



C.R.P.No.3221 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

C.R.P.No.3221 of 2022

V.Tamilvanan (Died)

1. Murali

2. Chandra

.. Petitioners

Vs.

Raja

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, pleaded to set aside the fair and decretal order passed in I.A.No.1/2020 in O.S.No.246 of 2015 dated 07.06.2022 on the file of the Hon'ble Subordinate Judge at Vellore.

For Petitioners : Mr.P.Ganapathy

ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the petition to condone the delay of 827 days in seeking to set aside the Exparte Decree dated 20.03.2018.



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2. The respondent herein filed a suit for specific performance against the brother of the first revision petitioner namely V.Tamilvanan. Pending suit, the said V.Tamilvanan died and hence, the revision petitioners who are brother and mother of V.Tamilvanan were brought on record as legal heirs. Due to non appearance of the revision petitioners, an exparte decree was passed on 20.03.2018. Subsequently, the petitioners filed the application to set aside the exparte decree along with the petition to condone the delay of 827 days on 29.07.2020. In the affidavit filed in support of the condone delay petition the petitioners averred that the suit summon was served on the first petitioner for his appearance on 19.01.2018, but two days prior to the date of hearing he was affected with severe cough and hence, he was not able to appear before the Court on 19.01.2018. It was also averred in the affidavit that the second petitioner/mother of the first petitioner received suit summons for her appearance on 27.02.2018. But, on the day she suddenly fell ill due to high sugar and also affected with acute Jaundice. Therefore, she was not able to appear before the Court. Subsequently, an exparte decree was passed on 20.03.2018.



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4. The learned counsel for the petitioners submitted that due to Covid-19 lockdown, the petitioners were prevented for filing the application to set aside the exparte decree. I am unable to accept the said submission. Because, the exparte decree was passed on 20.03.2018 and Covid-19 lockdown came into



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existence only on March 2020. In the impugned order, the Court below observed that initially the petitioners were served in the impleading application and after that suit summons were served on them. Therefore, owing to non appearance of revision petitioners, an exparte decree was passed. Subsequently, in the execution petition for registration of the sale deed notices were served on the revision petitioners and the petitioners though entered appearance engaged Advocate failed to participate in the execution proceedings. Subsequently, registered sale deed was executed in favour of the respondent. It was also mentioned in the impugned order that notice was served to the revision petitioners in Execution Petition for Delivery of possession. When the matter is posted for Delivery of Possession, the petitioners had come forward with the present petition after the lapse of 2 1/2 years. In view of the reasons stated above, the petitioners failed to explain the delay from 20.03.2018 to 29.07.2020 by giving any appropriate explanation. Hence, this Court is not inclined to interfere with the order passed by the Court below.



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5. Accordingly, this Civil Revision Petition stands dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

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Index: Yes/ No

Internet : Yes / No

To

The Subordinate Judge,

Vellore.



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S.SOUNTHAR, J.

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