

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P. (NPD) No.479 of 2011

Mrs.J.Dhahira Yusuf

.. Petitioner

Vs.

Pazhani @ Jaya Pazhani

.. Respondent

PRAYER: Civil Revision Petition filed under section 115 of Code of Civil Procedure against the fair and decreetal Order passed in I.A.No.148 of 2010 in O.S.No.30 of 2007 on the file of the Sub court, Nagapattinam dated 08.11.2010 and to set aside the same.

For Petitioner : Mr.A.Ansar

For Respondent : Mr.Gowthaman
for V.Ganesh

ORDER

This revision has been filed as against the Order of dismissal of the application filed to condone the delay of 678 days in filing an application to set aside the exparte decree passed against her on 24.08.2008.

2. The case of the petitioner is that the suit has been laid for specific

performance and the above suit was decreed ex parte on 24.04.2008. She came to know about the ex parte decree only recently and there is a delay of 678 days in filing an application to set aside the ex parte decree passed in the suit. The reason for the delay, according to the petitioner, is that her husband's elder brother, who is the head of the family, was not well and he died on 12.01.2008 and her husband also frequently went out of station and she was not properly intimated about the trial proceedings. So she was set ex parte. Further, an advocate clerk also got Government job and went away. So there is a delay of 678 days. According to the petitioner, she has never executed any sale agreement and she has only signed on the instructions of her husband. She was also suffering from Jaundice and was getting native treatment.

3. The learned counsel for the respondent submitted that in an earlier occasion, an ex parte decree was passed against the revision petitioner and the same was set aside. This is the second time an ex parte decree has been passed against the revision petitioner. Execution Petition has been filed and in the execution proceedings, summons have also been served on the revision petitioner. Thereafter, the Court had executed sale deed in the execution petition. Hence, contended that the reasons averred in the application is not bonafide and there is no sufficient cause to condone the delay. The trial Court considered the evidence of P.W.1 and has held that the delay has not been properly explained

and the reasons stated in the affidavit is not correct and the trial Court has rightly dismissed the application and this revision is liable to be dismissed.

4. The learned counsel for the revision petitioner has contended that the suit has been filed for enforcement of the agreement and the reasons stated in the petition has not been properly considered by the trial Court. Whereas, the learned counsel appearing for the respondent submitted that an exparte decree has been passed for the second time and in the earlier occasion, the exparte decree has been set aside. The allegation that the petitioner was suffering from jaundice and she was taking native treatment is highly improbable. The husband of the revision petitioner is a doctor by profession and therefore contended that the trial Court considering the entire aspects had dismissed the application. There is no sufficient cause to condone such a huge delay.

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

6. The revision petitioner has filed an application to condone the delay of 678 days in filing an application to set aside the exparte decree. The main ground of the revision petitioner for seeking condonation of 678 days delay is that

since her husband's elder brother had died and there was no proper intimation given to her regarding the suit. Immediately, she was suffering from jaundice and she was taking native treatment for jaundice.

7. It is curious to note that the specific contention of the revision petitioner that her brother-in-law died on 12.01.2008. At the relevant point of time, there is no exparte decree passed. Whereas, after his death, the earlier exparte decree passed in the earlier occasion was set aside on 04.04.2008 itself in I.A.No.49 of 2008. In fact, the earlier application to set aside the exparte decree has been filed on 04.03.2008, after the death of the petitioner's husband's elder brother. Therefore the trial Court disbelieved the allegation of the petitioner in the affidavit. Though the delay has occurred due to the death of her husband's elder brother, the trial Court has disbelieved the allegation that she was taking native treatment for jaundice, since her husband himself is a doctor by profession.

8. It is to be noted that the petitioner is not a rustic woman and her husband is a doctor by profession. Therefore, it is improbable to contend that she was taking native treatment for jaundice particularly when her husband himself is a doctor by profession. No doubt, the word 'sufficient cause' has to be given liberal approach. To exercise such a liberal approach, the person coming to the Court should come with clean hands with bonafide reasons. When the allegations set

out in the application itself appears to be false and improbable, such person cannot seek equity before the Court of law.

9. It is to be noted that it is not the first time, the revision petitioner has been set exparte. She has already been set exparte once and the exparte decree has also been set aside on 04.04.2008. Execution Petition has been filed and notice has also been served on the revision petitioner and in Execution Petition, the revision petitioner has remained exparte. Thereafter, the Court had executed the document in favour of the respondent and delivery also appears to have been taken. At this stage, the revision petitioner claim no knowledge about the proceedings is highly improbable. Therefore, this Court is of the view that absolutely, there is no cause, much less sufficient cause, shown by the revision petitioner to condone such a huge delay of 678 days. Hence, this Court do not find any merits in this revision.

10. Accordingly, this Civil Revision Petition is dismissed and the Order of the trial Court is confirmed. No cost.

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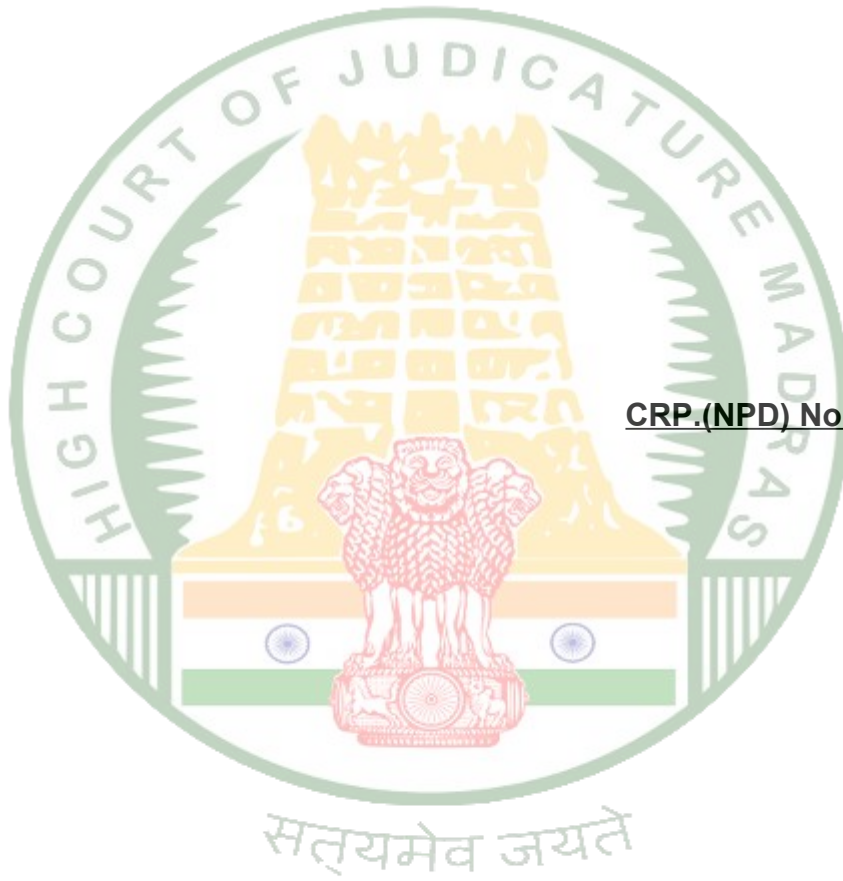
To
The Subordinate Judge,
Nagapattinam.

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N.SATHISH KUMAR, J.

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