

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2019

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(NPD)No.758 of 2019

and

CMP.No.4986 of 2019

Thilagavathi

... Petitioner

Vs.

Thangamani

... Respondent

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code against the fair and decreetal order passed in I.A.No.391 of 2018 in O.S.No.208 of 2015 dated 28.11.2018 pending on the file of the Sub Court, Udumalpet.

For Petitioner : Mr.N.Umapathi

For Respondent : Mr.S.Arjun

ORDER

Revision petitioner is the defendant. Aggrieved over the dismissal of the petition filed to condone the delay of 136 days under Section 5 of the Limitation Act in filing a petition to set aside the exparte decree, she preferred the above civil revision.

2. The respondent / plaintiff filed a suit for specific performance. The suit was posted for cross-examination of P.W.1, on 14.03.2017 and adjourned on four occasions. On 05.06.2017, she was set exparte and on 21.09.2017, an exparte decree was passed. An execution petition was filed for execution of sale deed. At that stage, the petition to set aside exparte decree came to be filed along with the petition under Section 5 of the Limitation Act. The trial Court relying on the various judgments of this Court and Supreme Court, dismissed the petition as the reasons stated are not sufficient and satisfactory.

3. The learned counsel for the petitioner would contend that the reason stated by the petitioner is genuine. Due to small mistake committed by the counsel, while drafting the petition, shall cost the petitioner of her valuable right over her property. The suit is filed on the basis of fabricated documents. The fraudulent act of the respondent shall not be permitted to continue and her valuable rights shall not be taken away on the basis of technicalities, rather she shall be granted an opportunity to contest the case on merits. He would rely on the judgment of the Hon'ble Supreme Court in *Pundlik Jalam Patel (dead) by LR's Vs. Executive Engineer, Jalgaon Medium Project and another* (2008 (17) SCC 448).

4. The very same judgment was relied on by the trial Court also for dismissing the petition filed to condone the delay. However, the Hon'ble Supreme Court, in the very same judgment would rely on the ratio that length of delay is no matter and acceptability of explanation is the only criterion. If the explanation offered does not smack of malafides or it is not put forth as a part of dilatory tactics, the Court must show utmost consideration to the suitor. The trial Court, of course, exercised the discretion after considering all the materials placed before it. Yet I am of the considered opinion that Rules of limitation are not meant to destroy the rights of the parties. If the petitioner is not given the opportunity by shutting the doors of the courts on technicalities, the substantial rights of protecting her right over the property on merits will be deprived. When the hardship caused to the opponent could be compensated by imposing compensatory costs, that should be preferred then the depriving the substantial rights.

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5. Considering the facts and circumstances of the case, in order to provide one more opportunity to the petitioner to contest the case on merits, this Court is inclined to set aside the order passed in I.A.No.391 of 2018 in O.S.No.208 of 2015, by imposing compensatory cost of Rs.3,000/- payable to

M. GOVINDARAJ, J.

bri

the counsel for the petitioner within two weeks from the date of receipt of a copy of this order.

In fine, the Civil Revision Petition stands allowed. No costs.
Consequently, connected miscellaneous petition is closed.

24.07.2019

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Index:Yes/No

Internet:Yes/No

Speaking Order/Non Speaking Order

To

The Judge,
Sub Court,
Udumalpet.

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