



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2020

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.M.P No.21735 of 2019
in
C.R.P SR No.65662 of 2019

Subammal

... Petitioner

Vs.

Balachandar

... Respondent

Prayer :- This Civil Miscellaneous Petition has been filed under Section 5 of the Limitation Act 1963, to condone the delay of 1074 days in filing the above Civil Revision Petition in C.R.P SR No.65662 of 2019 before this Court.

CRP SR65662/2019:- Petition filed under section 115 of the constitution of India, may be pleased to set aside the fair & Decreetal order dated 02/04/2016 made in I.A.No.64/2015 in O.S 229/2010 on the file of the subordinate judge, Cout, Sathyamangalam.

For petitioner : Mr. S.A.Mohamed Mubarak
For Respondent : Ms.R.Shase

O R D E R

This Civil Miscellaneous Petition has been filed to condone the delay of 1074 days in filing the Civil Revision Petition.

2. The petitioner is the 1st defendant, in the suit filed by the respondent in O.S.No.229 of 2010 before the Subordinate Court, Sathyamangalam, seeking for specific performance. In the above suit, an exparte decree has been passed on 29.04.2011. To set aside the exparte decree, the petitioner has filed an application under Order 9 Rule 13 of CPC along with an application in I.A.No.64 of 2015 to condone the delay of 1203 days in filing the application. That application came to be dismissed by the trial Court on 21.04.2016. Challenging the same, the present revision is filed. Since there is a delay of 1074 days in filing the revision, the present application has been filed to condone the delay.

3. On a perusal of the affidavit filed in support of the petitioner, it is seen that earlier, the petitioner's counsel failed to apply for a certified copy of the order passed in I.A.No.64 of 2015 by the trial Court and only, on 20.05.2019, the petitioner has filed an application seeking for a certified copy of the same. According to the petitioner, since the petitioner was unwell and was taking treatment at Komarapalayam



Government Hospital from 18.04.2016 to 18.04.2019, she could not contact his counsel and hence the delay of 1074 days.

4. The learned counsel for the petitioner would contend that since the petitioner being an old lady was taking treatment in the hospital, she was unable to contact his previous counsel and hence, the delay in applying for a certified copy of the order passed in I.A.No.64 of 2015 by the trial Court and the delay is neither willful nor wanton.

5. Per contra, the counsel for the respondent would submit that the delay of 1074 days has not been properly explained by the petitioner merely saying that she was taking treatment from 18.04.2016 to 18.04.2019 which is not the sufficient cause to condone the long delay of 1074 days in filing the revision. He would further submit that subsequent to the decree, now the respondent has filed an Execution Petition and in the aforesaid petition, a sale deed was executed in his favour and delivery of possession has also been ordered. At this stage, the present application has been filed only to drag on the proceedings.

6. Considered rival submissions made by both sides. The present revision has been filed against the dismissal order dated 21.04.2016, passed in the application in I.A.No.64 of 2016 in O.S.No.229 of 2020 to condone the delay of 1203 days, in filing the petition to set aside the exparte decree. Challenging the aforesaid order, the present revision is filed with the delay of 1074 days. The only reason stated by the petitioner is that her earlier counsel did not file an application seeking for a certified copy of the order, from 18.04.2016 to 18.04.2019 and the petitioner was taking treatment and she could not able to contact his counsel. But, in support of her contention, there is no material placed before this Court. The application for condoning the delay of 1203 days in setting aside an exparte decree has been dismissed in the year 2016. If at all, the petitioner is vigilant in prosecuting her case, she would have engaged a counsel to file an application in time. The copy application for certified copy has been filed only on 20.05.2019 and hence, I am of the view that the reason stated by the petitioner for condoning the long delay is not sufficient. Therefore, I find no merits in the present application and the same deserves to be dismissed.

7. Accordingly, this Civil Miscellaneous Petition is dismissed. Consequently, the Civil Revision Petition is dismissed at the SR stage itself.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar



uma

To

WEB COPY

The Subordinate Judge,
Sathyamangalam.

+1cc to Mr.M.Guruprasad, Advocate, SR. No. 6879

C.M.P No.21735 of 2019 in
C.R.P. SR No.65662 of 2019

VGII (CO)
RMP (14/07/2020)