



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.01.2020

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

C.R.P. (MD)No.1480 of 2012

and

M.P. (MD) .No.1 of 2012

Rajapandy (Died)

.. Revision Petitioner/Petitioner/
Petitioner

2.Janet

3.Kiruba Gnanaselvi

4.Jebasteen

5.Daniel

6.Blessing Ponnudurai

.. Petitioners

[Petitioners 2 to 6 brought as LR's of the
deceased sole petitioner vide order dated
10.02.2016 made in MP(MD).No.1 to 3 of
2015]

vs.

Arulpandy

.. Respondent/Respondent/Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair and decreetal order, dated 13.10.2011, passed in I.A.No.145 of 2008 in P.O.P.No.143 of 2008, on the file of the Principal District Judge, Thoothukudi.

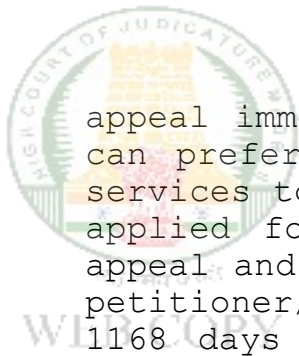
For Petitioners : Mr.S.Packiaraj

For Respondent : Mr.G.Rajaraman

ORDER

This Civil Revision Petition has been directed against the impugned fair and decreetal order, dated 13.10.2011, made in I.A.No.145 of 2008, in P.O.P.No.143 of 2008, on the file of the learned Principal District Judge, Thoothukudi. The said interlocutory application has been filed to condone the huge delay of 1168 days in filing the appeal in Pauper Original Petition.

2. The learned counsel for the petitioner/defendant submitted that the respondent/plaintiff had filed the suit for specific performance against the petitioner/defendant and got decree in his favour. The suit was decreed on 25.02.2005. The property involved in the suit is the residential house of the petitioner/defendant. The petitioner is an uneducated man and he had no sufficient means to meet the expenses in the appeal. Therefore, he did not prefer



appeal immediately. Only after some time, he came to know that he can prefer appeal as an indigent person and there are free legal services to help him in this aspect. Therefore, on 26.02.2008 he had applied for copy of the judgment and decree in order to prefer appeal and the same were obtained on 26.05.2008 and thereafter, the petitioner/defendant had preferred the appeal. In the meanwhile, 1168 days delay had occurred. However, the Court below, without considering his prayer in proper perspective has dismissed the petition. Hence, the order in I.A.No.145 of 2008, in P.O.P.No.143 of 2008, may be set aside and the delay may be condoned.

3. The learned counsel for the respondent/plaintiff submitted that he has received some details showing that the petitioner/defendant cannot be considered as a pauper, in view of the fact that the petitioner/defendant is the owner of two houses, and he has to take instructions. The learned counsel for the respondent/plaintiff further submitted that the decree was executed on 26.10.2007 by the Execution Court and there was no appeal filed against the said judgment and decree, dated 25.02.2005. It is highly inappropriate on the part of the defendant/petitioner to come to this Court with a huge delay of 1168 days in filing the appeal as against the judgment and decree, dated 25.02.2005. Even the reasons cited by the Execution Court also show that when the trial Court had decreed the suit for specific performance on 25.02.2005, no efforts were taken by the defendant/petitioner to prefer an appeal till 2008. Thereafter, the execution petition in E.P.No.28 of 2006 was filed and the same was also contested. Even in the counter filed before the execution Court, the petitioner did not say anything as to whether he wanted to prefer an appeal, as an indigent person. Therefore, his prayer to condone the delay of 1168 days also got refused. Hence, he prays for dismissal of this petition.

4. This Court has considered the rival submissions made on either side and perused the materials placed on record.

5. This Court does not find any merit whatsoever for the reasons that the suit for specific performance was decreed on 25.02.2005; thereafter, the defendant/petitioner has not preferred any appeal, as against the said judgment and decree, dated 25.02.2005; in the meanwhile, the execution petition was filed and it was allowed on 08.12.2006 and the Execution Court has also executed the sale deed in favour of the respondent/plaintiff on 26.10.2007. Therefore, it is not open to the petitioner to say that he wants to file an appeal as against the judgment and decree belatedly and the Court below has rightly come to the conclusion that when the decree was executed on 26.10.2007, without filing the appeal within the prescribed time, the interlocutory application, in I.A.No.145 of 2008 in P.O.P.No.143 of 2008, which is filed to condone the huge delay of 1168 days, cannot be maintained. Hence, this petition is liable to be dismissed.



6. Accordingly, this Civil Revision Petition stands dismissed.
No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

WEB COPY

/ /2020

Sub Assistant Registrar(CS)

PJL

To

1. The Principal District Judge,
Thoothukudi.

2. The Section Officer, (2 COPIES)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.A.EBENEZER, Advocate (SR-4096[F] dated 31/01/2020)

+1 CC to M/s.G.RAJARAMAN, Advocate (SR-4039[F] dated 31/01/2020)

C.R.P. (MD)No.1480 of 2012
30.01.2020

SMA/25/02/2020/3P/5C