

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.NPD.No.2833 of 2018

G.Jayalakshmi

... Petitioner

Vs.

V.Vinayagam

... Respondent

PRAYER: The Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the order dated 15.12.2017 made in I.A.No.410 of 2017 in I.A.No.175 of 2015 in I.A.No.249 of 2012 in O.S.No.49 of 2011 on the file of the learned Subordinate Judge at Vaniyambadi by allowing this Civil Revision Petition.

For Petitioner : Mr.R.Sugumaran

For Respondent : Mr.D.Thirumoorthy

ORDER

This Civil Revision Petition is directed as against the fair and decretal order passed in I.A.No.410 of 2017 in I.A.No.175 of 2015 in I.A.No.249 of 2012 in O.S.No.49 of 2011 dated 15.12.2017 on the file of the learned Subordinate Judge, Vaniyambadi, thereby dismissing the petition to restore the Interlocutory Application to condone the delay in filing the application

to set aside the ex-parte decree.

2. Heard the learned counsel for the petitioner. Though the respondent engaged Mr.D.Thirumoorthy as his counsel, the counsel for the respondents reported no instructions before this Court.

3. The petitioner is the defendant and the respondent is the plaintiff. The respondent filed a suit for specific performance, on the strength of the agreement for sale dated 13.05.2010. After filing the written statement, the petitioner failed to appear before the trial Court and as such, she was set ex-parte and the suit was decreed as ex-parte by the judgment and decree dated 30.11.2011. Immediately, the petitioner filed a petition to set aside the ex-parte decree dated 30.11.2011 along with written statement. Since the petitioner was residing at Hyderabad and she is having minor children, she could not able to pursue the said application, and therefore, she directed her brother Mr.Govindaraj to follow up the suit on her behalf. Unfortunately, her brother failed to look after the case and did not pursue the application to set aside the ex-parte decree. Therefore, again, the petitioner filed a petition to set aside the ex-parte decree with a delay of 492 days in I.A.No.175 of 2015. The said application also was dismissed for default on 26.04.2017.

Therefore, the petitioner filed the present application to restore the condone delay petition in I.A.No.175 of 2015. The said application was dismissed by the Court below for the reason that on the strength of the judgment and decree, the respondent filed an Execution Petition in E.P.No.40 of 2013. In the Execution proceedings, the Court below executed the sale deed on 11.02.2015. An execution petition has also been filed for delivery of possession. On the strength of the sale deed, the delivery of possession also recorded by the Execution Court and subsequently, the Execution Petition was closed.

4. Under these circumstances, no purpose would be served to restore the petition to condone the delay in filing the application to set aside the ex-parte decree. Therefore, the Court below rightly dismissed the petition and this Court finds no infirmity or illegality in the order passed by the Court below.

5. Accordingly, this Civil Revision Petition is dismissed. No costs.

15.06.2021

Speaking/Non-speaking order
Index : Yes/No

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G.K.ILANTHIRAIYAN,J.

Kv

To

1. The Subordinate Judge, Vaniyambadi.
2. The Section Officer,
V.R.Section, High Court of Madras.



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