



W.M.P.No.8108 of 2021

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2023

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.M.P.No.8108 of 2021

in

W.P.No.9386 of 2017

Nirmala

. . Petitioner

Vs

1. S.Sundaraman (Deceased)

2. R.Deepa

3. The Sub-Registrar

. . Respondents

Prayer: The Writ Miscellaneous Petition filed under Article 226 of the Constitution of India may be pleased to condone the delay of 349 in referring the set aside petition in above W.P.9386 of 2017.

For Appellant : Mr. D. Umashankar

ORDER



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The Writ Miscellaneous Petition has been filed to condone the delay of 349 days in filing the petition to set aside the order passed in W.P.No.9386 of 2017 dated 18.07.2018. The reasons stated in the affidavit filed in support of the Miscellaneous Petition is that the petitioner came to understand that she was set ex-parte and the order impugned was quashed behind her back in W.P.No.9386 of 2017 in respect of the cancellation of a deed executed by her and she has obtained the copy of the order on 22.11.2019 and due to her old age, she could not able to contact the advocate and file a petition to set aside the order. Thus there was delay of 349 days in preferring the application to set aside the order.

2. The order was passed in W.P.No.9386 of 2017 on 18.07.2018 The Writ Petition was filed by one Mr.S.Sundararaman in the year 2017 and notice was ordered by this Court and the final order was passed after one year from the date of filing of this Writ Petition. The Writ Petition was admitted on 18.04.2017 and disposed of on 18.07.2018 after a lapse of more than one year.

3. On verification of Court records, it reveals that the husband of the petitioner R.Nirmala received the Court notice on 21.06.2017. The Court bailiff made an endorsement that the notice in the Writ Petition was served by him on



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Mr.Sivakadatcham the husband of the petitioner R.Nirmala on 21.06.2017.

Thus the Court notice was served through bailiff pertinently, the 2nd notice was served to the same person Mr.Sivakadatcham, the husband of the petitioner R.Nirmala by the bailiff again on 07.07.2017. Twice the Court notice was served through the bailiff to the petitioner and now the petitioner has come forward with an affidavit stating that no notice was served to her. Her own husband who is residing in the same house received the notice twice from the Court bailiff and therefore the affidavit filed by the petitioner is *prima-facie* false and intended to misguide the Court. Though court has to initiate serious action on such false affidavit made in effecting the service by the Court through bailiff, considering the age of the petitioner, this Court is inclined to take a lenient view by imposing cost alone. Such approach of the petitioner with false affidavit at no instance be tolerated by the Courts. When Court notice was served to the petitioner twice by the Court which was received by none other than the husband of the petitioner to the same address. False affidavit filed by the petitioner is to be viewed seriously.

4. Considering the fact and circumstances and taking note of the age of the petitioner, the Miscellaneous Petition stands dismissed with the cost of

S.M.SUBRAMANIAM, J.



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Rs.5,000/- which has to be paid to the High Court, District Legal Services Authority by the petitioner on or before 27.02.2023.

5. Registry is directed to list the matter on 28.02.2023 for reporting compliance.

09.02.2023

Speaking Order/Non-Speaking Order.

Internet : Yes/No.

Index: Yes/No.

Neutral Citation: Yes/No

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IN

W.P.No.9386 of 2017