



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.02.2022

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P(MD)No.1658 of 2021

and

C.M.P(MD) Nos.8986 and 10741 of 2021

A.Seethalakshmi

... Petitioner

Vs

S.T.Palani

... Respondent

PRAYER:- Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order dated 07.09.2021 made in E.A.No.3 of 2021 in E.A.No.1 of 2021 in E.P.No.55 of 2014 in O.S.No.288 of 1999 on the file of the Subordinate Court, Sattur.

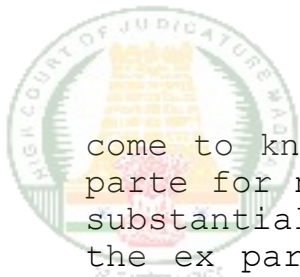
For Petitioner : Mr.S.Mahalakshmi

For Respondent : Mr.G.Prabhu Rajadurai

ORDER

Challenging the dismissal of her application to condone the delay of 1022 days in setting aside the ex parte order passed in E.A.No.3 of 2021, the judgment debtor/defendant is before this Court.

2.The case of the petitioner in the impugned application (i.e., E.A.No.353 of 2018 on the file of the Sub Court, Sivakasi, now transferred to the file of the Sub Court, Sattur and renumbered as E.A.No.3 of 2021) was that she had been contesting the execution proceedings through counsel. Thereafter, she had received the summons in E.A.No.234 of 2016. When she had taken the said summons to her counsel, he had not given her any convincing reasons. Therefore, she had engaged the service of an other counsel, who entered appearance on her behalf in E.A.No.234 of 2016. Subsequently, the petitioner had sustained injuries on account of fall in her residence, as a result of which, she was unable to get in touch with her counsel. Therefore, her counter could not be filed in the said application. On 31.08.2018, she had sought permission of the court to verify the records and only then she had



come to know about the fact that on 17.11.2015 she had been set ex parte for non-filing of her counter. She would state that she has a substantial case to urge in this execution proceedings and for which the ex parte order passed against her needs to be set aside. Now there is a delay of 1022 days in filing the application to set aside the ex parte order. The delay is neither deliberate nor wanton, but had occurred only due to an act of God. Therefore, she had filed the impugned petition to condone the said delay.

3.The respondent/decreed holder had filed a counter *inter alia* contending that the petition has to be dismissed at the outset. The allegations regarding her fall was denied by the respondent. The respondent had further contended that the allegation of the petitioner that she had come to know about the ex parte order dated 17.11.2015 only in August 2018, after the perusal of the files in the execution petition through another counsel, is absolutely false. The petitioner was very much aware about the proceedings and has deliberately kept away from the same. The delay is huge and no satisfactory reasons had been given for the same.

4.The learned Subordinate Judge, Sattur, after hearing the arguments on either side and perusing the records proceeded to dismiss the said application. Aggrieved by the same, the petitioner is before this Court.

5.The grounds of challenge by the judgment debtor/revision petitioner is in two folds:-

- a) The execution petition in E.P.No.55 of 2014 is time barred;
- b) On account of the description of property as given in the execution proceedings, it would be very difficult to execute the decree.

6.The learned counsel for the petitioner would submit that the application filed by the revision petitioner for receiving the counter in E.A.No.234 of 2016 had been allowed by order of the Court dated 07.09.2021 and therefore, this application ought to have been dismissed.

7.In response to the above argument, the learned counsel appearing for the respondent/decreed holder would submit that a mere perusal of the conduct of the respondent from the date of filing of the suit to date would clearly show that the revision petitioner has treated the entire proceedings nonchalantly. He would further submit that a mere perusal of the proceedings would indicate the same. The argument that the execution proceeding is time barred, is totally erroneous. The present execution petition is nothing, but a continuation of the earlier petition. He would draw attention of the Court to the fact that E.P.No.19 of 2003 was dismissed on 11.08.2003, E.P.No.87 of 2004 was closed on 15.10.2004 and E.P.No.64 of 2012 was closed on 10.10.2014. Immediately within four days



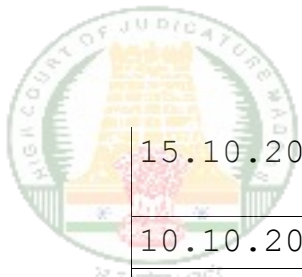
i.e., on 14.10.2014 the present execution petition in E.P.No.55 of 2014 was filed. The petitioner, who entered appearance did not file the counter and therefore, on 17.01.2015 she was set ex parte. Ultimately the sale was registered on 29.04.2016 and the E.P was terminated on 02.07.2016. After the termination of the execution proceedings, the respondent/decree holder had come forward with an application in E.P.No.234 of 2016 seeking delivery of possession of the suit schedule property. This petition was served on the revision petitioner herein and he had entered appearance on 25.11.2016. Once again, the revision petitioner was called absent and set ex parte on 12.06.2017 and E.A.No.234 of 2016 came to be ordered on the said date. Thereafter, the petitioner has come forward with an application in E.A.No.286 of 2017 to set aside the ex parte order of delivery dated 12.06.2017 in E.A.No.234 of 2016 and the impugned petition.

8.The learned counsel would further submit that since the earlier execution proceedings had been closed and had not been dismissed on merits, the present execution petition is only continuation of the earlier application. He would also point out the fact that within four days of the ex parte order of delivery, the application had been moved to set aside the ex parte order in main execution proceedings. The learned counsel would further submit that no reasons have been given for the said delay. Further he would also contend that the revision petition itself is not maintainable.

9.Heard the counsel and perused the records.

10.The following chronology of dates and events would put in perspective the conduct of the judgment debtor/ revision petitioner:-

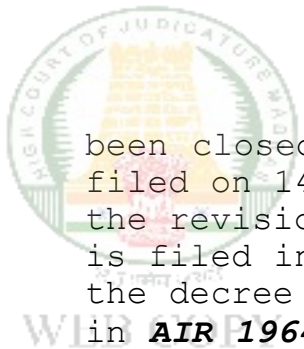
10.08.1998	O.S.No.288 of 1999 filed by the respondent/plaintiff herein for specific performance of an agreement of sale said to have been executed by the petitioner/defendant in favour of the plaintiff / respondent after receiving a sum of Rs.1,00,000/- as advance and agreed to pay the balance of Rs.25,000/-within a year
07.02.2000	The revision petitioner filed the written statement
11.08.2000	Since the revision petitioner had not appeared for enquiry, she had been set ex parte and thereafter, ex parte judgment and decree came to be passed
11.08.2003	E.P.No.19 of 2003 was dismissed



15.10.2004	E.P.No.867 of 2004 filed by the respondent herein was closed.
10.10.2014	E.P.No.64 of 2012 was closed
14.10.2014	The respondent filed E.P.No.55 of 2014
30.02.2015	Vakalat filed for the revision petitioner
17.01.2015	No counter filed and there was no representation for the petitioner. Hence, the revision petitioner herein was called absent and set ex parte.
29.04.2016	Sale deed registered
02.07.2016	Execution petition was terminated
26.09.2016	E.A.No.234 of 2016 filed seeking delivery of the property.
25.11.2016	Respondent/plaintiff enters appearance through counsel
12.06.2017	Since counter was not filed and there is no representation on behalf of the respondent, the respondent was called absent and set ex parte and the execution application was allowed.
16.06.2017	Application in E.A.No.286 of 2017 to set aside the ex parte order filed.
11.06.2018	E.A.No.286 of 2017 is allowed
06.10.2018	The petitioner files E.A.No.3 of 2021 (old number E.A.No.353 of 2018) for setting aside the ex parte order dated 17.11.2015 with the delay of 1022 days.
07.09.2021	E.A.No.3 of 2021 was dismissed. Challenging this order the revision has been filed.

11.A perusal of the affidavit which is filed in support of the above application by no stretch of imagination sets out a reason or cause for the delay of 1022 days. In fact, the affidavit is totally bereft of details. The Judgment debtor/defendant has not challenged the order dated 07.12.2015 wherein the sale deed had been filed into Court and ultimately, the execution petition had been terminated on 02.07.2016. The revision petitioner has remained ex parte in the suit, execution petition as well as in the subsequent applications as well.

12.Regarding the first defence that the suit is not executable, as it is filed after 14 years attention has to be given to the contents of the execution petition wherein it has been clearly mentioned that the earlier applications before the Sub Court, Sivakasi in E.A.No.64 of 2012 (the third execution petition) had



been closed on 10.10.2014. The present execution petition has been filed on 14.10.2014 within a period of four days. The allegations of the revision petitioner is that the present execution petition which is filed in the year 2014 is clearly barred by the limitation, since the decree had been passed on 11.08.2000. A perusal of the judgment in **AIR 1964 SC 1454** reported as **Pentapati China Venkanna and others vs Pentapati Bangararaju and others**, would show that the Hon'ble Supreme Court had summarized the issue as follows:-

"An application made after 12 years from the date of the decree would be a fresh application within the meaning of Section 48 of the Code of Civil Procedure, if the previous application was finally disposed of. It would also be a fresh application if it asked for a relief against parties or properties different from those proceeded against in the previous execution petition or asked for a relief substantially different from that asked for in the earlier petition."

13.The learned Judge had observed that where an execution petition has been closed and subsequent petition has been filed for the very same relief, it would only be the continuation of the earlier proceedings and therefore, there is no question of the same being treated as new application under Section 48 of the Code of Civil Procedure. The said decision also had a precedent in the Judgement of a Division Bench of this Court reported in **1945 (2) MLJ 436** in the case of **Lakshmana Rao Vs The official receiver Damodara Rao**, wherein the Hon'ble Division Bench had held that where the petition is closed for statistical purposes which is not the subsequent execution petition, it cannot be treated as fresh application, but it may be treated as an application to revive or continue the earlier application. In the case on hand, the earlier two applications i.e., E.P.No.87 of 2004 and E.P.No.64 of 2013 had been closed. Therefore, there is no final orders in the execution petitions so as to hold that it has been finally decided.

14.The second argument is that the property is not executable. A perusal of the records would show that the property that is sought to be put in execution is the very same property in respect of which decree had been granted. The revision petitioner had to date not set aside the ex parte decree or filed an appeal challenging the ex parte decree in the suit. Therefore, the decree has attained finality. Even during pendency of the execution petition, the chronology of dates and events will clearly demonstrate how the petitioner has been procrastinating at every juncture. The decree holder, who has obtained a decree in his favour as early as in the year 2007, is yet to realize the fruits of decree. The affidavit filed in support of the impugned petition clearly shows that there is no reasons given for the delay. The learned Judge has rightly



dismissed the application and I do not entertain any reason for re-appreciating the same.

15. In the result, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Deputy Registrar(LA & MC)

// True Copy //

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Sub Assistant Registrar(CS)

cp/kan

Note In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:-

The subordinate Judge,
Sattur.

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-4418[F] dated 07/02/2022)

C.R.P(MD)No.1658 of 2021

and

C.M.P(MD) Nos.8986 and 10741 of 2021

04.02.2022

KG(CO)

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