

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(NPD)No. 1355 of 2018

P.M.Narayanasamy
Power of Attorney agent of
Mr.M.Kubendran

..Petitioner

Vs.

D.Umashankar

..Respondent

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the order and decretal order dated 19.02.2018, passed in I.A.No. 437 of 2015 in O.S.No. 185 of 2011, on the file of the learned Principal Sub-Ordinate Judge, Vellore and to set aside the same.

For Petitioner : Mr.A.Thameem Mohideen

For Respondent : Mr.C.P.Sivamohan

O R D E R

The defendant in O.S.No. 185 of 2011, whose application for condonation of delay of 1450 days seeking to set aside the exparte decree was dismissed has come up with this Civil Revision Petition.

2. The said suit was filed for specific performance of an agreement of sale dated 13.08.2008. The plaintiff contended that the defendant agreed to sell the suit property for a total consideration of Rs.3,10,000/- and received an advance of Rs.1,00,000/- on the date of agreement and a period of 11 months was fixed for paying balance of sale consideration. In the interregnum period, the defendant received a further sum of Rs.1,00,000/- on 29.07.2009 and another sum of Rs.1,00,000/- on 16.12.2010. Since the defendant did not come forward to execute sale deed despite the plaintiff being ready to pay the balance amount of Rs.10,000/-, the plaintiff filed a suit. The suit was decreed exparte on 12.11.2011. An execution petition was filed for execution of sale deed in E.P.No. 74 of 2014.

3. In the said execution petition, notice was served on the son of the petitioner on 13.10.2014. Though the petitioner claimed no notice was served on the suit, he had in fact admitted in the affidavit that notice was served on his wife on 14.09.2011 and his wife completely forgot about the receipt of the summons. He came to know about service of the notice in the suit only after service of the notice in the execution petition. Admittedly, notice in the execution petition was served on his son on 13.10.2014 but the application seeking condonation of delay was filed on 24.08.2015. The petitioner, blamed his wife and son and claimed that they did not inform him about the service of notice on them. The Trial Court has rightly dismissed the application concluding that the petitioner has not made out sufficient cause for condonation of delay.

4. Order 5 Rule 15 of the Code of 1908 enables service on the adult member of the family of the defendant. Admittedly, the suit notice was served on the wife of the defendant on 14.09.2011. The plaintiff claimed that his wife is ignorant of Court proceedings and she had completely forgotten about the receipt of the summons. This, in my considered view is no explanation at all for condoning the delay of 1450 days. Again, the notice in the E.P.No. 74 of 2014 was served on his son on 13.10.2014. The application for condonation of delay, as already stated was filed after 10 months, on 24.08.2015. This shows that the petitioner has been negligent all along. This Court and the Hon'ble Supreme Court had repeatedly pointed out that the Court should be liberal in matters of condonation the delay but at the same time, the petitioner who seeks the indulgence of the Court in the matter of condonation of delay should demonstrate absence of negligence in prosecuting the proceedings apart from making out sufficient cause for the delay. To say that his wife and son forgot about the receipt of the summons is least of the explanation that could be offered for the delay of 1450 days.

5. Hence, I do not think the Trial Court was wrong in refusing to condone the delay. This Civil Revision Petition fails and it is accordingly dismissed. No costs.

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Assistant Registrar

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Sub Assistant Registrar

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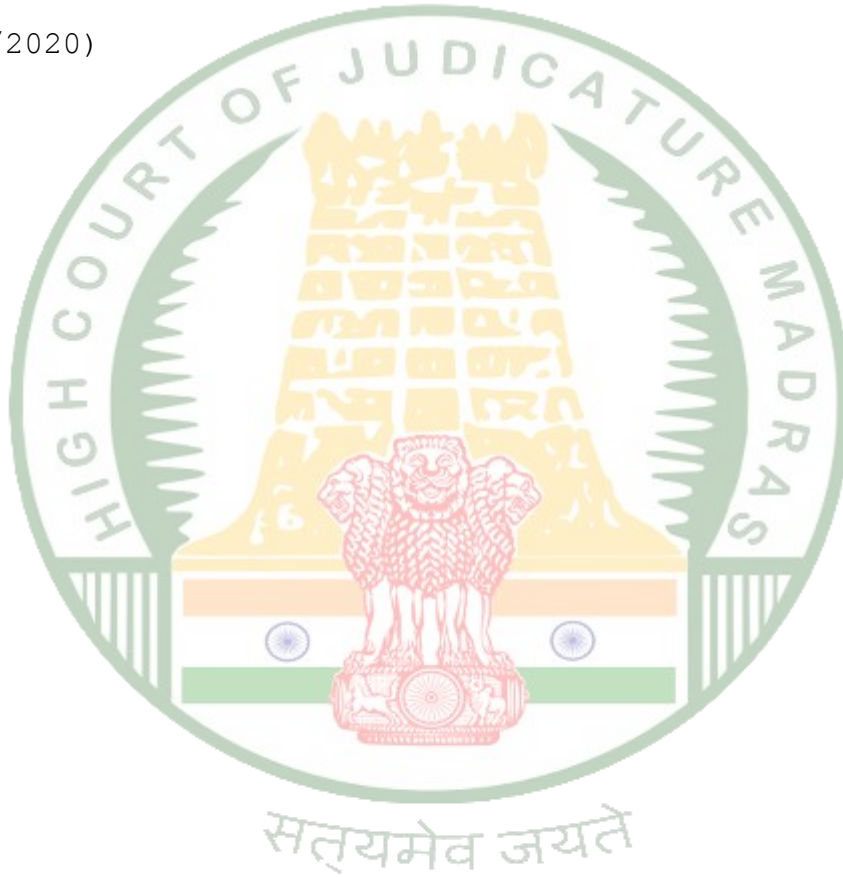
To:-

The Principal Sub-Ordinate Judge,
Vellore

+1cc Mr.A.Thameem Mohideen, Advocate, sr no.26660

C.R.P (NPD) No. 1355 of 2018

CA (CO)
RMP (29/09/2020)



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