



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2021

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(MD)No.425 of 2021

and

CMP(MD)No.2316 of 2021

M.Chellameena

... Petitioner

vs.

P.Subbiah

... Respondent

Petition filed under Section 115 of the Civil Procedure Code, to set aside the order passed in I.A.No.113 of 2020 in I.A.No.232 of 2016 in O.S.No.556 of 2014 dated 11.12.2020 on the file of Subordinate Judge, Melur.

For Petitioner : Mr.M.V.Venkatashesan

ORDER

This revision petition has been filed to set aside the order passed in I.A.No.113 of 2020 in I.A.No.232 of 2016 in O.S.No.556 of 2014 dated 11.12.2020 on the file of Subordinate Judge, Melur.

2.The respondent/plaintiff filed a suit for specific performance against the petitioner/defendant. The suit was decreed exparte. The petitioner filed a petition in I.A.No.232/2016 to condone the delay in filing the petition to set aside the exparte decree. The condone delay petition was dismissed for default. The petitioner filed the present petition in I.A.No.113/2020 to condone the delay of 1153 days in filing the restoration petition to restore I.A.No.232/2016 which was dismissed, against which, this revision petition is filed.

3.The learned counsel for the petitioner would state that the learned Judge failed to note that unfortunate circumstances forced the petitioner to leave the native which resulted in the above delay. He would further state that mere participation of the petitioner in execution proceedings would not debar her from seeking to set aside the exparte decree. Thus, he would pray for setting aside the impugned order.

4.Heard the learned counsel for the petitioner. In view of the order going to be passed, notice to the respondent is not



5.Perusal of record shows that the petitioner remained exparte and based on the exparte decree, the respondent/plaintiff filed E.P.No.58/2015 and EP notice was sent to the petitioner/defendant which was returned and paper publication was effected and she was set exparte and the EP was also ordered. Thereafter, the respondent has filed E.A.No.29/2015 for delivery of possession of the suit property, in which also, the petitioner remained exparte on 14.10.2015 and on the same day, exparte order was passed. The petitioner filed E.A.No.9/2017 to set aside the exparte order dated 14.10.2015 passed in E.A.No.29/2015 and also the exparte order passed in E.P. The petitioner allowed E.A.No.9/2017 for dismissal for default and thereafter filed E.A.No.1/2019 to restore E.A.No.9/2017. I.A.No.232/2016 was filed to condone the delay in filing the petition to set aside the exparte decree. Again, the petitioner allowed the said petition for dismissal for default. Thereafter, the petitioner has participated in the EP proceedings by filing petitions in 2017 and after allowing the same to be dismissed, again the petitioner came forward with the present petition in I.A.No.113/2020 to condone the delay of 1153 days in filing the restoration petition to restore the I.A.No.232/2016 which was dismissed for default. The said application was dismissed, against which, the present revision petition is filed.

6.It is very unfortunate that the petitioner was not diligent enough to proceed with the matter at any point of time either in E.P or in the suit and allowed the petitions to get dismissed and thereafter has filed the present petition with untenable reasons. The reasons assigned by the petitioner are not acceptable reasons. The learned Judge has rightly declined to condone the delay. Applying the principles laid down in the judgment in **Esha Bhattejee vs. Managing Committee of Raghunathpur** reported in **2013 (5) CTC 547**, I am not inclined to interfere with the order passed by the learned Judge.

7.Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



To சென்னை

The Subordinate Judge,
Melur.

Copy to
The Section Officer, VR Section-2 copies
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.M.V.VENKATASESHAN, Advocate (SR-10240[F] dated
11/03/2021)

ORDER MADE IN
CRP(MD)No.425 of 2021
DATED : 09.03.2021

KM(03.06.2021) 3P 5C