

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 06.10.2020]

[PRONOUNCED ON : 11.11.2020]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.P.No.17517 of 2019

in

C.R.P.SR.No.34584 of 2019

Irudayaraj

... Petitioner

.. Vs ..

1. Pushparani
2. A.Kennet Thomas
3. A.Petricia
4. Premila Kumar
5. Josephine Vasantha

... Respondents

Prayer: Civil Miscellaneous Petition filed under Section 5 of the Limitation Act, to condone the delay of 91 days in filing the above revision.

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For Petitioner : Mr.T.Sivagnanasambandan
For R-2 : Mr.P.G.Thiyagu

ORDER

The above civil miscellaneous petition has been filed by the petitioner seeking to condone the delay of 91 days in filing the above civil revision petition.

2. As the Petitioner is aged about 65 years, suffering from diabetics and underwent cataract surgery, he could not contact his Advocate. Hence, there was a delay of 91 days in preferring the above civil revision petition.

3. Some of the parties alone are arrayed as the respondents in the CRP. The 2nd Respondent has filed a counter.

4. The suit has been filed, seeking partition and separate possession and a preliminary decree was passed as early as on 14.08.2014 and thereafter, an application was filed for final decree proceedings, in which an Advocate Commissioner has been appointed.

5. Taking into consideration that there are three items in the suit properties, namely, one vacant site and two house properties, the Advocate Commissioner has fixed the mode of partition in respect of item (1) viz. vacant site and in respect of items (2) and (3), both being house properties and indivisible, he suggested to go for auction. Pursuant to the memo filed by the Advocate Commissioner, auction was ordered and the Petitioner herein has not even participated in the auction and in the auction, with the permission of the Court, the 2nd Respondent herein has participated and deposited Rs.77,50,000/- and in the mean while, sale papers are also deposited. At this juncture, the Petitioner has preferred the present Petition to condone the delay of 91 days in preferring the C.R.P. on some medical grounds.

6. The order now under C.R.P. was passed on 27.06.2018. The petitioner has chosen to file the C.A. itself only on 20.07.2018. Even though the copies were made ready on 04.10.2018, but, the C.R.P. was dated 08.03.2019, hence, there is laches on the part of the petitioner in filing the C.R.P.

7. The petitioner has not averred any reason to condone the delay concerning order now challenged under C.R.P.

8. The Fair and Decretal order dated 27.06.2018 passed in I.A.No.142 of 2018 by the learned Additional District Judge, Chengalpattu, has been impugned for scrutiny under revisional Jurisdiction. The 2nd respondent is Mr.A.Kennet Thomas and he has been arrayed as 8th Plaintiff in the Original Suit in O.S.No.498/2004 and he is the 2nd Petitioner in I.A.No.142 of 2018, an application filed under Section 3 of Partition Act and Section 94(e) and 151 of CPC. The said application filed by the plaintiffs 6 and 8 to 11, for the relief to exercise the right of Pre-emption, by directing the plaintiffs and defendants (respondents 1 to 9 and 12 and 13 in I.A.No.142/2018) to sell their respective 3/6 Shares in item No.2 of the suit property and further to direct the Plaintiffs and Defendants (respondents 1 to 13 in I.A.No.142/2018) to sell their 2/3 shares in Item No.3 of the suit Property. In that Application, the present petitioner stands as 6th respondent / 4th defendant.

9. The said applications were taken up together and the Court below passed a common order dated 27.06.2018 by considering that the Suit was finalised on the quantum of shares by a Preliminary Decree and then shares allocated to the parties for the Item-1 of the suit property under Report filed by the Advocate Commissioner, which was accepted and the possession is being allocated for the respective parties. The other properties in Item 2 and 3 are concerned, the commissioner reported as indivisible as they are house Properties. In result, the Court below allowed those two interlocutory applications by appointing an advocate commissioner to sell the properties in Item 2 and 3. The said order had been implemented subsequently. The parties have filed subsequent applications to participate in the auction by leading a set-off their shares against the property. The Defendants 2 to 6, including the present petitioner/4th defendant did not participate in auction held on 20.03.2019. From the date of order, they had the day-to-day knowledge about the proceedings taken under sale warrant. The Son-in-law of the 7th Plaintiff, Mr.E.J.Manuel (O.S.No.498 of 2004), Mr.Amulranjith participated in the auction on behalf of 7th Plaintiff. He had participated

by paying 2 lakhs as EMD along with a letter of authorisation from the 7th plaintiff. Even though some other defendants sought for Pre-emptive right to purchase the shares, they had not chosen to participate in the auction. I had participated in the auction along with him and successfully bid the property and paid a sum of Rs.77,50,000/- (Seventy Seven lakhs and fifty thousand only). The sale consideration paid in complete and received by the Court in Execution Proceedings and accounted in E.P. Ledger. Hence, I do not see any merit in the main case except to drag on the proceedings.

10. There is no sufficient cause for condoning the delay. Hence, the above civil miscellaneous petition No.17517 of 2019 filed for condoning the delay is dismissed. The Civil Revision Petition in S.R.No.34584 of 2019 shall stand rejected at the S.R. stage itself, consequent to the order of dismissal of the condone delay petition.

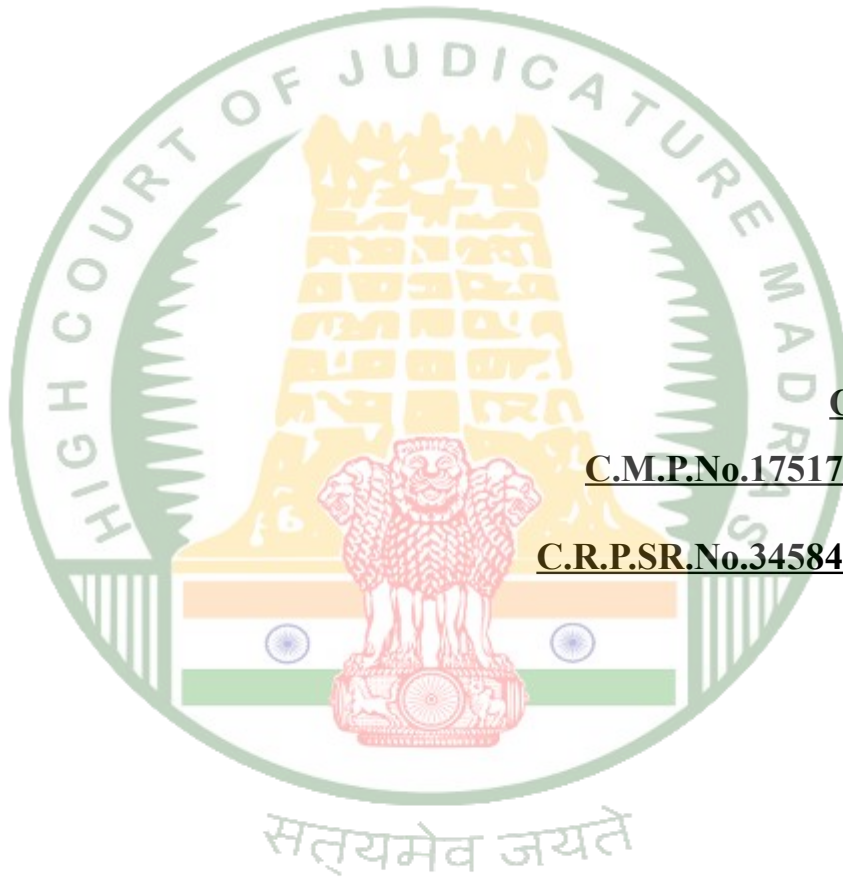
11.11.2020

Index : Yes / No
Internet : Yes
Jrl

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RMT.TEEKAA RAMAN, J.

JRL



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