

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :12.07.2019

PRONOUNCED ON:22.07.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

C.M.P.Nos.12622 and 12623 of 2017

in

S.A.S.R.Nos.54513 and 54518 of 2017

1.Pachaiammal

2.Kavitha

3.Sampoornam

... Petitioners/ Appellants in both petitions

Vs.

R.Shanmugam

... Respondent / Respondent in both petitions

Common Prayer:

Civil Miscellaneous Petitions are filed under section 41 R3(A),
r/w XLII R1 C.P.C., to condone the delay of 3214 days in filing the
second appeals.

For Petitioners : Mr.A.D.Janarthanam in both petitions

For Respondent : Mr.K.K.Senthilvelan in both petitions

COMMON ORDER

The abovesaid Civil Miscellaneous Petitions have been filed to condone the delay of 3214 days in filing the Second Appeals.

2. The respondent/plaintiff is found to have laid the suit against the petitioners/defendants for the relief of specific performance and in the alternative, claimed the relief of refund of the advance amount and for permanent injunction.

3. The abovesaid suit has been contested by the petitioners/defendants and it is found that the abovesaid suit had been partly decreed in favour of the respondent/plaintiff on 07.09.2007. Aggrieved over the same, both the plaintiff and the defendants had filed the First Appeals in A.S.No.10 of 2008 and A.S.No.76 of 2007 respectively. It is found that the First Appellate Court had allowed the Appeal preferred by the plaintiff and resultantly decreed the suit in favour of the plaintiff for the relief of specific performance and dismissed the Appeal preferred by the defendants on 29.02.2008. Impugning the same, the present second appeals have been preferred by the petitioners/defendants. However as there

occurred the delay of 3214 days in preferring the Second Appeals, to condone the said delay, the present petitions have been laid by them.

4. The only reason given by the petitioners for the delay is that they are not aware of the proceedings before the First Appellate court as they are illiterates and their advocate has not informed about the obtainment of the judgment and decree passed in the Appeals and furthermore, as the first appellant was seriously ill they were unable to take a decision and further action and only after receiving the notice in the execution proceedings, according to them, they met their advocate and as he had not properly responded and further stated that they had approached another advocate and come forward with the second appeals and hence the delay.

5. The abovesaid reasonings projected by the petitioners for the delay had been stoutly repudiated by the respondent/plaintiff. According to the respondent/plaintiff, the First Appeals were disposed off on 29.02.2008 and pursuant to the same, he has also deposited the balance sale consideration in the Court and the petitioners are fully aware of the same as well as the judgment and decree of the First Appellate court in both the Appeals and the

respondent has laid REP.No.147 of 2009 for the execution of the sale deed and in the said E.P proceedings, the petitioners have been served with the notice and appeared through counsel, filed their counter and contested the matter and the abovesaid E.P ended in favour of the respondent and the sale deed had been executed in his favour by the Court on 09.03.2015 and after the same, he had filed another E.P in REP.189 of 2016 for delivery of possession and even in the said EP, notice has been served to the petitioners and despite the same, they had remained exparte and delivery was ordered and the respondent has moved for police aid for obtaining delivery and only thereafter it is stated that the petitioners had come forward with the petition to set aside the exparte order passed in the execution proceedings with the delay petition and the same was dismissed and the C.R.P filed by the petitioners against the same in C.R.P.No.3303 of 2017 has also been dismissed by this Court and therefore, according to the respondent, only with a view to prevent the respondent from obtaining the delivery of the property, the present petitions have been laid by the petitioners projecting false reasons and the reasons projected by them for the delay are totally false and hence not entitled for acceptance and prayed for the dismissal of the petitions.

6. It is found that the First Appeals preferred by the petitioners and the respondent had been disposed of on 29.02.2008. The plea put forth by the petitioners that they are not aware of the disposal of the First Appeals, as such, cannot be accepted straightway. In the reply affidavit, it has been accepted by the petitioners that they had been informed by their advocate that they should prefer the second appeals and also admitted that they had affixed their signatures in the stamp papers and they did not know about the stage of the case. Therefore from the abovesaid position, it is evident that the petitioners are very well aware of the disposal of the appeals by the First Appellate Court on 29.02.2008.

7. Even according to the petitioners, they had come to know about the same after the notice in the execution proceedings. When it is seen that the petitioners had been contesting the execution proceedings levied by the respondent one way or the other, their contention that they are illiterates and unable to proceed further, as such, cannot be believed and accepted. It is found that after the contest, the sale deed had come to be executed in favour of the respondent by the Court. Thereafter, for taking delivery, the respondent had filed another E.P. The petitioners, despite notice,

remained exparte in the same and after delivery, it is found that they had moved the Court concerned to set aside the same. However, the same was rejected and the CRP preferred by the petitioners against the same had also ended in dismissal. Therefore, it is evident that the petitioners have been delaying the efforts made by the respondent to execute the decree one way or the other and in such view of the matter, the case of the petitioners that they are not properly informed by their counsel about the stage of the case and the steps taken to prefer the second appeals etc., cannot be believed and accepted in any manner.

8. The delay involved in the matter is found to be very huge and inordinate. There is no material on the part of the petitioners for substantiating the reasons projected by them for the delay. The petitioners have not come forward as to when from the first petitioner was suffering in fever, when she recovered etc., Therefore the plea of illness put forth by the petitioners is also found to be totally unacceptable. If really the petitioners have a good case, they would have endeavoured to take further proceedings in the matter in the manner known to law. On the other hand, as their main object is only to stifle the execution proceedings of the respondent, it

is found that accordingly, they are unable to place a good cause for the delay and also not able to buttress the same by placing acceptable and convincing materials.

9. In the light of the abovesaid discussions, I do not find any sufficient cause for the condonation of the huge and inordinate delay and even the alleged cause putforth by the petitioners is not substantiated with acceptable and reliable materials even *prima facie*. Resultantly, the petitions are found to be devoid of merits and they are dismissed with costs. Consequently, Second Appeals in S.A.S.R.No.54513 of 2017 and S.A.S.R.No. 54518 of 2017 are rejected.

22.07.2019

mfa
Index:yes
Internet:yes

सत्यमेव जयते

WEB COPY

T.RAVINDRAN, J.

mfa



Pre-delivery order made in
C.M.P.Nos.12622 and 12623 of 2017
in
S.A.S.R.Nos.54513 and 54518 of 2017

WEB COPY

22.07.2019