



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.02.2020

Delivered on : 10.07.2020

CORAM

THE HONOURABLE MRS. JUSTICE R.THARANI

C.R.P.(MD)No.2286 of 2019

and

C.M.P.(MD)No.11946 of 2019

Puspaleela ... Petitioner / Petitioner / Defendant

Vs.

Kaleel ... Respondent / Respondent / Plaintiff

Prayer : This revision petition is filed under Section 115 of the Code of Civil Procedure, against the order and decretal order, dated 07.11.2019 of the learned Subordinate Judge, Kuzhithurai, made in I.A.No.1 of 2019 in O.S.No.177 of 2011 on his file.

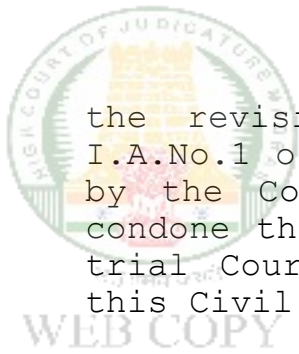
For Petitioner : Mr.K.N.Thambi

For Respondent : Mr.M.P.Senthil

ORDER

This Civil Revision Petition is filed against the order, dated 07.11.2019, made in I.A.No.1 of 2019 in O.S.No.177 of 2011 on the file of the learned Subordinate Judge, Kuzhithurai.

2. The revision petitioner herein is the defendant and the respondent herein is the plaintiff in the suit. The respondent herein / plaintiff filed a suit in O.S.No.177 of 2011 for a prayer of specific performance. An exparte decree was passed by the trial Court. Thereafter, the respondent / plaintiff filed an Execution Proceedings in E.P.No.51 of 2012, for execution of sale deed and another petition in E.A.No.205 of 2017, for delivery of possession. The revision petitioner / defendant filed a petition in E.A.No.346 of 2014 to set aside the exparte order passed in the E.P. The revision petitioner / defendant filed two petitions, one to condone the delay in setting aside the exparte decree, in C.F.No.280, dated 08.04.2014, the said petition was not numbered or was returned and



the revision petitioner / defendant filed another petition in I.A.No.1 of 2019, stating that the earlier petitions were misplaced by the Court and the petitioner is filing a fresh petition to condone the delay of 2616 days, that petition was dismissed by the trial Court with costs. Against which, the petitioner preferred this Civil Revision Petition.

3. Brief substance of the Petition in I.A.No.1 of 2019 is as follows:

Due to severe diabetes and other diseases, the petitioner was hospitalized and was unable to appear before the Court and hence, the suit was decreed exparte on 24.02.2012, thereafter, the petitioner filed a petition to condone the delay in filing a petition to set aside the exparte decree in CF No.280, there was a delay of 716 days, but, that petition was not numbered or returned E.A.No.205 of 2017 in E.P.No.51 of 2012 was posted for enquiry. The earlier petition was neither returned nor numbered and the petition was misplaced by the Court. Hence, the petitioner, filed a fresh petition and now, the delay was increased to 2616 days. Only on the strength of the exparte decree, the plaintiff filed an execution petition and the plaintiff is seeking delivery of possession and the agreement was not intended to be a sale agreement, the document was executed only as a security for a loan amount of Rs.5,00,000/-. The house of the petitioner is situated in the suit property, the property and the building were worth more than Rs.15,00,000/-, but, the loan amount was only Rs.5,00,000/-, the petitioner has no other property and prayed that the delay of 2616 days to be condoned.

4. Brief substance of the counter in I.A.No.1 of 2019 is as follows:

4.1. The averments contained in the affidavit are not correct. No medical certificate was produced alongwith the petition. The name of the hospital, nature of the disease, name of the Doctor, were not mentioned, in the affidavit.

4.2. A petition in C.F.No.280, to condone the delay of 716 days in filing the application to set aside exparte decree and another petition, to set aside the exparte order passed in the Execution Petition in E.A.No.346 of 2014 were filed and all the petitions were dismissed on 20.12.2016. The averment that the earlier petition was misplaced is wrong. If at all the petition was not numbered or returned, the defendant ought to have proceeded with the same petition and he has no right to file a fresh petition before the same Court. The number of days of delay is not correctly stated. The allegation that the intention is only to create a security for the loan is wrong. Only because the sale agreement was executed by the defendant, she remained exparte in the suit. The documents filed with the petitions are created for the purpose of this case. Each and every day delay was not properly explained.

<https://hccs.judges.gov.in> Services of e-filing and e-conveyance received the suit summons, but, failed to appear



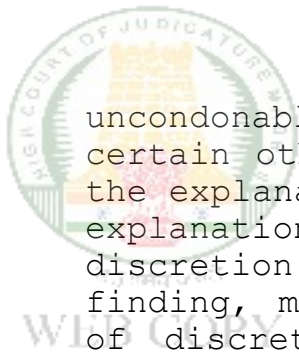
before the Court neither in person nor through her counsel. The defendant was set exparte and consequently, a decree was passed on 20.04.2012. After that the plaintiff filed E.P for execution of the sale deed, notice in E.P was received by the defendant on 24.02.2013, the defendant is well aware of the progress of the suit and this petition is an abuse of process of law.

5. The trial Court, after considering both sides, dismissed the I.A. petition with costs. Against which, the petitioner preferred this Civil Revision Petition.

6. On the side of the revision petitioner, it is stated that when the petitioner was hospitalized and was taking treatment for diabetes and other disease, the respondent obtained an exparte decree in the suit and also got an exparte order in E.P.No.51 of 2012. Thereafter, the petitioner filed an application in C.F.No.280, dated 08.04.2014, to condone the delay of 716 days in filing a petition to set aside the exparte decree in the suit along with three other petitions viz., (i) for condoning the delay in filing a petition to set aside the exparte order in E.P.No.15 of 2015; (ii) to set aside the the order; and (iii) for stay and the petitions were not numbered. An un-numbered petition in C.F.No.4287 of 2019 to number the said petition to condone the delay in filing a petition to set aside the exparte decree to the effect and the C.F. petition was closed by the trial Court and hence, the petitioner filed a fresh petition in I.A.No.1 of 2019 with a delay of 2616 days. The suit property is worth more than Rs.15,00,000/- (Rupees Fifteen Lakhs only), but, the same was attached only for a sum of Rs.5,00,000/- (Rupees Five Lakhs only).

7. On the side of the revision petitioner, it is stated that medical certificate was marked as Ex.P5 and that Exs.P4 and P5 clearly reveals that the petitioner is a chronic patient and she was hospitalized and was not able to appear before the Court. The petitioner filed number of petitions and the same is evident from the C.F. register and one such petition is for condoning the delay of 716 days, Ex.P2 proved that the petitioner had filed a petition in C.F.No.280 dated 08.04.2014, the dismissal of the petitioner's I.A. is erroneous and unsustainable, and an opportunity for the petitioner to putforth her case has to be given, the petitioner has already presented her written statement, which is marked as Ex.P3 and hence, if the exparte decree is set aside, the suit can be disposed of on merits without any delay. The decision of the Court below is unsustainable and is liable to be reversed on the ground that the petitioner's residential property is being snatched away for a very meagre amount and prayed the impugned decree to be set aside.

8. On the side of the petitioner, it is stated that length of delay is not at all matter, acceptability of the explanation is the



unconardonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. A judgment of the Hon'ble Supreme Court reported in **2002 (0) Supreme (SC) 277 [Ram Nath Sao @ Ram Nath Sahu Vs. Gobardhan Sao]** is cited.

9. On the side of the revision petitioner, it is stated that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the Court should lean against acceptance of the explanation. A judgment of this Court pronounced in **C.R.P.No.404 of 1999 [Amudha Vs. Arumughan]** is cited.

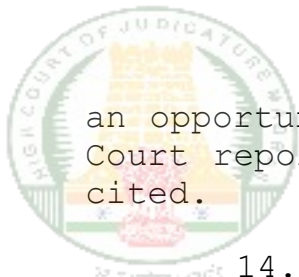
10. On the side of the petitioner, it is stated that sufficient cause for not making the Application within the period of limitation should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of the case. The words 'sufficient cause' in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the Appellants. A judgment of this Court reported in **2012 (1) CTC 801 (Mad.) [A.Seyed Hakim and others Vs. K.S.Maideen]** is cited.

11. On the side of the petitioner, it is stated that when a Court of Law deals with an Application to condone the delay filed under Section 5 of the Limitation Act, such application will have to be generally viewed in a liberal and lenient way to do substantial justice between the parties. If a meritorious matter is thrown out at the threshold or at an early stage the cause of justice will be certainly defeated. A judgment of this Court reported in **2016 (5) CTC 117 (Mad.) [Sarasu Vs. Ravi]** is cited.

12. On the side of the revision petitioner, it is stated that to condone the delay, the Court can look into the merits of the case. A judgment of this Court reported in **2007 (4) CTC 449 (Mad.) [Arun Alexander Lakshman Vs. A.P.Vedavalli]** is cited.

13. On the side of the revision petitioner, it is stated that though sufficient cause is not shown, a delay can be condoned and

<https://hcservices.ecourts.gov.in/hcservices/>



an opportunity to be given to contest the case. A judgment of this Court reported in **2003 (3) MLJ 369 [K.Thirumurthy Vs. Muthammal]** is cited.

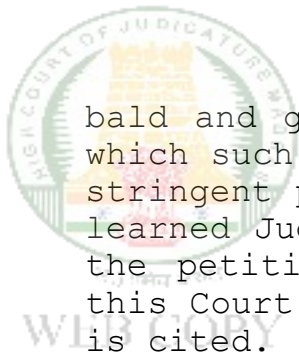
14. On the side of the revision petitioner, it is stated that when the delay is quite long, the petitioner cannot be punished with denial of further opportunity to prosecute the main case in which even, the petitioner's entire rights regarding the suit properties would become jeopardized. A judgment of this Court reported in **2001 (1) MLJ 231 [Devi Vs. Jayaraman]** is cited.

15. On the side of the respondent, it is stated that the suit is filed for specific performance and an exparte decree was passed and E.P.No.51 of 2012 was filed for execution of the sale deed. Even in the Execution Proceedings, the revision petitioner was set exparte and an exparte order was passed on 22.02.2017. A Petition in E.A.No.346 of 2014 was filed to condone the delay of 716 days in filing a set aside petition and the same was dismissed. Since there was no appeal, the order become final. The plaintiff filed E.A for delivery and the same is pending. The respondent filed a petition in C.R.P.No.184 of 2019, to expedite the trial. Only after obtaining the order from this Court, the revision petitioner has come forward with the petition in I.A.No.1 of 2019, to condone the delay of 2616 days, this petition is the third petition, there was a delay of 8 years, which was not at all explained by the revision petitioner.

16. On the side of the respondent, it is stated that the issue as to whether the petitioner had a good and arguable case in the main suit would be irrelevant in the case of a party, who sleeps over her rights on more than one occasion. The petitioner having received the notice in the Execution Proceedings, has chosen to be unresponsive. A judgment of this Court reported in **2019 (1) MWN (Civil) 876 [Leela Vs. V.R.Asha]** is cited.

17. On the side of the respondent, it is stated that the petitioner / defendant has filed the condone delay application only after the sale deed was executed by the Executing Court in favour of the respondent / plaintiff. The only reason given in the affidavit filed in support of the condone delay application is that her Advocate did not inform her about the stage of the suit. The delay is in-ordinate and no proper explanation has been given by the petitioner for condonation of such an inordinate delay. A judgment of this Court reported in **2019 (1) MWN 577 [M.S.Rathna Kumar Vs. Trilokchand]** is cited.

18. On the side of the respondent, it is stated that it is not possible to absolve the Courts from the blame for the tendency which is growing in the litigants to take exparte decrees very casually and at leisure make applications for setting aside them on



bald and general averments which are rarely scrutinized, with care which such applications and affidavits deserve, having regard to the stringent provision of Section 5 of the Limitation Act and that the learned Judge was clearly in error in condoning the delay in filing the petition for setting aside the exparte decree. A judgment of this Court reported in **2007 (2) CTC 643 [G.Jayaraman Vs. Devarajan]** is cited.

19. On the side of the respondent, it is stated that the prescribed period of limitation for an application under Order 9, Rule 13 of the Code of Civil Procedure, for setting aside an exparte decree is thirty days, but not for an application to set aside an exparte order, with the result that an application for setting aside the exparte order shall be governed by the residuary clause contained in Article 137 of the Limitation Act. A judgment of this Court reported in **2006(1) LW 790 [Rajaji Vs. R.Krishnaji]** is cited.

20. It is seen that the respondent as the plaintiff has filed the suit for specific performance and an exparte decree was passed on 25.04.2012. The respondent filed a petition in E.P.No.51 of 2012 for exeuction of the sale deed and the sale deed was executed by the Court on 22.02.2017. The respondent filed another petition in E.A.No.205 of 2017 for delivery of possession. This Court has passed an order, in C.R.P.No.184 of 2019, to dispose of the E.A. within a period of four months.

21. In the above circumstances, the revision petitioner filed a petition in I.A.No.1 of 2019, to condone the delay of 2616 days in filing the petition, to set aside the exparte decree. On the side of the revision petitioner, it is stated that the petitioner filed a similar petition, to condone the delay of 716 days in C.F.No.280, dated 08.04.2015 and that petition was not numbered and the same was misplaced by the Court. The contention of the respondent is that the C.F.No.280 was numbered as E.A.No.346 of 2015 and the same was dismissed on merits on 20.12.2016.

22. It is seen that the revision petitioner has filed a petition in I.A.No.1 of 2019 stating that C.F.No.280 was not numbered, whereas the same was numbered and was dismissed on merits. It is seen that the petitioner has suppressed the factum that her petition in C.R.No.280, dated 08.04.2014 was numbered as E.A. No.346 of 2014.

23. The reason stated in the I.A. petition was that the petitioner was hospitalized due to diabetes and other ailments. It is seen that Ex.P5, medical certificate is only for 5 days. Even, if the petitioner suffered from ailments, Ex.P5 is not sufficient enough to prove the delay of 2616 days. The petitioner has to explain the delay for each and every day delay. The suit was filed in the year 2011. The petitioner has not denied the receipt of



summons and notices. The revision petitioner kept quiet years together and she wake up from her slumber suddenly and has come forward with this petition.

24. In the above circumstances, there is nothing sufficient enough to interfere with the order passed by the trial Court, but, slight modification in the trial Court order in I.A.No.1 of 2019 is required.

25. Accordingly, the order passed in I.A.No.1 of 2019 in O.S.No.177 of 2011, is modified as "**dismissed without costs**".

26. With the above observation, this Civil Revision Petition is **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note: With the consent of both side counsels the order is pronounced in the Open Court through Video conference on this 10-th day of July 2020.

To

1.The Subordinate Judge,
Kuzhithurai.

2.The Section Officer, (2 - Copies)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery order
made in
C.R.P.(MD)No.2286 of 2019
10.07.2020

Ls
SDS (16.07.2020) 7P-4C