



C.R.P.(NPD).No.1675 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.06.2022

CORAM

THE HONOURABLE Mrs. JUSTICE **S.KANNAMMAL**

Civil Revision Petition No.1675 of 2020

Rajendran

.. Petitioner

Versus

1.Kumaraswamy  
Ramasamy Gounder (died)  
2.Vellingiri  
3.Devayal  
4.Saraswathi

.. Respondents

Civil Revision Petition is filed against the fair and decreetal order passed in I.A.No.235 of 2018 in unnumbered A.S. in C.F.R.No.10483 of 2018 by the learned Principal District Judge, Erode dated 03.03.2020.

For Petitioner .. Mr.S.Parthasarathy  
For R1 .. Mr.R.Shase

**ORDER**

The present Civil Revision Petition has been filed by the petitioner, who claims to have purchased the property from the judgment debtor in O.S.No.61 of 2000 on the file of Subordinate Court, Gobichetti Palayam.



C.R.P.(NPD).No.1675 of 2020

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2. The suit in O.S.No.61 of 2000 was filed by Kumaraswamy, the 1<sup>st</sup> respondent herein against the respondents 2 and 3 herein for recovery of money. Even during the pendency of the suit, he has filed an application to attach the properties of the defendants, before judgment. Subsequently, the suit itself was decreed in favour of the plaintiff/1<sup>st</sup> respondent herein. The plaintiff has also filed execution petition to bring the property for sale to realize the fruits of the decree. Accordingly, the property was brought into Court auction in which the plaintiff/first respondent herein himself has purchased the property. A sale deed also appears to have been executed in favour of the plaintiff by the learned Subordinate Court, Gobichetti Palayam.

3. At this stage, the appellant herein claiming himself to have purchased the property by a sale deed dated 10.01.2000 from the defendants in the suit, has filed an application to raise the order of attachment and it was dismissed on 21.08.2006. It is stated that the appellant had instructed his counsel to prefer an appeal and he was under the bonafide impression that an appeal in fact was filed before the appellate Court. However, only on 22.11.2018 i.e., nearly after 14 years



C.R.P.(NPD).No.1675 of 2020

WEB COPY

when the plaintiff came to the suit property for taking measurement he realised his folly and filed the application in I.A.No.235 of 2018 in unnumbered A.S. in C.F.R.No.10483 of 2018 seeking to condone the delay of 4457 days in filing the appeal.

4. On notice, the plaintiff resisted the application for condonation of the delay by filing a counter. According to the plaintiff, on 14.12.2008, the property in question was delivered to him and the same was also recorded by the learned Subordinate Judge, Sathiyamangalam in E.A.No.6 of 2012. When the entire execution proceedings have come to an end, the present application has been filed with a delay of 4403 days. It is also stated that the delay was deliberate, wilful and intentional and it should not be condoned.

5. The learned Principal District Judge, on consideration of the arguments put forth by the counsel for both sides and also the oral evidence of the appellant herein as P.W.1 and the plaintiff, as R.W.1, Ex.R1-certified copy of the possession certificate issued to the plaintiff, has concluded that the appellant herein has not approached the Court



C.R.P.(NPD).No.1675 of 2020

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with clean hands. The delay of 4403 days is wilful and deliberate and there is no sufficient cause shown by the appellant for condonation of such inordinate delay. Accordingly, the learned Principal District Judge, Erode dismissed the application filed by the appellant herein.

6. Heard the learned counsel for both sides and perused the materials available on record.

7. This is a case where the appellant has filed the instant application for condonation of delay of 4403 days in filing the appeal against the execution proceedings. The appellant claims himself to have purchased a portion of the property, which is the subject matter of execution proceedings, by a sale deed dated 10.01.2000. According to him, after he purchased the property on 19.04.2000, the property was subjected to attachment. As regards the knowledge with respect to the present suit as well as the execution proceedings initiated by the plaintiff. It is stated that the appellant has filed an application along with others for lifting the attachment of the property. However, it was dismissed by the trial Court on 21.08.2006. The appellant very callously has stated that



C.R.P.(NPD).No.1675 of 2020

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as against the order dated 21.08.2006, he has instructed his counsel to file an appeal and he was under the impression that an appeal was filed by his counsel. This piece of averment of the appellant shows that he is not diligent enough in perusing the appeal remedy.

8. First of all, an appeal itself has not been filed by the appellant. If really an appeal was filed by the counsel, he should have signed the vakalat and other appeal memorandum and followed it up with his counsel. Even without doing so, a casual averment was made by the appellant as if he was under the impression that an appeal was filed. The appellant also by virtue of such averment indirectly blamed a counsel for not having filed an appeal. In fact, the appellant himself has stated that several persons, who are affected by the order of attachment, have approached the counsel and those persons have filed an appeal. In fact, one Palanisami and another have filed the appeals through their counsel. However, the appellant and one Subramani did not prefer an appeal. If it is so, the appellant himself has to be blamed. The appellant has not taken any efforts to ensure that whether an appeal has been filed in the year 2006 or not. The appellant has gone into deep slumber and suddenly



C.R.P.(NPD).No.1675 of 2020

WEB COPY

woken up in the year 2018 when the property said to have been purchased by him was subjected to measurement by the decree holder. Thus, atleast for 14 years the appellant did not take any steps to file the appeal. Even in the interregnum the appellant had not contacted his counsel to ascertain as to the stage of the appeal. All these facts would only go to show that the appellant was not diligent in pursuing the appeal remedy.

9. It is well settled that length of delay is not a criteria but the reasons assigned thereof. In condoning the delay, the Court must be liberal to ensure that doors of justice are not shut against a litigant. At the same time, the Court has to weigh the diligent efforts made by a litigant and if such efforts were made genuinely, precisely and continuously, then the Court can grant relief in favour of such litigant. But none of the above parameters can be extended in favour of the appellant in this appeal. The appellant having purchased the property and claiming himself to be in possession of the property has not taken any steps from 2006 till 2018 to ensure whether any appeal has been filed by the counsel or it was numbered and what was the stage of the appeal. Therefore, there is



C.R.P.(NPD).No.1675 of 2020

absolute slackness on the part of the appellant in pursuing his appeal remedy. While so, the discretion conferred upon this Court to condone delay cannot be exercised in the present case where the appellant is not justified in filing the instant application for condonation of inordinate delay of 4403 days in filing the appeal. The appellate Court also on careful consideration of the oral and documentary evidence made available has refused to condone the delay. I do not find any reason to upset such a findings rendered by the appellate Court.

10. In the result, the order dated 03.03.2020 passed in I.A.No.235 of 2018 in unnumbered A.S. in C.F.R.No.10483 of 2018 on the file of the learned Principal District Judge, Erode, stands confirmed.  
No Costs.

21.06.2022

gbi

To  
The Principal District Judge,  
Erode.



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C.R.P.(NPD).No.1675 of 2020

**S.KANNAMMAL, J.**

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C.R.P.No.1675 of 2020

21.06.2022