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C.R.P. (NPD) .No.2873 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(NPD).No.2873 of 2021

and

C.M.P.No.20745 of 2021

1.Sharmila

2.Malathi

.. Petitioners

Vs.

Leelavathy Ammal

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, praying to set aside the fair and final order made in I.A.No.34 of 2020 (Old I.A.No.959 of 2018) in old O.S.No.37 of 2012 on the file of the District Munsif cum Judicial Magistrate, Cheyyur dated 19.02.2021.

For Petitioners : Mr.J.R.Prabhakaran

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ORDER

Challenge in this Revision is to the order of the trial Court viz., District Munsif Court, Cheyyur, dismissing the application filed by the petitioners seeking condonation of delay of 1846 days in filing the application to have the *ex parte* decree passed in the suit in O.S.No.37 of 2012 set aside.

2. The suit in O.S.No.37 of 2012 has been filed by the respondent herein seeking permanent injunction restraining the defendants/ petitioners herein from interfering with her possession. The suit came to be decreed *ex parte* on 12.09.2012, since they did not file the written statement. After a very long delay of 1846 days, the petitioners came up with the instant application in I.A.No.34 of 2020 seeking condonation of the delay. The only reason that was assigned is that the Advocate did not contact them.

3. This Court as well as the Hon'ble Supreme Court have repeatedly held that a litigant cannot seek condonation of delay alleging that the

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Advocate did not contact the party. It is the duty of the party to contact the counsel and seek information regarding the pending litigation. The reason assigned is hardly sufficient to condone such a long delay of 1846 days.

4. Mr.J.R.Prabhakaran, learned counsel appearing for the petitioners would however submit that the petitioners already filed a suit seeking specific performance of the agreement of sale that was entered into between the parties on 20th October 2010 and the grant of this *ex parte* decree for injunction may prejudice their right in the suit for specific performance.

5. I do not see any basis in the apprehension of the counsel. If, in the suit for specific performance, the petitioners are able to prove the agreement and are able to convince the Court that they are entitled to a decree for specific performance, they are bound to succeed. I do not think that the grant of decree for permanent injunction will come into the way of the Court in granting specific performance.



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R.SUBRAMANIAN, J.

dsa

6. The Revision therefore fails and it is accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.

06.01.2022

dsa

Index : No

Speaking order

To

The District Munsif Cum Judicial Magistrate, Cheyyur.

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