



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 16.08.2018
CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WEB COPY

CRP (MD)No.846 of 2017 (NPD)
and
CMP(MD)No.3776 of 2017

Tamilselvi

... Petitioner/ Petitioner/Defendant

Vs.

Manickavalli

through her power agent

Madhavan

... Respondent/Respondent/Plaintiff

Prayer : This Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, to set aside the dismissal order passed in I.A No.150 of 2015 in O.S No.52 of 2007 dated 15.11.2016 on the file of the learned Subordinate Judge, Sivagangai.

For Petitioner : Mrs.Thilaga Balasubramanian
for Mr.P.Aju Tagore

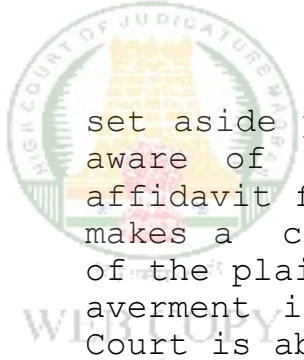
For Respondents : Mr.T.Lajapathi Roy

ORDER

The revision petitioner is the defendant in O.S No.52 of 2007 on the file of the Sub Court, Sivaganga. It is a suit for specific performance. The said was decreed exparte on 12.12.2007. To set aside the same, the revision petitioner filed a petition under Order 9 Rule 13 of CPC. But then, there was a delay of 2537 days in filing the said petition. The said petition was dismissed by order dated 15.11.2016. The correctness of the said order is under challenge in this Civil Revision Petition.

2.When the matter was taken up for disposal, Tmt.Thilaga Balasubramanian, the learned counsel submitted that the learned counsel for the revision petitioner is indisposed and that the matter may be adjourned. Normally, when it is reported that the counsel is indisposed, this Court would not hesitate to adjourn the case. But then, in this case, there is absolutely no merit whatsoever in this Civil Revision Petition.

3.This Court went through the entire materials on record independently. <https://hcservices.ecourts.gov.in/hcservices/> It is seen that the suit in question was filed on 09.07.2007. A reading of the affidavit filed in support of the



set aside petition clearly shows that the revision petitioner was aware of the institution of the suit against her. In the affidavit filed in support of this petition, the revision petitioner makes a claim that a promise was given to her by the power agent of the plaintiff that he would stop the suit proceedings. From this averment in the affidavit filed by the revision petitioner, this Court is able to come to the conclusion that the revision petitioner was aware of the filing of the suit against her.

4. But then, the only reason given by the revision petitioner for the delay in filing the set aside petition is that she was suffering from jaundice and knee pain. In the present case, the delay runs to 2537 days and that is inordinate. In the meanwhile, the plaintiff had already filed EP No.48 of 2008. In the said execution proceedings, the revision petitioner herein filed a claim petition under Section 47 of CPC. The said claim petition was dismissed on merits.

5. Therefore, the petitioner definitely had knowledge of the exparte decree at least from the year 2008. Therefore, there is absolutely no justification for the revision petitioner to have waited till 2015 for filing the aforesaid set aside petition. The delay has not at all been explained. Some vague reasons are given. This Court is of the view that the reasons given by the revision petitioner are false. The court below was justified in holding that sufficient cause has not been made out for condoning the long delay.

6. Affirming the reasons given by the court below, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(Rti)

/True Copy/

Sub Assistant Registrar(CS-IV)

To
The Subordinate Judge, Sivagangai.
· 1 CC TO Mr.T.Lajapathi Roy, ADVOCATE IN SR No. 79082
· skm
· DS SV SAR-4 22 10 2018 2P 3C

CRP (MD) No.846 of 2017 (NPD)
and
CMP (MD) No.3776 of 2017