



C.R.P.(NPD).No.2012 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).No.2012 of 2020

and

C.M.P.No.12472 of 2020

Chitra

.. Petitioner

Vs.

1.Parameswari

2.Subatra

3.Kamala

4.Rani

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, praying to set aside the fair and decreetal order passed in I.A.No.1 of 2020 in O.S.No.248 of 2017 dated 21.08.2020 on the file of the II Additional District Judge at Salem by allowing the present Civil Revision Petition.

For Petitioner : Mr.R.Jayaprakash



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ORDER

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Challenge in this Revision is to the order of the learned trial Judge made in I.A.No.1 of 2020 filed under Section 5 of the Limitation Act, by the 1st defendant in the suit, seeking to condone the delay of 299 days in filing a petition to set aside the exparte decree.

2. The petitioner filed the suit for specific performance of the agreement of sale dated 11.08.2014. According to the petitioner, the 1st defendant who is the power agent of 2nd defendant had agreed to convey the suit property for a consideration of Rs.16,40,800/- and received a sum of Rs.4,00,000/- towards advance. A period of 3 months was fixed for performance of the contract. Contending that the defendants have not come forward to execute the sale deed, the plaintiff sued for specific performance.

3. Since the defendants did not filed written statement, they were set exparte on 17.07.2018. On an application under Order IX Rule 7 of the Code of Civil Procedure, the exparte order was set aside and the written statement was filed on 10.09.2018. Thereafter, when the suit was posted for



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trial, the defendant's counsel reported no instructions and the 1st defendant was called absent and set exparte. The exparte decree came to be passed on 27.02.2019.

4. The plaintiff levied execution in E.P.No.168 of 2019. On receipt of notice in the execution petition, 1st defendant came up with the application seeking condonation of delay of 299 days in seeking to set aside the exparte decree. The 1st defendant would claim that though she was appearing regularly before the Court, her counsel informed her that she need not appear for every hearing and she would be informed as and when required. However, in January 2019 she was inflicted with jaundice and became bed ridden. Therefore, she could not contact the counsel and she did not receive any information from the counsel. Only after the receipt of notice in execution petition, she came to know that her counsel had reported no instructions. The application was opposed by the plaintiff claiming that the reasons were not *bona fide* and it is only an attempt to drag on the proceedings.



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5. The trial Court upon consideration of the reasons assigned in the affidavit filed in support of the application, concluded that the 1st defendant has made out a case for condonation of delay. The Court however imposed costs of Rs.2,000/- to be paid by the defendant as a condition for condoning the delay.

6. I have heard Mr.R.Jayaprakash, learned counsel appearing for the petitioner.

7. The trial Court has accepted the reasons assigned for the delay. The trial Court also taken into account the fact that the suit is one for specific performance and it has found that the petitioner has explained the delay. Though the fact that the 1st respondent was suffering from jaundice was denied, the trial Court has found that there was no negligence or indifference on the part of the 1st respondent in prosecuting the suit. Earlier when she was set exparte, immediately she came up with the application seeking to set aside the exparte order. She also filed written statement along with the said application. Subsequently, upon receipt of notice in execution



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petition, within 2 days she had filed the application seeking to condone the delay in filing the application to set aside the exparte decree. The trial Court had concluded that the delay is *bona fide* and the same has been properly explained.

8. I do not find any illegality or irregularity in the order of the trial Court. The trial Court had, after all, exercised its discretion. I do not think that the trial Court can be faulted for such exercise of discretion. Hence, this Civil Revision Petition fails and it is accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.

9. Considering the fact that the suit is one for specific performance of the year 2017, the trial Court is directed to dispose of the suit within a period of six (6) months from the date of receipt of either a certified copy or a web copy of this order.

24.11.2021

dsa
Index : No
Internet : Yes
Speaking order

R.SUBRAMANIAN, J.

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To

The III Additional District and Sessions Judge, Salem.

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