

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (NPD) Nos.606 and 607 of 2020

J.Banu

...

Petitioner
(in both CRPs)

versus

Md.Kalimullah

...

Respondent
(in both CRPs)

COMMON PRAYER: Civil Revision Petitions have been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order of the learned Principal Judge, City Civil Court, Chennai pertaining to the order dated 18.09.2019 passed in I.A.No.1 of 2019 in A.S.SR.Nos.3608 and 3607 of 2019.

For Petitioner
[in both CRPs]

: Mr.S.Babu
for Mr.P.V.Sudakar

For Respondent
[in both CRPs]

: M/s.Vasudha Thiyagarajan

COMMON ORDER

C.R.P.No.606 of 2020 is filed, challenging the order dated 18.09.2019 passed by the learned Principal Judge, City Civil Court, Chennai, in I.A.No.1 of 2019 in A.S.SR.No.3608 of 2019. C.R.P.No.607 of 2020 is filed, challenging the order dated 18.09.2019 passed by the learned Principal Judge, City Civil Court, Chennai, in I.A.No.1 of 2019 in A.S.SR.No.3607 of 2019. Both these applications had been filed under Section 5 of the Limitation Act to condone the delay of 505 days in preferring the appeal, against the common judgment delivered in O.S.No.6561 of 2011 and O.S.No.7519 of 2012.

2. The learned counsel for the petitioner submitted that, the petitioner filed the suit in O.S.No.6561 of 2011 seeking the relief of declaring the agreement of sale dated 12.04.2011 obtained by the defendant from the plaintiff of the schedule property and registered as Document No.1366 of 2011 on the file of the Sub-Registrar, Purasawalkam, as null and void and unenforcable; for a direction directing the defendant to return the 2 nos. of Rs.20/- blank stamp papers / blank papers, in which, the defendant

had obtained the signature of the plaintiff; and for injunction restraining the defendant, his men, agent or any other person claiming under him or through him in any manner misusing the 2 nos. blank stamp papers / blank papers in which the defendant had obtained the signature of the plaintiff.

3. O.S.No.7519 of 2012 was filed by the respondent against the petitioner seeking the relief of mandatory injunction, directing the defendant to obtain a valid conveyance in respect of the Plot bearing No.47, Door No.47-A, First Street, Karimedu Cynder, Vyasarpadi, Chennai, in respect of R.S.No.779/23 (Part) Block 32, Perambur Village, Purasawalkam Taluk, measuring an extent of 36 sq.metres from Tamil Nadu Slum Clearance Board within a time to be fixed by the Court or in default permit the plaintiff to obtain a sale in the name of the defendant; directing the defendant to specifically perform her part of the obligations and duties as per the registered agreement for sale dated 12.04.2011 after receiving balance sale consideration of Rs.3 lakhs.; execute the valid sale deed delivery of vacant possession of schedule A and B property and for permanent injunction.

4. Both the abovesaid suits have been tried jointly and after contest, the learned XV Assistant Judge, dismissed the suit in O.S.No.6561 of 2011 filed by the petitioner and decreed the suit in O.S.No.7519 of 2012 filed by the respondent. The petitioner ought to have filed appeal against the judgment and decree in both the suits in time. However, the petitioner was exploring the possibility of settlement for the reason that, there was no sale agreement, but it was only a mortgage. However, the mediators found that the attitude of the respondent not conducive for negotiation and therefore, settlement could not be reached. That apart, the petitioner's elder son became addicted to drugs towards the end of 2014 and he took steps for rehabilitating him. On account of these reasons, there is a delay of 505 days in filing the appeal. However, the trial Judge, without considering the genuine reasons for the delay caused in filing the appeal, dismissed both the applications. Against the said dismissal orders, these Civil Revision Petitions have been preferred.

5. The learned counsel for the petitioner reiterated the submissions made in the affidavits filed along with I.A.No.1 of 2019 in

A.S.SR.No.3608 of 2019 and I.A.No.1 of 2019 in A.S.SR.No.3608 of 2019 and submitted that, the petitioner was genuinely taking steps for settling the matter. His son was addicted to drugs and as a father he had to attend to rehabilitate him. Therefore, the delay in filing the appeal should be condoned and he should be given an opportunity to file the appeal.

6. In response, the learned counsel for the respondent submitted that, in pursuance of the decree passed, the respondent filed the Execution Petition and the Sale Deed was executed in favour of the respondent. Petitioner cannot seek to file the appeal and prejudice the respondent. It is submitted by the respondent that, the learned trial Judge considered the reasons stated by the petitioner and found that the delay in filing the appeal is not acceptable and dismissed the applications. Therefore, she prayed for confirming the order of the learned trial Judge and for dismissing these Civil Revision Petitions.

7. Considered the rival submissions and perused the records.

8. Admittedly, the suits in O.S.No.6561 of 2011 and O.S.No.7519 of 2012 had been hotly contested by the parties and judgment came to be delivered on 09.02.2017 in joint trial of these cases. The suit filed by the petitioner was dismissed and the suit filed by the respondent was decreed. Petitioner has not taken steps for filing the appeal against the judgment within the period prescribed. The reason for not filing the appeal in time, is that the petitioner was taking steps to settle the matter and his son was addicted to drugs. However, the perusal of the order of the learned trial Judge shows that, after the suit filed by the respondent was decreed, the respondent filed the Execution Petition on 20.10.2017. The respondent has also deposited the balance sale consideration with interest in the Court even before filing the Execution Petition. Petitioner entered appearance in the execution proceedings on 21.02.2018 and she got several adjournments for fling the counter. On 05.10.2018, an order was passed by the Executing Court for executing the Sale Deed. Subsequently, draft sale deed was filed and it is submitted by the learned counsel for the respondent that, the Sale Deed had been executed on 08.01.2019.

9. Petitioner's contention is that he has not filed appeal in time for the reason that he was making attempts to settle the disputes and his son was addicted to drugs. It was also submitted by the learned counsel for the petitioner that, his elder son set fire to his dwelling house and that was also one of the reason for the delay in filing the appeal. However, these reasons cannot be attributed for the delay, especially the delay of 505 days in filing the appeal. Even after entering appearance in the Execution Petition and taking several adjournments for filing counter, petitioner has not even filed counter. Now, Sale Deed had been executed in the Execution Petition by the X Assistant Judge. Because of the lackadaisical attitude of the petitioner and in not prosecuting the case diligently some benefits accrued to the respondent. It has to be borne in mind that the respondent had deposited the balance sale consideration even before the filing of the Execution Petition. The benefits accrued to the respondent cannot be reversed. The overall analysis of the materials placed before the Court shows that, the petitioner has not satisfactorily explained the delay of 505 days in filing the appeal.

10. In such view of the matter, this Court finds no reason to interfere with the orders of the learned Principal Judge, City Civil Court, Chennai and the orders dated 18.09.2019 made in I.A.No.1 of 2019 in A.S.SR.No.3608 of 2019 and I.A.No.1 of 2019 in A.S.SR.No.3607 of 2019 respectively, are hereby confirmed.

11. Resultantly, these Civil Revision Petitions are dismissed. However, there is no order as to costs.

22.10.2021

Speaking order / Non-speaking order
Index : Yes / No

sri

To

The Principal Judge,
City Civil Court, Chennai.

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G.CHANDRASEKHARAN, J.

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