



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2018

CORAM

WEB COPY

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (NPD) (MD) No.984 of 2018
and C.M.P. (MD) No.4312 of 2018

R.Pandiyammal ... Petitioner/Petitioner/Defendant
-vs-
Arjunan ... Respondent/Respondent/Plaintiff

PRAYER: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code against the fair and decretal Order dated 04.04.2018, rendered in I.A.No.1281 of 2017 in O.S.No.257 of 2012 on the file of the learned District Munsif, Melur.

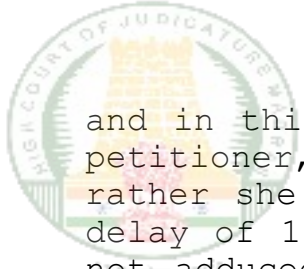
For Petitioner : Mr.A.Rahul
For Respondent : Mr.RM.Arun Swaminathan

O R D E R

The revision petitioner is the defendant in O.S.No.257 of 2012 on the file of the learned District Munsif, Melur and in the suit, the plaintiff sought for the relief of specific performance of sale deed dated 02.03.2009. In the suit, an exparte order was passed against the defendant on 14.02.2017 on account of her non appearance. Therefore, the revision petitioner/defendant has filed two applications in I.A.No.1281 and 1282 of 2017, both for condoning the delay of 161 days in filing petition for setting aside the said exparte order and also to set aside the order dated 14.02.2017. Both the applications came to be dismissed by the Trial Court, on the ground that no proper reasons were assigned for the delay. Aggrieved by such dismissal, the revision petitioners are before this Court.

2. It is the case of the revision petitioner that the Trial Court had posted the matter for cross examination of the plaintiff by the petitioner on 14.02.2017 and on the said date, due to her ill-health, she could not appear before the Trial Court and she also did not contact her Advocate, which ended in dismissal of the suit against her. Contending that her non appearance before the Trial Court is neither wanton nor wilful and no prejudice would be caused to other side, in the event of condoning the delay so as to enable the petitioner to challenge the exparte order, it is prayed that the order of the Trial Court is liable to be set aside.

3. Learned counsel for the respondent has contended that it is a settled law that it is imperative that if the chief examination is over, on the next day, the cross examination should be completed



and in this case, despite several opportunities being given to the petitioner, she had not chosen to cross examine the plaintiff, rather she has come up with a plea of ill-health, that too, with a delay of 161 days. It is further contended that the petitioner has not adduced any reasons for such delay and as per the judgment of this Court in the case of M/s.Gulf Air Company, Chennai vs. V.M.Rajalingam, reported in (2005) 4 MLJ 676, the party filing the petition for condoning the delay has to show sufficient cause or bona fide for the delay, in absence of which, it can be inferred that the party has no interest in prosecuting the case and in such an event, the delay cannot be condoned. Therefore, the respondent sought for dismissal of the petitioner at the threshold.

4. Heard the learned counsel on either side and also perused the material documents available on record.

5. It is stated by the petitioner that she had filed an affidavit before the Trial Court, explaining the reasons for the delay and the Trial Court has not taken into account the said affidavit and dismissed the petition in a biased manner. It is the claim of the respondent / plaintiff that an agreement of sale was entered into between the plaintiff and the defendant on 02.03.2009 in respect of the suit schedule property, by which the defendant agreed to sell the property for Rs.60,000/-, against which the plaintiff had already paid Rs.50,000/- as advance and the balance amount to be paid is only Rs.10,000/-. Though the plaintiff was willing and ready to pay the said meagre amount, the defendant purposely evaded from receipt of the payment and did not come forward to execute the sale deed, which forced the plaintiff to initiate lis against the defendant.

6. It is appropriate to state here that as repeatedly held by this Court, in the matter of condonation of delay, a lenient view should be taken to condone the delay. This Court, on earlier occasion in the case of G.Krishnamoorthy vs., Arulmighu Sri Pataleeswarar Devasthanam, rep. by its Executive Officer, Cuddalore, reported in 2010 (1) MWN Civil 837, has clearly held that the petition for condonation of delay can be allowed, if it is proved that the party could not be able to contact the lawyer in respect of his/her case.

7. In the present case on hand, it has been repeatedly reiterated by the petitioner that pursuant to her ill-health, there was no communication between her and her Advocate and therefore, the delay of 161 days has occurred in filing petition to set aside the exparte order, which is an acceptable ground to consider the case of the petitioner. Accordingly, upon hearing the submissions of both sides and finding merits in contention raised by the petitioner, this Court is of the view that the order dated 04.04.2018, passed in I.A.No.1281 of 2017 in O.S.No.257 of 2012 by the learned District Munsif, Melur, is liable to be set aside.



8. In the result,

(a) this Civil Revision Petition is allowed and the order dated 04.04.2018, passed in I.A.No.1281 of 2017 in O.S.No.257 of 2012 by the learned District Munsif, Melur, is hereby set aside.

No costs. Consequently, connected C.M.P.(MD) No.4312 of 2018 is closed.

/True Copy/

Sd/-
Assistant Registrar (CS-I)

Sub Assistant Registrar

To:

The District Munsif,
Melur.

+1CC to Mr.A.Rahul Advocate in SR.No.67273.

STS/AR
DS/SKN-RSK/SAR-1 :27.06.2018: 3P/3C

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