



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (NPD) (MD) No.1919 of 2014

and

M.P. (MD) No.1 of 2014

Mrs.Vedhavalli

.. Petitioner/ Appellant/
Petitioner

-vs-

Mrs.Mallika

.. Respondent/ Respondent/
Respondent

Prayer :- Petition filed under Section 115 of Code of Civil Procedure against the fair and decreetal order dated 24.06.2014 passed in I.A.No.90 of 2013 in U/F.A.S.No.----- C.F.R.No.3475 of 2013 on the file of the Subordinate Judge, Pattukkottai.

For Petitioner : Mr.P.Thirumahil Maran

For Respondent : Mr.M.R.S.Prabhu

ORDER

The defendant, in a suit in O.S.No.161 of 2011, whose application for condoning the delay of 45 days in filing the first appeal against the judgment and decree dated 29.04.2013 passed in O.S.No.161 of 2011 on the file of the District Munsif, Pattukkottai, was dismissed, is the revision petitioner before this Court.

2.The Appellate Court had dismissed the said application on the ground that the reasons given in the affidavit filed in support of the petition to condone the delay had not been substantiated and further, the same appear to be unbelievable. Aggrieved by the said order, the petitioner/defendant is before this Court.

3.The impugned application is filed to condone the delay of 45 days in filing the first appeal.



4.Learned counsel for the petitioner/defendant has stated that the petitioner had contracted jaundice and further, considering the age, she was unable to immediately contact her counsel to file the appeal. He would, therefore, submit that the delay be condoned, as the reasons given are sufficient.

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5.Learned counsel appearing for the respondent vehemently opposed the above stating that there was no proof given to show that the petitioner was under some incapacity.

6.Heard the learned counsel on both sides and perused the records.

7.The respondent herein had filed the suit in O.S.No.161 of 2011 on the file of the District Munsif, Pattukkottai for specific performance of an agreement of sale, dated 24.04.2010 said to have been executed by the petitioner herein in her favour. The suit has been decreed and the petitioner herein had contested the said suit. However, she could not file the appeal in time.

8.It is time and again held by the Apex Court as well as by this Court that a liberal view has to be taken while condoning the delay. In the instant case, the delay is only 45 days and the same has been adequately explained by the petitioner. That apart, the suit is for a specific performance of an agreement, which has been disputed by the petitioner herein. Therefore, in the interest of justice, the delay of 45 days is condoned. The learned Sub Judge, Pattukkottai, is directed to number the first appeal and dispose of the same within the period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

abr

Note:-In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

The Sub Judge, Pattukkottai.

<https://hcservices.ecourts.gov.in/hcservices/>



Copy to:

The Section Officer, V.R.Section,
Madurai Bench of Madras High Court, Madurai. (2 copies)

+1 CC to M/s.P.THIRUMAHILMARAN, Advocate (SR-36398[F] dated
29/11/2021)

C.R.P. (NPD) (MD) No.1919 of 2014
Dated: 26.11.2021

RD(17.12.2021) 3P 5C