.VAMANAN, ADVOCATE IN SR No. 52574
+ 1 CC TO Mr.D.RAMESHKUMAR, ADVOCATE IN SR No. 52454

GCG
TE/KKR/SAR-1 : 23/03/2018 : 4P/5C

order made in
C.R.P (MD) No.308 of 2015 (NPD) and
M.P. (MD) .No.1 of 2015
02.03.2018