

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2019

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

C.R.P. No.3820 of 2019
and C.M.P.No.25111 of 2019

Rajeshwari

... Petitioner/Defendant

-Vs-

Periyasamy

... Respondent/Plaintiff

Prayer : Civil Revision Petition under Article 227 of the Constitution of India against the fair and decreetal order dated 27.09.2019 made in I.A.No.42 of 2019 in O.S.No.19 of 2014 on the file of the Subordinate Judge at Tirupattur, Vellore District.

For Petitioner : Mr.Karan
for M/s.Karan and Uday

O R D E R

This revision has been filed against the fair and decreetal order dated 27.09.2019 made in I.A.No.42 of 2019 in O.S.No.19 of 2014 on the file of the Subordinate Judge at Tirupattur, Vellore District.

2. Before the trial Court, the respondent / plaintiff filed a suit for specific performance against the revision petitioner / defendant. In the said suit, which was posted on 04.02.2016 for cross examination, since the revision petitioner / defendant did not appear before the Court, on 17.02.2016, an exparte decree was passed. Thereafter, for nearly about two years, nothing was forthcoming from the revision petitioner / defendant and after 612 days, she had come forward to file a petition under Order IX Rule 13 of C.P.C., to set aside the exparte order, with a condone delay petition to condone the delay of 612 days in filing the petition. The said condone delay petition filed under Section 5 of the Limitation Act, since has been rejected through the impugned order, aggrieved over the same, the present revision has been filed.

3. Heard the learned counsel appearing for the petitioner, who would submit that the bonafide reason according to the revision petitioner for not approaching the Court for 612 days is because the revision petitioner / defendant's wards had been admitted in a reputed educational institution far away from

their normal place of residence and due to that, the revision petitioner / defendant had to shift her residence to stay along with their wards and that is the reason why nearly about 2 years, the revision petitioner could not contact her counsel as to the further development of the case, which was posted on 04.02.2016 for cross examination and only after such a long delay of more than 600 days, she was able to contact the counsel and after coming to know that an exparte decree was passed on 17.02.2016, she had made arrangements to file the present application and therefore there was a delay of 612 days and hence such delay has to be condoned on the aforesaid bonafide reason.

4. I have heard the learned counsel for the revision petitioner and also perused the materials placed on record.

5. Admittedly, the reason given by the petitioner / defendant for not approaching the Court to set aside the exparte decree for 612 days is that, because of the educational purpose of the wards of the revision petitioner / defendant, she had to shift her residence and nearly after about two years ie., upto 612 days she could not contact the counsel.

6. This Court is afraid of hearing this kind of reasons given by the litigant public for not approaching the Court in time. In the present case, the suit was at the trial stage, where the case was posted for cross examination on 04.02.2016 when the defendant had not been present and thereafter on 17.02.2016, an exparte decree was passed. Therefore, the defendant must have enquired, if not immediately, at least within a reasonable time, from the counsel, as to what had happened to the suit, as the suit has been in the trial stage.

7. Instead, the revision petitioner claims that, for two years she could not contact the counsel for the reason that she had to be with her wards to look after their studies. If this reason is accepted by this Court, almost every litigant who come to the Court can give this kind of reasons that because of their family issues like education etc., they could not approach the Court in time and for the said purpose, if the huge delay of nearly two years is accepted by the Court as plausible reason, then there would be no end and hence in the opinion of this Court, this kind of flimsy reason cannot be accepted.

8. Moreover, the suit was not in the stage of pleadings or in the stage of framing of issues. In fact, the suit was in the stage of trial and the trial was going on. On a particular day, it was posted for cross examination. Due diligence and

care could have been taken by the defendant to appear on that day. Suppose if the revision petitioner could not appear on that particular day for an unforeseen reason, immediately on the next day or within a reasonable time, she could have filed an application to set aside the exparte decree.

9. Without resorting to any such move, as has been indicated above, the revision petitioner / defendant, after having been in long slumber, has come forward after nearly two years and saying this flimsy reason, to condone the delay. In this regard, even though the learned counsel for the petitioner pleaded that in the main suit, the revision petitioner / defendant has got a good case, since the suit is for specific performance, which was laid based on an unregistered sale agreement, that cannot in any way enhance the quality of the reasons now adduced by the revision petitioner / defendant for this unreasonable delay of 612 days.

10. In that view of the matter, this Court is not inclined to entertain this revision, as this Court does not find any infirmity or erroneousness in the impugned order passed by the trial Court. Hence, this Civil Revision Petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The Subordinate Judge at Tirupattur,
Vellore District.

AKM/09.03.2020/3P- 2C /

C.R.P. (PD) No.3820 of 2019