

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2020

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THE HONOURABLE MR.JUSTICE **M. GOVINDARAJ**

C.R.P.(PD) No.1780 of 2019

I.Amali

.. Petitioner

Vs.

P.Sagaya Rakini

... Respondent

Prayer: Civil Revision Petition is filed under Article 115 of the Constitution of India to set aside the order passed by the Principal Judge, City Civil Court, Chennai, dated 18.02.2019 in C.M.P.No.1360 of 2018 in A.S.SR.No.65011 of 2018.

For Petitioner : Mr.T.Jayaramaraj

For Respondent : M/s.M.Devandran

सत्यमेव जयते

ORDER

The present Civil Revision Petition has been preferred against dismissal of the petition filed to condone the delay of 728 days in filing an appeal in A.S.SR.No.65011 of 2018. The lower appellate Court dismissed the application as the petitioner has failed to show sufficient

cause for condoning the delay.

2. The learned counsel for the petitioner would submit that the petitioner was not aware of the judgment and decree passed by the trial Court and she got knowledge only when she received notice in Execution Petition filed by the respondent. Immediately thereafter, she obtained change of vakalat and filed a copy application on 23.08.2018. On receipt of the copy of the judgment and decree on 14.09.2018, she filed an appeal on 30.11.2018. The delay in getting the bundle from the erstwhile counsel was the reason for not filing the appeal in time. Therefore, for the fault of the Advocate, the litigant should not be penalized and on that ground relying on the judgment reported in **1996 (II) CTC 109** in the case of *State of Haryana Vs. Chandra Mani and others* and **AIR 2009 SC 2375** in the case of *Uma Nath Pandey Vs. State of U.P.*, the learned counsel for the petitioner prays to set aside the order passed by the lower appellate Court and to condone the delay.

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3. Per contra, the learned counsel for the respondent would contend that the suit was filed in the year 2013 for a relief of mandatory injunction. The revision petitioner being the defendant contested the case

throughout and she was very much aware that the decree was passed on 06.08.2016. In spite of that she has not taken any steps to file an appeal. Claiming knowledge only on entering appearance in the Execution Petition on 28.03.2018, the petitioner filed a copy application on 23.08.2018. There is no explanation for the delay between 28.03.2018 and 23.08.2018 in filing the copy application.

4. Be that as it may, even after receiving the certified copy of the order on 14.09.2018, the petitioner has not filed the appeal in time. She has taken three months time for filing the appeal. This delay was not explained. Therefore, the lower appellate Court has rightly considered the inordinate delay was without any sufficient cause or reason and dismissed the application and there is no irregularity and illegality in passing such an order. Therefore, he seeks to dismiss the petition filed by the petitioner.

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5. I have heard the submissions made by the learned counsel appearing on both sides.

6. It is true to state that the Court must be pragmatic in

considering the condone delay and should take a lenient view when it comes to filing of statutory appeal by the litigants. It is also well settled that for the fault of the Advocate, the litigant cannot be put to sufferance. But, in the present case, the factual circumstances prove otherwise. The decree and judgment was passed in the suit on 06.08.2016. There is no reason as to why the copy application was not filed in time. The petitioner claims that she has got knowledge only on receipt of the Execution Petition. But, it should be borne-in-mind, the suit is for mandatory injunction to remove the unauthorized construction of balcony on the common passage. Both the petitioner and the respondent are sisters living in the same premises. Day in and day out they meet each other, therefore, the petitioner must be aware of the litigation and its result. However, even assuming that the petitioner has got knowledge only on 28.03.2018, when she entered appearance in the Execution Proceedings, she should have taken steps immediately to file a copy application to get the certified copy of the order. But, there is a delay of five months in filing the copy application after entering appearance in the Execution Proceedings. The reason that she was unable to get the bundle from the erstwhile counsel is not a sufficient for, for applying for the certified copy of the order, the details given in the Execution Petition

would suffice.



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7. Further, as admitted by the petitioner, when she received the order copy on 14.09.2018, she should have been very vigilant and diligent in filing the appeal in time. Even there, it was filed only on 30.11.2018 with a delay of around three months. This delay goes unexplained. Therefore, at every stage, I find there is delay in filing the appeal and therefore, the inordinate delay without sufficient cause cannot be condoned. The contention of the petitioner that the fault is on that Advocate cannot be accepted for the reason, she has filed the copy application after the delay of five months and the appeal after a period of three months even after getting the bundle back from the erstwhile counsel. The unexplained delay disentitles the petitioner to get the relief.

8. Accordingly, this Court does not find any sufficient reasons to condone the delay. The Civil Revision Petition stands dismissed. There shall be no order as to costs.

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Index : Yes/No
Speaking Order : Yes/No

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M. GOVINDARAJ, J.

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To

The Principal Judge,
City Civil Court,
Chennai.



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