



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP NO.2775 OF 2021 AND
CMP.NO.20182 OF 2021

Elayapillai

... Petitioner/
Defendant

Vs

Annadurai

... Respondent/
Plaintiff

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India against the order made in I.A.No.452 of 2019 in O.S.No.109 of 2012 dated 26.08.2021 on the file of Principal District Munsif, Kallakuruchi whereby dismissing Application under Section 5 of Limitation Act.

For Petitioner : Ms.Kousalya
for M/s.Karan and Uday

O R D E R

Challenge in this revision is to the order of the trial Court dismissing an application for condonation of delay of 828 days in seeking to set aside the exparte decree in O.S.No.109 of 2012.

2.The petitioner sought for condonation of such inordinate delay claiming that an exparte decree came to be passed since PW2 was not cross examined by the defence counsel on 24.02.2017. According to the petitioner, after the exparte decree, he had gone to Bengaluru to work as a Coolie. He would further aver that he met his counsel only during July 2019 and enquired about the case. It was only then his counsel informed him about the exparte decree having been passed. Hence, the petitioner sought for condonation of delay.



3.This application was resisted on the ground that the petitioner has given false reasons. It was pointed out that the notice in the execution proceedings in E.P.No.52 of 2017 was served on the petitioner and since the petitioner did not appear on 07.10.2017 before the Executing Court, an exparte order came to be passed in the execution petition. The petitioner filed an application in E.A.No.269 of 2017 seeking to set aside the exparte order in the execution petition. Therefore, he was aware of the exparte decree even on 07.10.2017. Despite being aware of the exparte decree, the petitioner did not chose to seek the set aside the exparte decree. He had waited till the sale deed having been executed by the Court and thereafter, he has filed the instant application seeking condition of delay.

4.According to the respondent, the petitioner having come up with the false case is not entitled to the discretionary relief of condonation of delay. The learned Principal District Munsif, Kallakurichi heard the application agreed with the defence and dismissed the same. Hence, the revision.

5.Ms.Kousalya, learned counsel appearing for the petitioner would vehemently contend that the suit being one for specific performance, the Court must have given the petitioner an opportunity to defend the suit. No doubt, the Hon'ble Supreme Court and this Court have been consistent in adopting a liberal approach in cases of condonation of delay. But, such liberal approach cannot be extended to a person who comes to Court with the false case. The petitioner was aware of the exparte decree, he was served with notice in E.P.No.52 of 2017, he was set exparte in the execution proceedings, he filed an application in E.A.No.269 of 2017 seeking to set aside the exparte order in the E.P. and allowed it to be dismissed for default. Thereafter, almost after 2 years in July 2019. the petitioner has come up with this application completely suppressing the proceedings in execution. Hence, I do not see any justification for adopting a liberal approach in favour of the petitioner. Hence, the revision fails and it is accordingly dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs



To:

1. The Principal District Munsif,
Kallakuruchi.
2. The Section Officer,
VR Section,
Madras High Court, Chennai.

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NMI (CO)
PM/06/01/2022