

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

C O R A M

THE HON'BLE MR. JUSTICE S.VAIDYANATHAN

C.R.P.(NPD).No.4154 of 2017

Sempannan

...Petitioner

vs

Gunasekaran

.... Respondent

Civil Revision Petition filed under Section 115 of CPC, against the fair and decreetal order dated 25.10.2016 made in I.A.No.482 of 2012 in O.S.No.28 of 2007 on the file of the Subordinate Court, Bhavani.

For Petitioner : Mr.J.Ramakrishnan

ORDER

This Civil Revision Petition has been filed seeking to set aside the fair and decreetal order dated 25.10.2016 passed by the learned Subordinate Judge, Bhavani in I.A.No.482 of 2012 in O.S.No.28 of 2007, on the ground as to whether the Trial Court was right in rejecting the condonation of delay Petition, which was filed seeking to set aside the exparte judgment passed in O.S.No.28 of 2007.

2. In the Petition seeking to condone the delay of 1856 days in filing a Petition to set aside the exparte judgment passed in O.S.No.28 of 2007, the Petitioner has stated that, he is an illiterate and that, he was undergoing country treatment for jaundice for the past four years by staying away from his native and that, his Counsel did not inform him about the status of the case. However, the Petitioner has not produced any documentary evidence to prove that, he was undergoing treatment for jaundice. Even assuming that, the averment of the Petitioner is true, he has not taken steps to examine the Country Doctor (நாட்டு மருத்துவர்) who treated him.

3. After passing of the exparte judgment and decree in O.S.No.28 of 2007, the Petitioner herein filed E.P.No.27 of 2008 for execution of Sale Deed and possession, and the Sale Deed was executed on 26.06.2012. The said Execution Petition is pending, and more than 12 years have gone by.

4. In a similar circumstance, in **C.M.P.Nos.21784 and 21785 of 2017** filed to condone the delay of **765 days in preferring the Appeal**, a Division Bench of this Court, **by an order dated 15.02.2018**, dismissed the said Petitions. For better appreciation, relevant paragraphs of the said decision are extracted hereunder:

“32. Ordinarily, the 'Condonation of Delay' is a matter of discretion to be exercised by the Concerned Court. Also, it is true that the length and breadth of delay is not relevant, but the acceptance of explanation can only be a relevant criterion for the concerned Court to deal with / condone the aspect of 'Condonation of Delay'. However, in this regard, the Petitioner / concerned litigant is to offer / ascribe sufficient reasons or project sufficient cause or good cause to condone the delay with a view to enable the Concerned Court to take a liberal view with a view to secure the ends of justice.

33. It is to be borne in mind that the term 'Sufficient Cause' under Section 5 of the Limitation Act, 1963 is an elastic one to enable the Court to apply the Law in a meaningful fashion, with a view to secure the ends of justice. However, 'Sufficient Cause' / 'Good Cause' is a condition precedent for exercise of discretion by the Concerned Court in regard to the 'Condonation of Delay'. If the delay in question is not either properly or satisfactorily and convincingly explained, the Court of Law cannot condone the delay on sympathetic ground alone, as per decision of Hon'ble supreme Court **BrijeshKumar V. State of Haryana reported in AIR 2014 SCC at Page 1612.**

36. The Petitioner has come with unclean hands and the Hon'ble Supreme Court in the decisions, which were cited by the Petitioner, had categorically held that the 'length of delay is not a matter, but the acceptance of explanation is only criteria and length of delay may be long, but if there is justification, long delay can also condoned'. If there is a short delay and the explanation is not satisfactory and if it is on account of smack or malafide or on account of dilatory strategy, this Court cannot help the persons, who come before this Court to condone the delay and protract the proceedings.”

5. In view of the above Division Bench ruling of this Court, and as the reasons assigned on behalf of the Petitioner herein are not satisfactory, this Court is of the view that, there is no need to interfere with the order passed by the Court below, and the same is confirmed. The Trial Court is expected to proceed with the Execution Petition on a day-to-day basis, without adjourning the matter beyond **15** working days at any point of time.

6. In fine, **this Civil Revision Petition stands dismissed with the above observation. No costs.**

13.03.2020

Index : Yes/No

Speaking order : Yes/No

(rst/aeb)

To:

The Subordinate Court, Bhavani.

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S.VAIDYANATHAN,J.

(rst/aeb)



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