

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2019

CORAM

THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

CRP(NPD).No.2532 of 2018

and

C.M.P.No.15397 of 2018

S.Kalaiyarasi

.. Petitioner/Defendant

Vs

S.Jayaprakash

..Respondent/Plaintiff

Civil Revision Petition filed under Section 115 of the Civil Procedure Code to set-aside the Fair Order and Final Order passed in I.A.No. 638 of 2013 in O.S.No. 91 of 2011 dated 31.07.2018 on the file of Sub Court, Kallakurichi, Villupuram – District.

For Petitioner : Mr.D.Balachandran
For Respondent : Mr.N.Manokaran

ORDER

The above Civil Revision Petition is filed challenging the order, dismissing the application filed by the defendant/revision petitioner to condone the delay of 746 days in filing an application to set aside ex-parte decree passed on 16.08.2011.

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The brief facts which are necessary for disposing of this revision petition is that the defendant had entered into an agreement of sale with the plaintiff on 04.06.2010 and since the defendant had not come forward to execute the sale deed, the

plaintiff had filed the suit in O.S.No. 91 of 2011, on the file of the Sub Court, Kallakuichi for specific performance. Though summons were served on the defendant, the defendant had not entered appearance and therefore, she was set ex-parte on 25.07.2011 and thereafter an ex-parte decree came to be passed on 06.08.2011.

3 When notice in E.P.No. 1 of 2012 was served on the defendant/revision petitioner on 14.02.2012, for executing the sale deed, the defendant once again remained ex-parte and thereafter, on 02.04.2012, the Court had executed the Sale Deed, thereafter it is seen that E.P.No.42 of 2012 had been filed for seeking delivery of the property and in the execution petition, the revision petitioner/defendant had entered appearance on 03.02.2012 and the matter, after hearing the arguments, was reserved for orders on 08.10.2013.

4 Meanwhile, it is only on 01.10.2013, the revision petitioner had filed the impugned petition to condone the delay of 746 days stating that she was affected with Jaundice between 08.06.2011 to 08.07.2011 and therefore she was unable to attend the Court. Apart from the above, no other reasons have been given.

5 Therefore, the revision petitioner has explained the absence only for the period of 08.06.2011 to 08.07.2011 and thereafter, there is no explanation for the delay. The learned Subordinate Judge, Kallakurichi, considering the above facts, had proceeded to dismiss the said interlocutory petition against which the above Civil Revision Petition is filed.

6 Heard Mr. D.Balachandran, learned counsel appearing on behalf of the petitioner and Mr.N.Manokaran, learned counsel for caveator.

7 From a reading of the records, it is evident that despite notice having been served in the first execution petition namely E.P.No.1 of 2012, the revision petitioner/defendant had not evinced any interest in filing application for setting aside the ex-parte decree. Once again when the second application in execution petition was filed, the judgment debtor had entered appearance only on 03.09.2012 and no steps have been taken to set aside the ex-parte decree and it is only when the arguments were heard in E.P.No.42 of 2012, that the revision petitioner has come forward with an impugned application.

P.T.ASHA, J.

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8 Mr.N.Manokaran, learned counsel appearing on behalf of the respondent would contend that delivery of possession has also been taken. Therefore, taking into account, the fact that sufficient facts has been shown and that the delivery has also been effected, this Court is of the opinion that the order passed by the learned Subordinate Judge does not have any infirmity.

In the result, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

28.02.2019

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Index: Yes/No

Internet: Yes/No

Speaking order / Non-speaking order

To

The learned Sub Court,
Kallakurichi,
Villupuram – District.

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