



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 22.11.2019

CORAM

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

C.R.P. (PD) (MD)No.217 of 2013

and

M.P. (MD)No.1 of 2013

WEB COPY

Muthu Ameena Beevi

.. Petitioner/Defendant

Vs.

Mohamed Marjohn Beevi

.. Respondent/Plaintiff

**Prayer :** This Civil revision petition is filed under Section 115 of Code of Civil Procedure Code, to set aside the fair and decretal order dated 04.01.2013 made in I.A.No.897 of 2012 in O.S.No.25 of 2008 on the file of the District Munsif Court, Ramanathapuram.

For Petitioner : No Appearance

For Respondents : Mr.J.Barathan

**ORDER**

The above Civil Revision Petition is filed by the revision petitioner/defendant, challenging the order passed by the learned District Munsif, Ramanathapuram in dismissing the application filed by her to condone the delay of 1445 days for setting aside an exparte decree.

2.Originally the petitioner was represented by Mr.S.M.A.Jinnah, learned counsel. However, on 11.11.2019, the learned counsel had reported to this Court that he have handed over the brief back to the clients along with the change of vakalath. This Court directed the Registry to take steps to issue notice to the petitioners and the said notice was also sent through Bailiff, District Court, Ramanathapuram.

3.Today the matter was listed displaying the name of the revision petitioner. Though in the normal circumstances, this Court would have passed an order dismissing the revision for non prosecution, however, considering the conduct of the revision petitioner in prolonging litigation this Court is proceeding to pass orders on merits.

4.O.S.No.25 of 2008 has been filed by the respondent herein for declaration that he is the absolute owner of the suit property, which has been sold by the revision petitioner to him by a sale deed and for recovery of possession. The chronology of events of the suit filed by the respondent herein would indicate that this suit was filed on 04.02.2008 and on 16.04.2008, the petitioner has entered appearance through counsel. The matter was adjourned on several occasions and ultimately on 20.08.2018, the revision petitioner was set exparte for non filing the written statement and on 20.08.2018, exparte decree came to be passed. After the exparte decree was passed, the petitioner had filed E.P.No.8 of 2012 to execute the decree in O.S.No.25 of 2008 on 12.04.2012. The revision petitioner has entered appearance in the execution proceedings through counsel on 12.06.2012.



5. In the meanwhile, another suit was filed by the revision petitioner in O.S.No.186 of 2005 (which is the subject matter of C.R.P.(MD)No.883 of 2013) which was also dismissed for default and was sought to be restored by the revision petitioner. After the exparte decree was passed in O.S.No.186 of 2005 on 20.08.2008, the petition to restore that petition filed in I.A.No.176 of 2008 was restored on 29.08.2018 and it is seen that the matter was listed for trial on 20.10.2008 and the revision petitioner has taken several adjournments right up to 03.09.2012, when the trial had opened with the examination of P.W.1 in O.S.No.186 of 2005.

6. The execution proceedings initiated by the respondent herein was being adjourned on the request of the revision petitioner and ultimately, the execution proceedings was heard and delivery was ordered on 05.11.2005.

7. While these proceedings were going on, the revision petitioner on 05.09.2012, has filed an application for condoning the delay in filing the necessary application for setting aside exparte decree. Reading of the affidavit filed in support of this petition does not show any convincing reasons for the delay. The only reason given was that she was given a wrong advice that two suits would be tried jointly. Her age and health kept her away from meeting the Advocate quickly. No other reasons was put forth by petitioner for his enormous delay of 1444 days. The learned District Munsif, Ramanathapuram, by his order dated 04.01.2013, was pleased to dismiss the said application stating that it was highly belated. Challenging the said order, the revision petitioners have moved this application.

8. While considering the application on merits, despite the fact that the petitioner was contesting the connected suit and was also contesting the execution proceedings arising out of exparte decree, the petitioner has only taken out the first step for setting aside the exparte decree only on September 2012. The affidavit is totally bereft of sufficient cause for the delay. In these circumstances, I do not find any infirmity in the order passed by the learned Judge.

9. Accordingly, this Civil Revision Petition is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)



To

1.The District Munsif, Ramanathapuram.

+1CC TO Mr.T.R.JEYAPALAM, Advocate, Sr.No.100624

C.R.P. (PD) (MD) No.217 of 2013

**22.11.2019**

**mrn**

**SMA/02/01/2020/3P/3C**