



CRP No.1571 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2022

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.1571 of 2019
and C.M.P.No.10266 of 2019

Rani

..Petitioner

Vs.

Sekar

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 3.11.2018 made in I.A.No.782 of 2013 in O.S.No.117 of 2011 on the file of the Principal Subordinate Judge, Villupuram.

For Petitioner : Mr.P.G.Thiyagu

For Respondent : Mr.N.Suresh

ORDER

The civil revision petition has been filed as against the fair and decreetal order dated 03.11.2018 passed in I.A.No.782 of 2013 in O.S.No.117 of 2011 on the file of the Principal Subordinate Judge, Villupuram, thereby dismissing the petitioner filed to condone the delay of 617 days to set aside the exparte decree.



2. The respondent filed a suit for specific performance on the strength of an agreement for sale dated 27.11.2009. On receipt of the notice in the suit, the petitioner failed to appear before the trial Court and as such, he was set exparte and an exparte decree was passed in 24.11.2011. On the strength of the decree, the respondent filed an Execution Petition in E.P.No.97 of 2012. In the said Execution Petition, the petitioner received notice and thereafter, filed a petition to set aside the exparte decree passed in the suit and the said petition was dismissed. Aggrieved by the same, the present civil revision petition.

3. The learned counsel for the petitioner would submit that the petitioner filed an affidavit and she was examined as PW1. She categorically stated that she was suffering from Typhoid and subsequently, by Jaundice and for her illness, she had gone to so many hospitals and had been taking continuous treatment. Thereafter, she went to Vaniyampadi for taking treatment for Jaundice and went to Chennai for taking treatment for Typhoid. Therefore, there is a delay of 617 days. Her evidence was also corroborated by the evidence of PW2, who accommodated PW1. Even then the trial Court dismissed the said petition for the reason that the petitioner failed to state valid reasons for the delay of 617 days. The petitioner also failed to produce any medical records to substantiate the said contentions.



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4. The learned counsel for the petitioner would further submit that, according to the petitioner, she never executed any agreement for sale and she denied the very execution of agreement for sale. According to her, she executed a mortgage deed in favour of a third person. In view of the settlement of the mortgage amount, she borrowed loan from the respondent and settled the said mortgage amount. While she borrowed the loan, the respondent also obtained signatures from the petitioner and created an agreement for sale as if the petitioner agreed to sell the property. Except the suit schedule property, no other property is owned by the petitioner and it is a dwelling house and she absolutely never intended to sell the property.

5. Per contra, the learned counsel for the respondent would submit that though the petitioner had examined PWs 1 and 2, she failed to explain the delay of 617 days in filing the condone delay petition to set aside the exparte decree. Even after receipt of notice in the execution petition, the petitioner failed to file a petition to set aside the exparte decree within a reasonable time. Only after one and half months from the date of issuance of notice, she filed a petition to condone the delay. Therefore, the petitioner failed to explain the delay with reason caused and as such, the Court below rightly dismissed the petition.



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6. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

7. The case of the respondent is that the suit property was purchased by the petitioner from one Settu, Krishnan and Kumar under a registered sale deed dated 25.10.2000. On 14.04.2004, the petitioner executed a mortgage deed in favour of one A.K.Anandhan for a sum of Rs.65,000/- and she executed an agreement for sale on 17.11.2009. As per the agreement, within a period of one and half years from the date of agreement, the respondent has to settle the balance sale consideration and the petitioner has to execute sale deed in favour of the respondent. However, the petitioner failed to execute the sale deed on receipt of the balance sale consideration and as such, the respondent caused legal notice and filed a suit. The petitioner also failed to file written statement at the time of filing the petition to set aside the exparte decree and subsequently, she denied the execution of agreement for sale dated 27.11.2009.

8. The case of the petitioner is that at the time of settling the amount which was borrowed from one A.K.Anandhan, on compulsion, she executed the agreement for sale and thereafter, continuously paid the interest. When she was



about to settle the entire amount which was borrowed from the respondent, she suffered with Typhoid and Jaundice. Therefore, she could not settle the amount.

Utilizing the said circumstances, the respondent filed a suit for specific performance. Therefore, she has valid reason to defend the suit filed by the respondent. In the meanwhile, she was set exparte and exparte decree was passed. On the strength of the exparte decree, the respondent filed an execution petition. In the execution petition, the petitioner received notice and thereafter filed a petition to set aside the exparte decree. In support of her contention, she examined PW1 and 2. Though, the petitioner failed to produce any document to show that she had taken treatment, her evidence was corroborated by the evidence of PW2 in respect of her illness. That apart, the execution petition filed by the respondent in E.P.No.97 of 2012 is also closed. Subsequently, no execution petition was filed by the respondent. Therefore, the petitioner may be given one more opportunity to defend the suit filed by the respondent on merits and in accordance with law. However, admittedly, the petitioner borrowed a sum of Rs.2,00,000/- from the respondent and thereafter, failed to return the same.

9. Considering the above facts and circumstances, the civil revision petition stands allowed and the order dated 3.11.2018 passed in I.A.No.782 of



CRP No.1571 of 2019

2013 in O.S.No.117 of 2011 on the file of the Principal Subordinate Judge, Villupuram, is hereby set aside on condition that the petitioner shall deposit a sum of Rs.2,00,000/- to the credit of O.S.No.117 of 2011, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the trial Court is directed to set aside the exparte decree and proceed with the trial. Further, the trial Court is directed to complete the trial within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

09.12.2022

Speaking/Non-speaking order
Index : Yes/No
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To

The Principal Subordinate Judge,
Villupuram.



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CRP No.1571 of 2019

G.K.ILANTHIRAIYAN.J.

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CRP.No.1571 of 2019

09.12.2022