



C.R.P.(PD).No.282 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).No.282 of 2020

and

C.M.P.No.1443 of 2020

1.Parvathi

2.R.S.Murugan

.. Petitioners

Vs.

Chitra

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order in I.A.No.766 of 2018 in O.S.No.33 of 2015 on the file of the learned Sub-Court, Uthangarai, Krishnagiri District dated 22.11.2019.

For Petitioners : Mr.K.Thiruvengadam

For Respondent : No appearance



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ORDER

WEB COPY The defendants in O.S.No.23 of 2015 are on Revision. Challenge is to the order dismissing their application seeking condonation of delay of 563 days in filing an application to set aside the *ex parte* decree passed against them on 13.04.2017.

2. The suit is one for specific performance. The defendants appeared through counsel and filed written statement. Since they did not chose to cross-examine PW1, they were set *ex parte* and *ex pearte* decree came to be passed. It is therefore, not a case where, the defendants were not aware of the *ex parte* decree. They were represented by the counsel in the proceedings. Thereafter, the plaintiff had filed the execution petition in E.P.No.13 of 2018 seeking to execute the decree. The defendants were served in the execution petition and they did not appear. *Ex parte* order came to be passed in E.P.No.13 of 2018 on 13.07.2018. It is thereafter, the defendants have come up with this application seeking condonation of delay in filing an application to set aside the exparte decree on 26.11.2018.



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3. The trial Court held that the defendants have not shown sufficient cause for condonation of delay. It also pointed out that despite service of notice in the execution petition even prior to 13.07.2018, the defendants chose to file the application only in November 2018.

4. The claim of the defendants that there was a negotiated settlement of the dispute was stoutly denied. Once a claim that there was a settlement of the dispute is denied, it is for the defendants, who seek condonation of delay, to show that there was some attempt for a settlement by letting in some evidence. No evidence was let in. I am therefore unable to fault the trial Court for having dismissed the application.

5. No doubt, the Hon'ble Supreme Court and this Court have been repeatedly holding that the Court must be liberal in the matters of delay. But, being liberal should not amount to helping a recalcitrant litigant. If the defendants are shown to be negligent in prosecuting the suit, I do not think, the Court can lend a helping hand to such party. Negligence is writ large in the case on hand. The defendants were represented by a counsel till *ex*



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parte decree came to be passed on 13.04.2017. Therefore, they were aware of the *ex parte* decree, on the date, when it was passed. They were served with notice in the execution petition prior to July 2018, but, they did not chose to appear in the execution petition and *ex parte* order came to be passed on 13.07.2018.

6. The above facts would demonstrate the total negligence on the part of the defendant in prosecuting the suit. I therefore do not see any reason to interfere with the order of the trial Court. The Revision therefore fails and it is accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.

15.12.2021

dsa

Internet : Yes

Index : No

Speaking order

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To

The Sub-Judge, Uthangarai, Krishnagiri District.

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R.SUBRAMANIAN, J.

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