



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.04.2019

CORAM :

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THE HONOURABLE MRS.JUSTICE **S.RAMATHILAGAM**

C.M.P. (MD) No.2669 of 2019

in

CRP (MD) No.SR10877 of 2019

and

C.R.P. (MD) No.SR10877 of 2019

in C.M.P. (MD) No.2669 of 2019

Pushpa

... Petitioner/Petitioner

vs.

Velusamy Servai

.. Respondent/Respondent

PRAYER:- Civil Miscellaneous Petition filed under Section 5 of Limitation Act, to condone the delay of 132 days in preferring the above revision.

For Petitioner : Mr.R.Maheswaran

For Respondent : Mr.R.Vijayakumar

in C.R.P. (MD) No.SR10877 of 2019

Pushpa

... Petitioner/Petitioner/Defendant

vs.

Velusamy Servai

... Respondent/Respondent/Plaintiff

PRAYER:- Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the fair and decreetal order dated 06.06.2018 passed in I.A.No.91 of 2017 in O.S.No.58 of 2014 on the file of the District Court at Sivagangai.

For Petitioner : Mr.R.Maheswaran

For Respondent : Mr.R.Vijayakumar

**ORDER**

This Civil Miscellaneous Petition has been filed to condone the delay of 132 days in preferring the above revision.

2.C.R.P.(MD) No.SR10877 of 2019 has been filed to set aside the order dated 06.06.2018 passed in I.A.No.91 of 2017 in O.S.No.58 of 2014 by learned District Judge, Sivagangai.

3.The defendant contended that the plaintiff has filed a suit in O.S.No.58 of 2014 before the learned District Judge, Sivagangai seeking for a relief of specific performance to execute a sale deed in respect of the suit properties on the receipt of balance sale consideration. Further, the defendant contended that all the averments in the plaint are false and fabricated and they are not true and due to the illness of him, he could not appear before the trial Court for cross-examining the decree holder, who has been examined as P.W1. Thereafter, an ex parte decree was passed. The said fact came to the knowledge of the defendant after a very long time, when he received the notice in the execution proceedings in E.P.No.81 of 2016. Hence, after knowing the said fact, the defendant has filed an application in I.A.No.91 of 2017 to set aside the ex parte order with a delay of 475 days and the same has been dismissed by the Court below.

4.The plaintiff has also filed his counter by stating that the reasons stated by the defendant to condone the delay of 475 days are not genuine and the said suit was already posted for cross-examining him and several adjournments were given to the defendant to cross-examine the plaintiff and in spite of sufficient opportunities given, the defendant has not appeared before the trial Court for cross-examining the plaintiff and thereafter, an ex parte order was passed. Further, the plaintiff has stated that the defendant has clearly known about the proceedings of the Court and there are no genuine reasons stated by the plaintiff to condone the said delay.

5.The trial Court after observing the same, has dismissed the said I.A., which was filed by the defendant. Aggrieved by the said order, the defendant has filed the present Civil Revision Petition with a delay of 132 days.

6.Heard the learned counsel on either side.

7.On perusal of the records, it is seen that the trial Court dismissed I.A.No.91 of 2017 filed by the defendant to condone the delay of 475 days on merit and hence, there is no merit in the Civil Revision Petition as well as in the present Civil Miscellaneous Petition to condone the delay of 132 days in preferring the said revision.



8. In view of the above, this Civil Miscellaneous Petition is dismissed. Consequently, CRP(MD) No.SR10877 of 2019 is also rejected at the SR stage itself.

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// True Copy //

Sd/-

Assistant Registrar (CS-II)

Sub Assistant Registrar (CS)

To
The District Judge,
Sivagangai.

+1 CC to M/s.R.MAHESWARAN, Advocate (SR-58947[F] dated
04/04/2019)

+1 cc to Mr.K.Vijayakumar , Advocate SR.No.58454

MM

C.M.P. (MD) No.2669 of 2019

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