



C.R.P.(NPD).No.124 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2022

C O R A M

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(NPD).No.124 of 2022

Krishnasamy

...Petitioner/Petitioner/Plaintiff

-V-

Chinnasamy

...Respondent/Respondent/Defendant

Prayer: Petition filed under Section 115 of the Code of Civil Procedure against the Fair and Decreetal order dated 07.10.2021 made in I.A.No.267 of 2019 in O.S.No.142 of 2021 on the file of the learned Additional District Munsif, Tittagudi, Cuddalore District.

For Petitioner : Mr.C. Prabakaran

ORDER

The plaintiff whose application for condoning the delay of 1507 days in filing the application to restore a suit dismissed for default is the revision petitioner before this Court. The plaintiff had filed the suit O.S.No.142 of 2012 on the file of the learned District Munsif, Tittagudi,



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for a declaration that the suit property belongs to him and for a consequential injunction, restraining the defendant, his men and agents, from interfering with the plaintiff's peaceful possession and enjoyment of the property. The suit was dismissed for default due to non-appearance of the plaintiff on 11.02.2015. Thereafter, the petitioner has filed I.A.No.267 of 2019 for condoning the delay of 1507 days in filing the restoration petition. In the affidavit filed in support of the said petition, the petitioner/plaintiff would submit that since he was traveling out of the State he was therefore unable to get in touch with the Counsel and consequently was unaware of the dismissal of the suit.

2.The learned counsel has also informed him that he had sent him a letter informing him the dismissal of the suit, however, the petitioner would submit that he had not received any letter from his Counsel and therefore, he was under the impression that the suit was still pending. Thereafter, he had obtained a change of Vakalat and nominated a new Counsel who has taken out the present petition, except for this, no other reasons have been given.



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3.The respondent had filed a counter *inter alia* contending that the allegation that the plaintiff had gone out of his native place is totally wrong and the reasons given were false. The learned Additional District Munsif (FAC), Tittagudi, on perusing the records had found that he had not filed any document to show that he was undergoing treatment elsewhere. The delay has not at all been explained. Since the plea was not supported by proof, the learned Judge had dismissed the said application.

4.Heard Ms.AL. Ganthimathi, learned counsel appearing for the petitioner and perused the papers. She would contend that the suit is one for Specific Performance and that the Sale Deed is yet to be executed. She fairly conceded that the reason given is wanting, however, the only plea was that the suit is for Specific Performance and therefore, chance has been given.

5.Admittedly, the suit is one for specific performance. The revision petitioner/defendant has on his own submission admitted that he had got



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summons in the year 2015 itself in the month of January 2015. From the said date till the filing of this petition on 29.04.2019, no steps had been taken to verify the status of the case and to file the Written Statement, etc., In the affidavit filed in support of the impugned petition dated 29.04.2019 not only is there reluctance to proceed with the suit manifest but it also demonstrates that this reluctance has been carried over to the execution proceedings. The revision petitioner has not given any valid reason for the inordinate delay. In these circumstance, this Court is not inclined to disagree with the learned Additional District Munsif, Tittagudi.

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

08.02.2022

Internet : Yes/No
Index : Yes/No
Speaking / Non-Speaking

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To

The Additional District Munsif,
Tittagudi,
Cuddalore District.



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P.T. ASHA, J.

mps

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