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C.R.P.(NPD) Nos.1219 & 1221 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2022

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

C.R.P.(NPD)Nos.1219 & 1221 of 2022

and

CMP.Nos.6562 & 6566 of 2022

1. Seetha @ Kalaivani

2. Murali

...

Petitioners in both CRPs

Vs.

Sakunthala

...

Respondent in both CRPs

PRAYER in CRP(NPD).No. 1219/2022: Civil Revision Petition filed under Section 115 of Code of Civil Procedure to call for the records and set aside the order dated 29.10.2021 passed in E.P.No.463 of 2018 in OS.NO.34 of 2015 by the learned II Additional District Judge, Puducherry.

PRAYER in CRP(NPD).No. 1221/2022: Civil Revision Petition filed under Article 227 of Constitution of India, to call for the records and set aside the order dated 07.09.2021 passed in I.A.No.1092 of 2019 in OS.No.34 of 2015 by the learned II Additional District Judge, Puducherry.

In both cases:

For Petitioners : Mr.V.S.Senthilkumar

For Respondent : No Appearance



COMMON ORDER

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These Civil Revision Petitions have been preferred to call for the records and set aside the orders dated 29.10.2021 passed by the learned II Additional District Judge, Puducherry in E.P.No.463 of 2018 in OS.No.34 of 2015 and the order dated 07.09.2021 passed in I.A.No.1092 of 2019 in OS.No.34 of 2015, respectively.

2. The revision petitioners are the defendants against whom the respondent/plaintiff has filed a suit for declaration and recovery of possession along with the relief of permanent injunction. Since the defendants remained *ex-parte*, an *ex-parte* order has also been passed. In pursuance of the decree, the respondent decree holder has also filed execution proceedings in EP.No.463/2018. Thereafter the revision petitioner has filed a petition in I.A.No.1092/2019 in OS.No.34/2015 to condone the delay of 554 days in setting aside the *ex-parte* decree dated 14.08.2017. He also filed an another petition to set aside the order of '*delivery*', passed by the executing Court; both the petitions were dismissed by the respective courts. Aggrieved over that these civil revision petitions were filed.



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3. Heard, Mr. V.S.Senthilkumar, learned counsel for the petitioners and perused the materials available on record.

4. The learned counsel for the petitioners submitted that the revision petitioner came to know about the *ex parte* decree only after receiving the notice in the execution proceedings. In fact they have filed a Writ Petition in WP.No.25253/2014 in respect of the same suit property; the said Writ Petition was pending, the revision petitioner presumed that no further proceedings will be taken in the suit and hence they omitted to make their appearance; later when they got the notice in the execution proceedings they came to know about the *ex-parte* decree.

5. Despite Notice has been served on the respondent, he chooses not to appear before this Court.

6. The records would show that the petitioners had made his appearance in the suit proceedings also. In fact he has filed his counter in the Interlocutory Application in I.A.No.160/2015. The suit proceedings were



filed subsequent to the Writ proceedings. When the petitioner was vigilant enough to file a counter in the interlocutory application, it is strange to believe that he omitted to file the written statement taking into consideration of the pending writ petition.

7. The one and only reason stated by the revision petitioner to condone the delay is that his counsel at Pondicherry did not inform him about the status of the case and due to non communication, he was not able to pursue the matter further. It is believable if the inability was for a few days or month. Despite knowing about the pending suit, the petitioner had chosen to remain silent for nearly two years. Even the execution proceedings have been initiated before three years and he got the notice on 02.11.2018.

8. It is seen that the learned trial Judge has passed the decree by appreciating the merits of the materials produced before him. Even though the petitioner remained *ex-parte*, the judgment is a speaking order by considering the merits of the case. Under such circumstances the petitioner ought to have filed an Appeal, instead of filing this petition to condone the delay in filing a petition to setting aside *ex-parte* decree. The reasons stated



by the petitioner is not satisfactory to condone the huge delay of 554 days.

The learned trial Judge has rightly dealt the issue hence I find no reason for interference.

In the result, the present Civil Revision Petitions stand **dismissed** and the orders of the learned II Additional District Judge, Puducherry order dated 29.10.2021 passed in E.P.No.463 of 2018 in OS.No.34 of 2015 and the order dated 07.09.2021 passed in I.A.No.1092 of 2019 in OS.No.34 of 2015, respectively are confirmed. No costs. Consequently connected miscellaneous petitions are also closed.

14.07.2022

Index : Yes/No
Speaking Order : Yes / No
jrs



C.R.P.(NPD) Nos.1219 & 1221 of 20__

R.N.MANJULA, J.,

jrs

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- To
1. The II Additional District Judge, Puducherry
 2. The Section Officer,
VR Section, Madras High Court,
Chennai.

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and
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14.07.2022