



C.R.P. (NPD) No.2725 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.12.2021

Delivered on : 17.02.2022

CORAM :

THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

C.R.P. (NPD) No.2725 of 2021

and

C.M.P.No.19941 of 2021

1.Pushpa
2.Kanchana
3.Jayapal

... Revision Petitioners

Vs.

1.M.AbdulKhadar
2.KadijaAmmal
3.M.Jaleelabanu
4.MahmoodMaraikar
5.S.Abdullah

... Respondents

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the Fair and Decreetal order, dated 19.03.2021, in I.A.No.1 of 2020 in A.S.SR.No.3737 of 2020 on the file of the Principal City Civil Court, Chennai.

For Petitioners : Mr.I.Abrar Md. Abdullah

For R1 to R5 : Mr.T.Dharmarajan



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C.R.P. (NPD) No.2725 of 2021

ORDER

(Through Video Conferencing)

This Civil Revision Petition has been filed against the order, dated 19.03.2021, in I.A.No.1 of 2020 in A.S.SR.No.3737 of 2020, passed by the Principal Judge, City Civil Court, Chennai, dismissing the petition to condone the delay of 1802 days in filing the appeal.

2.For the sake of convenience, the petitioners shall hereinafter be referred to as “defendants” and the respondents shall be referred to as “plaintiffs”.

3.The brief facts of the case are as follows :

- The plaintiffs purchased 1/5th undivided share of land each, situated at Madhavaram-Sembiam Village, Purasawalkam-Perambur Taluk, Chennai, comprised in Survey No.3 (as per document), Survey No.3/1 part (as per patta), T.S.No.13, Block No.3, measuring an extent of 10 grounds, through independent registered sale deeds, from Dr.Anusuya Devi, represented by her Power Agent Dr.Udaya Baskar.
- It is the case of the plaintiffs that, subsequent to the purchase, several



C.R.P. (NPD) No.2725 of 2021

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persons encroached into the property and the defendants are one among them, who have encroached an extent of 2000 sq.ft. out of the total land. They have also put up A.C. Sheet structure and are living there.

- Therefore, the plaintiffs filed a suit in O.S.No.7274 of 2009 on the file of the VI Assistant City Civil Court, Chennai, against the defendants for delivery of vacant possession of the land, after dismantling the superstructure put by the defendants.
- The defendants filed their written statement and took a stand that the husband of the 1st defendant purchased the property in question for an extent of 2175 sq.ft. from one Mrs.Anuradha, who is the Power Agent of Dr.Anusuya Devi, vide registered sale deed for valuable sale consideration. The defendants also took a stand that they are in possession of the property for more than two decades.
- The defendants further stated that the said Dr.Udaya Baskar, from whom the plaintiff allege to have purchased the property, had also filed a suit earlier in O.S.No.7095 of 2007 before the VIII Assistant City Civil Court, Chennai, against the defendants for permanent injunction. Only in order to grab the property, the plaintiffs have filed



the suit.

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- During trial, the defendants have not chosen either to cross examine P.W.1 nor adduced any contra evidence on their side. Therefore, the trial Court decreed the suit on 14.11.2014.
- In the execution proceedings filed by the plaintiffs in E.P.No.1115 of 2018, the defendants were served, but did not enter appearance, therefore, they were set *ex parte* on 11.09.2018.
- Thereafter, the defendants filed E.A.No.3886 of 2018 in E.P.No.1115 of 2018 to set aside the *ex parte* order and the same was dismissed.
- The defendants preferred revision against the dismissal, in C.R.P.No.3606 of 2019, and the same was allowed and the E.P. was ordered to be disposed of within two months.
- Thereafter, the defendants filed the appeal in A.S.SR.No.3737 of 2020 on the file of the Principal City Civil Court, Chennai, along with I.A.No.1 of 2020 for condonation of delay of 1802 in filing the appeal.
- The appellate Court dismissed the said application, by order dated 19.03.2021, against which, the defendants have preferred the present Civil Revision Petition.



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4.The learned counsel for the defendants/revision petitioners reiterated the averments in the written statement in the suit and submitted that the grand mother of the 2nd and 3rd defendants purchased the property from one Mrs.Anuradha, power agent of Dr.Anusuya Devi, in the year 1996 and the defendants were in possession for more than two decades. The learned counsel further submitted that, after the death of the father of the 2nd and 3rd defendants in the year 2007, the plaintiffs, in order to grab the property, filed the suit against the defendants and the defendants did not have adequate knowledge about the suit proceedings. The learned counsel submitted that, after examination of P.W.1, the original suit was dismissed for non-prosecution and thereafter, the plaintiffs filed an application for restoration, and no notice was served on the defendants in the restoration application and the same was allowed without their knowledge. Thereafter, the suit was decreed *ex parte* on 14.11.2014. The learned counsel further submitted that, on the belief that the erstwhile counsel would inform the defendants about the status of the case, the defendants did not contact their counsel and only after receipt of notice in the execution petition on 18.08.2018 for hearing on 20.08.2018, the defendants came to know that



C.R.P. (NPD) No.2725 of 2021

the application for setting aside the *ex parte* decree was dismissed. The learned counsel further submitted that, due to the demise of the grandmother of the defendants, they could not appear before the Execution Court on 20.08.2018, and hence, in the execution petition, they were set *ex parte* on 20.08.2018. The application to set aside the *ex parte* order was dismissed by the Execution Court, however, the defendants preferred revision in C.R.P.No.3606 of 2019 and the same was allowed by this Court on 02.12.2019. The learned counsel submitted that, thereafter, the defendants have preferred the appeal in February, 2020, therefore, in view of the above *bona fide* reasons, there is a delay of 1802 days in filing the appeal. The learned counsel relied upon the judgment of this Court in ***Meenatchi v. Andal [2021 (3) CTC 850]*** and submitted that the Courts should adopt a liberal approach in considering the petitions for condoning the delay, rather than hyper-technical considerations, and refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and can defeat the cause of justice. The learned counsel concluded his arguments by praying that the delay may be condoned and the present Revision may be allowed.



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5. The learned counsel for the plaintiffs/respondents submitted that the defendants have not even produced a single document before the trial Court to show their title to the property and hence, the suit was decreed on merits. The learned counsel further submitted that, even after receipt of notice in execution proceedings, the defendants deliberately remained absent and hence, they were set *ex parte* in the execution petition. However, they filed an application to set aside the *ex parte* order and the same was dismissed, but on revision, it came to be allowed by this Court with a direction to dispose of the execution petition within two months. The learned counsel further submitted that the defendants took out an application in E.A.No.1 of 2020 in E.P.No.1115 of 2018 under Section 47 CPC to drag on the execution proceedings despite the order of the High Court to dispose of the E.P. within two months. The learned counsel further submitted that the execution petition was allowed on 29.10.2021 and delivery was ordered. He further submitted that the defendants have not given any plausible reason for the inordinate delay of 1802 days in filing the appeal and the appellate Court has rightly dismissed the impugned application and hence, prayed for dismissal of the Civil Revision Petition.



C.R.P. (NPD) No.2725 of 2021

6. Heard the learned counsel on either side and perused the entire materials available on record.

7. The suit is for delivery of possession and the plaintiffs claim themselves to be the owner of the suit property and the defendants to be the encroachers in a certain portion of the suit property. The defendants resisted the suit by filing their written statement, stating that the suit property under their occupation was already purchased by their ancestors through a different Power Agent of the vendor of the plaintiffs. On the side of the plaintiffs, P.W.1 was examined and 11 exhibits were marked, however, the defendants did not choose to cross-examine P.W.1. After giving several opportunities, the defendants were set *ex parte* and an *ex parte* decree was passed in the suit on 14.11.2014.

8. It is the consistent plea of the defendants, both in the impugned application as well as in this revision that, after examination of P.W.1, the suit was dismissed for non-prosecution and thereafter, it was restored without the knowledge of the defendants. This aspect has been discussed by the appellate Court, and the learned Judge, after perusal of the case



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bundle, has rendering a finding to the effect that, after several adjournments, the cross-examination of P.W.1 was adjourned to 20.12.2013 on condition to pay Rs.1,000/- as costs. However, on 20.12.2013, the order has not been complied with and hence, the defendants were set *ex-parte*. At last, on 21.03.2014, a petition to set aside the *ex parte* order was filed in I.A.No.4973 of 2014 and after elaborate enquiry, the petition was allowed on 15.09.2014 on condition to pay Rs.1,500/-, however, the same was not paid. After several adjournments, on 17.10.2014, for non-payment of costs, the petition was dismissed and the *ex parte* order became final. Thereafter, the *ex parte* judgment was passed on 14.11.2014. After perusing the docket entries, the learned Judge has categorically given a finding that the allegations made by the defendants as if there was a dismissal of the suit for non-prosecution and restoration without their notice, are false.

9.In the backdrop of the above, this Court traverses to the subsequent development, viz., dates and events, after the *ex parte* decree was passed on 14.11.2014. It is stated by the defendants that they filed an application in I.A.No.7148 of 2015 to set aside the *ex parte* decree in O.S.No.7274 of 2009. They have stated that they were under the impression that their



C.R.P. (NPD) No.2725 of 2021

counsel would inform about the case and did not contact the counsel and they were not informed about the dismissal of the said application for setting aside the *ex parte* decree. It is further stated that, only on receipt of notice in execution petition on 18.08.2018 for the hearing on 20.08.2018, they came to know about the dismissal of their petition to set aside the *ex parte* decree; however, due to the demise of their grandmother, they were unable to appear before the Execution Court and they were set *ex parte* in the Execution Court on 20.08.2018. The defendants have preferred revision in C.R.P.No.3606 of 2019 against the *ex parte* order in execution proceedings and the revision was allowed on 01.12.2019. It is pertinent to note that the defendants contested in the execution petition and the execution petition was allowed on 29.10.2021 and delivery was ordered. It is only thereafter, the defendants have filed the appeal before the appellate Court in February, 2020, along with the impugned application to condone the delay of 1802 days in filing the appeal.

10.The judgment relied upon by the learned counsel for the



C.R.P. (NPD) No.2725 of 2021

defendants in *Meenatchi v. Andal (supra)* is with regard to a suit for specific performance, wherein, the learned Single Judge of this Court, on the facts and circumstances of the case therein, has found that both the parties were equally guilty of dragging on the proceedings and the delay of 124 days, and the *ex parte* judgment therein was rendered without application of mind. Moreover, in the said case, the execution proceedings and the application for setting aside the *ex parte* decree were proceeding in parallel right from the passing of the *ex parte* decree. Above all, the illness of the petitioners therein was considered to be the sufficient cause to condone the delay of 124 days.

11. Whereas, the facts and circumstances of the case on hand, are entirely different. The present suit is for delivery of possession and the defendants, though contested the suit till examination of P.W.1, for the reasons best known to them, did not proceed further to cross-examine P.W.1 or to adduce any evidence on their side to prove the contents in the written statement. They allowed the suit to be decreed *ex parte* and from the suit judgment, it is seen that the counsel for the defendants was very much present on the date of judgment on 14.11.2014. They filed an



C.R.P. (NPD) No.2725 of 2021

application to set aside the *ex parte* judgment, the same was dismissed, but they did not choose to file an appeal immediately, but remained silent for three years till 18.08.2018, until notice was received in execution petition. Thereafter, they resisted the execution petition, but even then, they did not choose to file an appeal parallelly. It is only after the execution was allowed and delivery was ordered on 29.10.2021, they have preferred the appeal, after a delay of 1802 days.

12.It is true that, in ***Collector, Land Acquisition, Anantnag and another v. Katiji and others [1987 (2) SCC 107]***, the Hon'ble Supreme Court has held that Court should adopt a liberal and justice-oriented approach in considering applications under Section 5 of the Limitation Act, 1963.

13.However, in ***University of Delhi v. Union of India and others [2019 SCC Online SC 1634]***, a Three-Judge Bench of the Hon'ble Supreme Court has held as follows :



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“20. ... Even in such case the condonation of long delay should not be automatic since the accrued right or the adverse consequence to the Opposite Party is also to be kept in perspective. In that background while considering condonation of delay, the routine explanation would not be enough but it should be in the nature of indicating “sufficient cause” to justify the delay which will depend on the backdrop of each case and will have to be weighed carefully by the Courts based on the fact situation.”

14.The cause which the defendants have projected for being set *ex parte* in the suit is that, the suit was dismissed for non-prosecution and they were not informed about the restoration of the suit. But, the learned appellate Judge, on a perusal of the case bundle, has categorically found on facts that the dismissal and restoration theory is false. Further, the cause which the defendants have projected for the delay of more than three years from the date of filing of petition to set aside the *ex parte* decree and the date of receipt of notice in execution petition is that, they were under the impression that the counsel would inform them about the status of the case. In any event, it is the duty of the parties to perform due diligence. Knowing fully well about the *ex parte* decree and having filed the petition to set aside



C.R.P. (NPD) No.2725 of 2021

the same, pleading ignorance about the case status is not convincing. Even after coming to know about the execution proceedings, they waited till the delivery was ordered and thereafter, have preferred the appeal. Such a conduct of the defendants gives room for doubt. The reasons put forth by them, in the opinion of this Court, do not appear to be a “sufficient cause” to condone such a long delay of 1802 days. Therefore, this Court does not find any infirmity, illegality or perversity in the order passed by the learned Judge.

15.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

17.02.2022

Internet : Yes
Index : Yes / No
Speaking order / Nonspeaking order

To



C.R.P. (NPD) No.2725 of 2021

1. The Principal Judge,
City Civil Court,
Chennai.
2. The VI Assistant Judge,
City Civil Court,
Chennai.

S. KANNAMMAL, J.



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C.R.P. (NPD) No.2725 of 2021

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Pre-Delivery Order in
C.R.P. (NPD) No.2725 of 2021

17.02.2022