



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.01.2018

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (NPD) (MD) No.1060 of 2016

and

C.M.P. (MD) No.5335 of 2016

Thiruppathi

... Petitioner / Petitioner /
Defendant

vs.

1. Selvi

2. Minor Jeyanthi

Rep. by her mother and natural guardian,
Selvi/first respondent herein.

... Respondents /
Respondents 2 & 3 /
L.Rs of Plaintiffs

PRAYER: Petition filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order dated 25.04.2016 passed in I.A.No.576 of 2009 in O.S.No.179 of 1996 on the file of the Sub-Court, Palani.

For Petitioner : Mr.T.R.Jeyapalam

For Respondents : Mr.C.K.M.Appaji

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order passed in I.A.No.576 of 2009 in O.S.No.179 of 1996 dated 25.04.2016 on the file of the Sub-Court, Palani.

2. The facts of the case, as averred in the affidavit filed in support of the petition, are as follows:

2.1. Originally, the suit in O.S.No.179 of 1996 was instituted by one K.Kandhaswamy (late), first respondent's husband seeking the relief of specific performance of a sale agreement dated 21.02.1995. The said suit was set *ex-parte* and after following due process of law, the sale deed was executed on 27.06.2003. Pursuant thereto, nearly after six years, the petitioner herein has filed an application in I.A.No.576 of 2009 to condone the delay of 4552 days in filing a petition to set aside the *ex-parte* decree dated 23.06.1997. Here, the respondents herein remained absent and condone delay application was allowed, followed by which, I.A.No.577 of 2009, petition to set aside the *ex-parte* decree was allowed. Consequently, the suit in O.S.No.179 of 1996 was



restored to file and subsequently, the suit was dismissed for default on 30.09.2010.

2.2. Thereafter, the respondents herein came to know about this development and C.R.P.(MD)Nos.826 & 827 of 2011 and 2627 & 2628 of 2012 came to be filed and this Court, by an order dated 14.12.2012, granted liberty to the petitioner therein to approach the trial Court with appropriate application. Thereafter, the respondents herein have filed I.A.No.17 of 2013 to set aside the order passed in condone delay petition and the trial Court has dismissed the same, which was later reversed by this Court in C.R.P.(MD)No.1567 of 2013 by an order dated 05.12.2013. Thus, the petition in I.A.No.576 of 2009 was restored back to file and the lower Court, after hearing both the parties, has now dismissed the interlocutory application seeking condonation of delay of 4552 days. Aggrieved over the same, the present case, which has a chequered history for more than one and half decade, came to be filed.

3. Heard the learned Counsel appearing on both sides and perused the documents placed on record.

4. Perusal of the record would show that an *ex-parte* order was passed on 23.06.1997. The petition to condone the delay of 4552 days in setting aside the *ex-parte* order was filed by this petitioner wherein, he has stated that he had left to Kerala and therefore, he did not know about the proceedings. PW2 has deposed that this petitioner has lived in her house at Kerala for rent from 2001 to 2009 and in 2009, he had left to Pollachi. PW2's evidence clearly shows that the petitioner was residing in Kerala from 2001 till 2009, but the *ex-parte* order was passed in 1997. After 4 years from the date of passing of the *ex-parte* order, the petitioner went to Kerala in 2009.

5. It is also seen from the records that the petitioner had been in Kerala only on business account and not on account of any problem with his family and therefore, the reasons stated by the petitioner for condoning the delay cannot be accepted. In the circumstances of the case, the impugned order passed by the learned Judge does not warrant any interference. Generally, the Courts are very liberal in condoning the delay, but, in this matter, the reasons stated by the petitioner are not acceptable in the circumstances of the case.

6. Therefore, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

/True Copy/



To

The Subordinate Judge,
Palani.

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Copy To:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.T.R.JEYAPALAM, ADVOCATE IN SR No. 43726
+ 1 CC TO Mr.C.K.M.APPAJI, ADVOCATE IN SR No. 43697

GK

TE/KKR/SAR-1 : 01/03/2018 : 3P/6C

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