



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 16.04.2018
CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P.(MD)No.2042 of 2013

and

M.P.(MD)No.2 of 2013

Bakkiyam @ Bakkiayavathi

... Petitioner/Petitioner/
5th Defendant

Vs.

1.M.Meyaan

... 1stRespondent /Respondent/
Plaintiff

2.Sivagami

... 2nd Respondent

(R2 impleaded vide order 12.06.2015
made in M.P.1 of 2015 in C.R.P.(MD)
No.2042 of 2013)

Prayer: Civil Revision petition is filed under Section 115 of Civil Procedure Code, against the order dated 10.01.2012 in I.A.No.917 of 2008 in O.S.No.91 of 1990 on the file of District Munsif Court, Musiri.

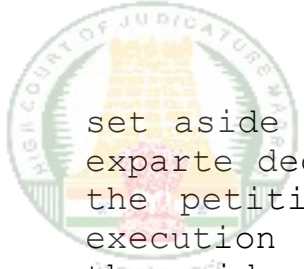
For Petitioner	: Mr.K.Govindarajan
For R-1	: Mr.H.Arumugam
For R-2	: Mr.S.A.Ajmalkhan

O R D E R

This Civil Revision Petition is filed by the fifth defendant in the original suit in O.S.No.91 of 1990 on the file of District Munsif Court, Musiri.

2.It appears that the suit was originally filed in O.S.No.91 of 1990 on the file of the Sub Court, Trichy and subsequently, the suit was transferred to Sub Court, Kulithalai and renumbered as O.S.No.80 of 1996. Actually, the suit was filed by the first respondent herein for specific performance of the agreement of sale dated 18.09.1987.

3.It appears that the sale agreement and the terms of the agreement are not in dispute. In these circumstances, the suit was decreed exparte on 31.01.2002. Even though other defendants have not raised any defence, the revision petitioner filed an application to set aside the exparte decree. The fifth defendant namely the revision petitioner filed an application in I.A.No.917 of 2008 to condone the delay of 779 days in filing the petition to

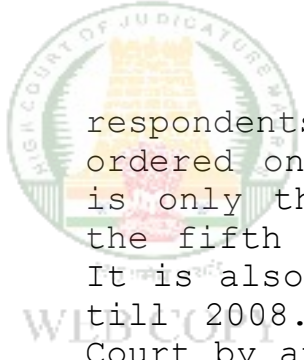


set aside the exparte decree and another application to set aside exparte decree. In the affidavit filed in support of the petition, the petitioner has admitted that he has received notice in the execution petition. The explanation is that the advocate to whom the said notice was handed over, did not take any steps, though he promised to file necessary petitions.

4.It is further stated that the petitioner came to know about the non filing of the petition only on 16.04.2004. The application filed by the revision petitioner is opposed by the plaintiff in the suit by referring to the execution petition filed by the plaintiff and the sale deed that was obtained through Court. The specific stand taken in the counter affidavit filed by the plaintiff/respondent is that the petitioner has come forward with this petition, by suppressing materials facts regarding the receipt of notice in the execution petition. Referring to the lack of /want of any explanation, for the delay after receiving notice in the execution petition, Counsel for the respondent submitted that the revision petitioner cannot be shown any indulgence.

5.The learned counsel for the respondent/plaintiff refers to the fact that the sale agreement dated 18.09.1997 is not disputed and submitted that the legal notice issued to the defendants on 12.03.1998 was not responded by the defendants. In the suit for specific performance written statement was filed admitting the sale agreement and the payment of advance amount for sale. The main defence taken in the written statement is that the time stipulated in the agreement is an essential term of the contract and that the plaintiff is not ready to perform within time.

6.This Court is fully convinced that in the written statement several issues have been raised in defence. However, this Court is unable to accept the case for the delay as it is stated by the revision petitioner. After the suit was filed in the year 1989, the written statement was filed in 1991. The suit was transferred to Sub Court, Kulithalai and renumbered in O.S.No.80 of 1996 on 05.07.1996. After the first defendant died on 10.07.1997, his legal representatives are impleaded as 3rd and 4th defendants and the fifth defendant is also impleaded as the legal representative of the 2nd defendant, who died on 16.04.1998. After the exparte decree in the suit for specific performance, the execution petition was filed in E.P.No. 352 of 2003 before the Sub Court, Kulithalai for executing a sale deed. It is admitted before the Court that notice was served on all other defendants in the execution proceedings. None of the parties filed any petition to set aside the exparte decree. Even in the year 2004, it is stated that notice was sent in Execution Petition No.352 of 2003. The execution petition was transferred to the District Munsif Court, Musiri and renumbered as E.P.No.48 of 2004. The defendants avoided notice. It is further stated that notice was sent to the



respondents, but not received and hence, paper publication was ordered on the respondents including the revision petitioner. It is only the legal representative of the second defendant namely the fifth defendant has filed the petition to condone the delay. It is also stated that no steps were taken to number the petition till 2008. Meanwhile, the plaintiff obtained sale deed through Court by an order dated 21.01.2008. It is further pointed out that the fifth defendant counsel represented the delay petition on 16.07.2007 and nearly after two years, the delay petition was filed and renumbered as I.A.No.917 of 2008.

7.The learned counsel for the contesting respondent further submitted that the property was also subsequently sold by him to a third party. He has now been impleaded in the petition.

8.Having regard to the facts and circumstances this Court is unable to find illegality or irregularity in the order passed by the lower Court. Hence, this Court, accepting the findings of the Court below that the petitioner has not explained the delay is not inclined to interfere with the order. Further going by the conduct and factual background this Court do not find any *bonafide* in the petition to condone the in-ordinate delay of 779 days.

9.As a result, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The District Munsif ,
Musiri.

2. The Record Keeper, (2 copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.S.A.Ajmalkhan, Advocate Sr.No.61668
+1cc to Mr.K.Govindarajan, Advocate Sr.No.61670
+1cc to Mr.H.Arumugam, Advocate Sr.No.61818

LS

VB/KK/SAR2/25.04.2018/3p/7c

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M.P. (MD) No.2 of 2013
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