



CRP.No.3779 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2022

CORAM:

THE HON'BLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.3779 of 2022
and
C.M.P.No.19914 of 2022

1.Uma

2.Pawnambal

... Petitioners

Versus

Sathya Naryanan

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C., to set aside the fair and decreetal order passed in I.A.No.1 of 2022 in O.S.No.08 of 2018, on the file of the III Additional District & Sessions Judge, Cuddalore @ Virudhachalam dated 26.10.2022.

For Petitioners : Mr.S.Kamadevan

ORDER



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This Civil Revision Petition is filed challenging the order passed by the court below dismissing the petition filed by the revision petitioners to condone the delay of 1363 days in filing the petition to set aside the ex parte decree dated 01.10.2018.

2. The respondent herein filed a suit for specific performance and obtained an ex parte decree on 01.10.2018.

3. The petitioners herein who were the defendants in the suit filed this petition to set aside the ex parte decree along with a petition to condone the delay of 1363 days in filing to set aside the ex parte decree on 25.07.2022. In the affidavit filed in support of the petition to condone the huge delay of 1363 days, the first petitioner had averred in the main suit that he conducted the suit proceedings by engaging a counsel namely Thamaraikannan and believing his words, she did not follow the case. It was further stated that she acquired knowledge about the ex parte decree only on 25.07.2022, on which date, the present petition to set aside the ex parte decree was filed.

4. The court below, not satisfied with the reasons assigned by the



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revision petitioners, dismissed the petition to condone the delay and aggrieved by the same, the revision petitioners are before this court.

5. The learned counsel for the respondent has vehemently contended that the petitioners herein are innocent and they have engaged an Advocate and believing the words of the Advocate, they failed to follow the status of the case and consequently, an opportunity may be given to the petitioners to conduct the case on merit.

6. The perusal of the order passed by the court would make it clear that the petitioners had engaged Advocates namely Mr.R.Selvakumar and Mr.R.Sureshkumar to conduct the case on their behalf. Therefore, it is clear that the averments made in the petitioners' affidavit that they had engaged a counsel namely Mr.Thamaraikannan for conducting the suit, is not correct. It is also pertinent to note that subsequent to the ex parte decree, the respondent has filed an execution petition in E.P.No.7 of 2019 for execution of the sale deed. The petitioners received a notice in that proceedings and they engaged

one Advocate Mr.Vasudevan to conduct the case in EP on their behalf. The petitioners have filed a counter in the said EP and thereafter an order was



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passed on 10.09.2019 for execution of the sale deed. After execution of the sale deed, the respondent filed the second execution petition in EA.No.2 of 2021 for delivery of the property. In that execution application also, notice was served on the petitioners and they entered appearance through one Advocate namely Mr.M.Elayaraja on 24.02.2022. Thereafter, they failed to file any counter in the execution application and consequently, they were set exparte and order for delivery was passed against the petitioners on 26.11.2021. After delivery order passed by the execution court, the petitioners had filed the present petition to set aside the ex parte decree on 25.07.2022 along with a petition to condone the delay of 1363 days. Sequences of events mentioned by the court below would make it clear that the petitioners had knowledge about the ex parte decree even in the year 2019 itself when EP notice was served on them. However, they filed the present petition to set aside the ex parte decree only on 25.07.2022. It shows that the intention of the petitioners is to drag on the proceedings and the reason given by the petitioners in the affidavit filed in support of petition to condone the delay is not bonafide. Therefore, I do not find any illegality and irregularity in the order passed by the court below.

7. In the result, this Civil Revision Petition is dismissed. Consequently,



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the connected miscellaneous petition is closed. No costs.

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Internet:Yes
Index:Yes/No
Speaking/Non speaking order
gv

To

The III Additional District & Sessions Judge,
Cuddalore @ Virudhachalam

S.SOUNTHAR, J.

gv



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