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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.NO.408 OF 2021

AND

CMP.NO.3466 OF 2021

Manjula

..Petitioner

Vs.

1.Lambert Sandou

Rep by Power Agent Nallam Venkataramaya

2.Ferdinand Sandou

3.Benjamin Sandou

4.Meenambal

5.Sylvia

6.Sadjan Ashok Radjkumar Sandou

..Respondents

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 04.12.2020 passed by the learned Principal Sub-Judge at Puducherry in IA.No.426 of 2018 in OS.No.171 of 1997.

For Petitioner

: Mr.T.Sai Krishnan

For Respondents

: Mr.Babu Rangasamy for R1

Mr.Rajagopal for R2 & R3

Mr.L.Sai Rajahandran for R6

O R D E R

Aggrieved by the order of the Trial Court, dismissing an application, seeking condonation of delay of 885 days in seeking



to set aside the exparte preliminary decree passed on 03.02.2016 in OS.No.171 of 1997, the petitioner is on revision.

2.The suit was laid by the 1st respondent herein, seeking to declare the settlement deed dated 05.09.1979 executed by Francoise Saint Jacque to and in favour of the 1st defendant Prosper Marie Joseph Sandou as null and void, to declare the acceptance deed dated 10.06.1982 as null and void, to declare the sale deed dated 22.09.2006 executed by the 4th and 5th defendants in favour of the 7th defendant as null and void and for the partition of the suit property. Originally, the suit was filed against the defendants 1 to 6. The petitioner herein claim that she had purchased the property pending suit without knowledge of the suit from the settlee under the settlement deed, which is impugned in the suit and impleaded herself in the suit as the 7th defendant. Since the 7th defendant did not chose to contest the suit, an exparte preliminary decree came to be passed on 03.02.2016. The petitioner filed an application to condone the delay of 885 days in seeking to set aside the exparte decree.

3.According to her, she was impleaded in the suit on 01.07.2014 and she was directed to file a written statement. Though she had engaged a counsel, she later came to know that her counsel had almost ceased practice in Puducherry and concentrating practice at Chennai and therefore, the counsel did not inform her about the exparte decree. It is also stated that she had to go abroad to take care of her children, who were staying abroad. These factors contributed to delay and she came to know about the exparte decree only when the Advocate Commissioner appointed visited the suit property.

4.On the above reasons, the petitioner sought for condonation of delay. The written statement was also filed along with the application. This was opposed by the plaintiff / 1st respondent contending that the reasons assigned do not constitute sufficient cause for condonation of delay. According to the 1st respondent, the petitioner has not bothered to seek details of case from the counsel and she cannot blame the counsel for her default. The learned Trial Judge, on a microscopic examination of the reasons assigned for the delay held that everyday's delay has not been satisfactorily explained. On the said conclusion, the learned Trial Judge, dismissed the application.

5.Mr.T.Sai Krishnan, learned counsel appearing for the petitioner would contend that the Trial Court erred in rejecting the reasons assigned. The fact that the petitioner was impleaded only in the year 2014 should have been taken note of by the Trial court. The failure on the part of the counsel



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to file written statement cannot be attributed to the petitioner so as to deny her right to contest the suit on merits. Mr.T.Sai Krishnan would also submit that the suit itself, on the face of it, is barred by limitation, since the plaintiff is seeking a declaration regarding the settlement deed executed way back in 1979. I do not propose to go into the merits of the claims. It is also seen from the records that the petitioner has mortgaged the property with Banks and secured financial assistance. A perusal of the plaint and the written statement filed by the petitioner would show that there is a very serious dispute that has to be decided in the suit.

6.This Court and the Hon'ble Supreme Court have repeatedly held that the Court should be liberal in condonation of delay unless it is shown that the delay is actuated by malafides. In Collector, Land Acquisition Anantnag and Another Vs. Katiji and Others reported 1987 (2) SCC 107, the Hon'ble Supreme Court has pointed out that no person stands to gain by the delay. Unless it is shown that the delay is malafide Courts must adopt a liberal approach in condonation of delay for a person has no vested right in injustice. In University of Delhi Vs. Union of India and Others reported in 2019 SCC Online SC 1634, the Hon'ble Supreme Court while approving the observations in Collector, Land Acquisition Anantnag and Another Vs. Katiji and others held that a liberal approach is the rule, and a rejection of application for condonation of delay should be an exception. The Court must so far as practicable attempt to resolve the issues on merits than to uphold a exparte decree.

7.It is seen from the records that the petitioner was impleaded in the suit only in July, 2014, an exparte decree came to be passed in February, 2016. The reasons assigned by the petitioner, in my opinion, are plausible and it does not smack of malafides. I am therefore, of the opinion that the Trial Court was not right in dismissing the application for condonation of delay. It is also stated that the Trial Court has allowed the application of the petitioner to set aside the exparte order in the final decree proceedings. If that be so, I do not think, the Trial Court was justified in dismissing the application to condone the delay in seeking to set aside the exparte decree. However, the respondent should also be compensated for the delay.

8.Hence, this civil revision petition is allowed, the order of the Trial Court is set aside, the delay of 885 days in seeking to set aside the exparte decree is condoned, on condition, the petitioner pays costs of Rs.25,000/- to the counsel appearing for the 1st respondent herein on or before 28.02.2022. Failing which, the revision will stand dismissed. The Trial Court shall number the application to have the exparte



decree set aside, on production of receipt for payment of Rs.25,000/-. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kkn

To-

The Principal Subordinate Judge,
Principal Sub-Court,
Puducherry.

+1cc to Mr.T.Sai Krishnan, Advocate, S.R.No.6667

C.R.P.No.408 of 2021
and
CMP.No.3466 of 2021

MT (CO)
PM/22/02/2022