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1

C.M.P.No.15843 of 2022 in AS.SR.No.98137 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.P.No.15843 of 2022
in AS.SR.No.98137 of 2022

M.Archana

... Appellant/2nd defendant

VS

S.Sheik Mujibur Rahiman

... Respondent/Plaintiff

Prayer in C.M.P.No.15843 of 2022: Civil Miscellaneous Petition is filed under Section 5 of the Limitation Act, 1963, praying to condone the delay of 1401 days in filing the First Appeal against the judgment and decree dated 31.07.2018 made in O.S.No.50 of 2009, on the file of the IV Additional District and Sessions Judge, Coimbatore.

Prayer in AS.SR.No.98137 of 2022: First Appeal is filed under Section 96 of the Civil Procedure Code, praying to set aside the Judgment and decree dated 31.07.2018 made in O.S.No.50 of 2009 on the file of the IV Additional District and Sessions Judge, Coimbatore.



For Appellant :Mr.P.Saravana Sowmiyan

For Respondent :Mr.L.Mouli

O R D E R

The Civil Miscellaneous Petition is filed seeking to condone the delay of 1401 days in filing the first appeal. The respondent herein filed a suit for specific performance of the sale agreement in O.S.No.50 of 2009 and obtained a decree on 31.07.2018. Aggrieved by the same, the petitioner has filed an appeal with a delay of 1401 days.

2. In support of the petition to condone the delay, the petitioner has filed an affidavit stating that her father who was arrayed as first defendant in the suit had died on 09.04.2015 and after his demise, she had been following the case diligently with his counsel and they informed her that they would intimate the progress of the case when it was required. In the affidavit, she further mentioned that she came back to India in July 2022 and when contacted her counsel, there was no proper response and through



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another counsel, she came to know that the suit was decreed against her as early as on 31.07.2018. She further averred that the counsel did not conduct the case properly by leading any evidence on her side. It is specifically averred in the affidavit that in connection with her research work, she was in Germany from 2018 to 2022. On these averments, she sought for the condonation delay of 1401 days.

3. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the records.

4. A perusal of the immigration seal found in the passport of the petitioner furnished in Page Nos.81 and 84 of the typed set of papers would suggest that the petitioner came back to India on 11.05.2016 and departed out of India on 02.06.2016 again she came back to India on 28.02.2017 and departed out of India on 28.03.2017 again she came back to India on 14.06.2018 and departed out of India on 27.06.2018. Therefore, from 2016 to 2018, she came back to India three times and stayed in India for considerable number of days. Even as per her affidavit, her father passed



away on 09.04.2015 itself and thereafter, she had been following the case diligently with her counsel. A perusal of judgment of the trial Court would suggest that the petitioner was represented by counsel and she had not let in any oral or documentary evidence. When the petitioner came to India during June 2018, she failed to contact her counsel. Therefore, the explanation given by the petitioner that her counsel did not inform her regarding the requirements of her presence in India cannot be accepted. Further, even as per the affidavit filed by the petitioner, she admitted that after the death of her father, she had been diligently following the case by contacting her counsel. Absolutely, there is no explanation why the petitioner did not contact her counsel, when she came back to India in June 2018. Therefore, the reason given by the petitioner, as if she acquired knowledge about the result of the case only in the year 2022 is not acceptable. A perusal of the certified copy filed by the petitioner would suggest that the copy of the judgment and decree were applied for only on 04.08.2022 and received on 16.08.2022. Therefore, it is clear that the petitioner has not followed the case for nearly more than four years from June 2018 to August 2022. Further, it is not necessary for a client to meet the counsel in person and



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know about the status of the case. Now a days case status are being uploaded in internet, the petitioner is a research scholar studied in Germany and it may not be difficult for her to follow the case through online mode. In any event, just prior to passing of judgment on 31.07.2018, during June 2018, the petitioner was very much available in India. The vague allegation of the petitioner by putting the blame on the counsel, as if he failed to lead evidence on her behalf is not sufficient to explain the inordinate delay of 1401 days.

5. A perusal of the written statement filed by the petitioner would suggest that the petitioner admitted the suit sale agreement and contested the suit mainly on the ground on readiness and willingness. It was also averred that the deceased/first defendant continuously approached the plaintiff seeking payment of balance sale consideration and the plaintiff refused to pay the same. It was further averred that when the first defendant was under preventive detention, the petitioner/second defendant approached the plaintiff demanding completion of sale transaction. Therefore, the petitioner herein appears to be a person well acquainted with the suit transaction and litigation. In these circumstances, the reasons given by the



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petitioner are not acceptable to explain the long delay of 1401 days.

S.SOUNTHAR, J.

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6. The petitioner fails to prove the existence of “sufficient cause” within the meaning of Section 5 of Limitation Act and consequently, the petition to condone the delay is dismissed and the appeal is returned in SR stage itself. No costs. Consequently, connected miscellaneous petition is closed.

17.11.2022

Index: Yes/ No
Speaking Order / Non-Speaking Order
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To
The IV Additional District and Sessions Court,
Coimbatore.



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7

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