



C.M.P.No.8995 of 2019
in A.S.No.144 of 1984

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 02.11.2022

Orders Pronounced on : **04.11.2022**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.M.P.No.8995 of 2019
in A.S.No.144 of 1984

T.P.Subhadra

.. Petitioner

Versus

A.M.Ponmalai (Died)

1. P.Visalakshi
2. P.Ravi
3. P.Sumathi
4. P.Usha
5. P.Latha
6. P.Priya

.. Respondents

* Cause title accepted made in C.M.P.No.34 of 2014
in A.S.No.144 of 1984 vide Court order,
dated 14.12.2018

Prayer : Civil Miscellaneous Petition filed under Section 5 of Limitation Act to condone delay of 4670 days in filing the restore petition in A.S.No.144 of 1984 which was dismissed for default on 21.02.2001.



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For Petitioner : Mr.C.Prakasam

For Respondents : Mr.D.Chandrasekar, for R2

R1- Died

Notice served for RR-3 and 6

R4- No such address

R5 - Insufficient address

ORDER

This application is filed to condone the delay of 4670 days in filing the application to restore A.S.No.144 of 1984 which was dismissed for default on 21.02.2001.

2. The brief facts leading to this application are, that the appellant/defendant is said to have entered into an agreement of sale, dated 15.07.1981, agreeing to sell the suit property for a total sale consideration of Rs.40,000/- and after receiving an advance of Rs.25,000/-, even though the respondent/plaintiff was ready and willing to pay the balance Rs.15,000/- within 90 days from the agreement, the appellant/defendant did not come forward to execute the sale deed. Therefore, the respondent/plaintiff issued a pre-suit notice, dated 12.11.1981 and thereafter, the suit in O.S.No.715 of 1981 was filed for specific performance of the agreement.



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3. The suit was resisted by the appellant/defendant stating that her husband was working as a Gold Smith under the respondent/plaintiff and while so, he had to pay a sum of Rs.10,000/- to the respondent/plaintiff and therefore, the respondent/plaintiff, threatening criminal action, had obtained signatures in document typed in Tamil and the appellant/defendant did not know Tamil and for the sake of her husband, signed the above document thinking that it was a guarantee document. Therefore, the suit for specific performance has to be dismissed.

4. On the pleadings, the Trial Court framed seven issues and after considering whether the suit agreement is genuine, whether the suit agreement has been obtained by threat and fraud and whether the plaintiff was ready and willing to perform his part of contract, answered all the issues in favour of the respondent/plaintiff. The Trial Court had, in detail, appraised the evidence and reasoned that if only such a fabrication of sale agreement had taken place, the conduct of appellant/defendant and her husband was not natural as she did not do anything including lodging of any Police complaint etc. The Trial Court further found that the appellant/defendant did not adduce any evidence to prove her case that the



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defendant's husband was due a sum of Rs.10,000/- to the respondent/plaintiff. After considering all the above, the time-line and the steps taken by the respondent/plaintiff, the Trial Court found that the respondent/plaintiff was always ready and willing to perform his part of the contract and ordered specific performance.

5. The present Appeal Suit in A.S.No.144 of 1984 was filed against the said judgment and decree of the Trial Court. It may be seen that the Appeal Suit was pending for long from the year 1984 and when the matter came up for hearing on repeated occasions, there was no representation on behalf of the appellant and finally on 20.02.2001, this Court had dismissed the Appeal Suit for default.

6. Thereafter, it is the contention of the petitioner/appellant that the learned Counsel who was on record had since stopped attending the Court in view of his ill-health and the said fact was not informed to the petitioner/appellant and she came to know only after she received notice in the Execution Petition on 25.03.2011. Thereafter only, she was able to get



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copy of the order and the case bundles and the present petition was filed on 03.12.2013.

7. *Mr.C.Prakasam*, the learned Counsel appearing on behalf of the petitioner/appellant, would submit that the appellant was very old and with very great difficulty, she could obtain the details and filed the present application. Therefore, even though the delay is huge, since sufficient reasons have been given, the delay has to be condoned and the Appeal Suit has to be restored to file.

8. The reasons mentioned in the affidavit filed in support of the application to condone such a huge delay of 4670 days are not at all satisfactory. It has been time and again held by this Court that it is the duty of the litigant to follow up his/her litigation and when the petitioner/appellant has filed an Appeal in the year 1984, the very fact that she did not even enquire her Counsel up to the year 2011 as to what happened to the Appeal Suit, is lapse on her part and therefore, non-communication from the learned Counsel is not at all an acceptable reason. Secondly, it can be seen that even though the petitioner/appellant states that



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she came to know only after receipt of notice in the Execution Petition and the said notice is admittedly received on 25.03.2011. Even thereafter, more than two years time has been taken and only on 03.12.2013, the present application is filed. Therefore, there is no satisfactory or sufficient reason to condone the delay, even taking a lenient view in this matter. Thus, there are no merits in this application to condone the delay in filing the application to restore the Appeal Suit in A.S.No.144 of 1984.

9. In the result, this Civil Miscellaneous Petition stands dismissed.

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Index : yes/no
Speaking order/Non-speaking order
grs



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D.BHARATHA CHAKRAVARTHY, J.,

grs

Pre-Delivery Order in

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