

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P. (NPD) No.176 of 2010 &

C.M.P.No.1 of 2010

Mrs.Vellaiammal

.. Petitioner

Vs.

Mr.Raghavan

.. Respondent

PRAYER: Civil Revision Petition filed under section 115 of Code of Civil Procedure against the Fair and decretal Order passed in I.A.No.46 of 2009 in numbered Appeal suit dated 04.11.2009 on the file of the Subordinate Court, Kallakurichi.

For Petitioner : Mr.R.Singaravelan

For Respondent : Mr.E.Vijay Anand

ORDER

Aggrieved over the finding of the appellate Court in condoning the delay of 715 days in filing the appeal, the present revision has been filed.

2. Brief facts leading to filing of this revision is as follows :

The appellant has filed the suit in O.S.No.38 of 2008 seeking specific performance. The suit was disposed on 18.07.2006. Thereafter, an application has been taken up by the respondent to condone the delay of 715 days in filing the appeal. It is contended by the respondent that due to the case bundle mixed in the advocate office, he could not file the appeal in time. Therefore, he prayed to condone the delay.

3. Whereas, it is the contention of the respondent that an Execution Petition has been filed to enforce the decree. The respondent appeared in the Execution Petition. On 10.11.2008, the Court has given time to execute the sale deed in favour of the respondent. As the sale deed has not been executed, second execution petition has been filed and the petitioner appeared before the Court on 02.09.2008. Thereafter, the sale deed was executed in favour of the respondent. Thereafter, the appellant has filed another application for delivery of possession. At this stage, an application to condone the delay of 715 days has been filed by the petitioner. Hence, it is the contention of the respondent/appellant that there is no sufficient reason to condone the huge delay. The appellant Court placing the burden on the appellant to prove his case, has allowed the application to condone the delay of 715 days.

4. Heard the learned counsel for the revision petitioner and the learned counsel for the respondent and perused the entire materials available on record.

5. It is to be noted that it is the specific contention of the respondent/appellant that there were two execution petitions filed and the respondent has appeared before the Execution Court and thereafter, sale deed has been executed in favour of the appellant. Subsequently, the third application has been filed seeking delivery of possession. The appeal has been filed with a huge delay of 715 days. This factum specifically asserted by the respondent/appellant has not been disputed by the revision petitioner. The Court below without going into the above aspects has simply allowed the application and condoned the huge delay. Such approach of the Court below is not according to law.

6. When the revision petitioner/respondent has not disputed the pendency of the execution petition and contesting the same, he cannot come up with an application to condone the huge delay on the flimsy ground that the case bundle got mixed up in the advocate office. Such reason is improbable and in fact, it is unbelievable. The respondent having contested the execution petitions and all along witnessed the proceedings, filed an application to condone the huge delay with lame excuses. If such reasons are accepted, then the decree will not see its logical conclusion.

7. No doubt, the word 'sufficient cause' has to be given liberal approach. To exercise such discretion to condone the delay, there must be valid and acceptable reasons. The very reasons found in the application to condone the delay of 715 days appears to be artificial in nature and cannot be taken note of. In view of the same, this Court is of the view that the reasons attributed in the application lacks bonafide and merits and hence, such huge delay cannot be condoned, particularly when the decree itself has been executed in execution proceedings. In view of the same, the Order of the Court below requires to be interfered and the same is liable to be set aside.

8. Accordingly, this Civil Revision Petition is allowed and the Order of the trial Court in I.A.No.46 of 2009 in unnumbered Appeal Suit is set aside. Consequently, the connected miscellaneous petition is closed. No cost.

12.02.2019

vrc

To

The Subordinate Judge,
Kallakurichi.

WEB COPY

N.SATHISH KUMAR, J.

vrc



CRP.(NPD) No.176 of 2010

WEB COPY

12.02.2019