



C.R.P.No.1398 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2023

CORAM : JUSTICE N.SESHASAYEE

C.R.P.No.1398 of 2019
and CMP.No.9186 of 2019

Rukkammal (Died) ..Petitioner / Petitioner / Defendant
P-2. S.Kamala
P-3. T.Venkatesh
P-4 T.Shankaran .. Petitioners

Vs

P.Chinnadurai .. Plaintiff / Respondent / Respondent

Prayer : Civil Revision Petition filed under Section 115 of CPC praying to set aside the order and decree in I.A.No.12585/2018 in I.A.No.8242/2012 in O.S.No.9024/2010 dated 06.03.2019 on the file of IV Additional City Civil Court, Chennai, and allow this revision.

For Petitioners : Mr.G.Appavu
For Respondent : Mr.G.Ilamurugu

ORDER

This matter comes up before this Court for final disposal. On 29.03.2023, this Court has heard the matter substantially, and for convenience the orders thereof are extracted and reproduced as below :



"This revision arises out of a very ordinary order seeking extension of time for payment of cost for condonation of delay in filing an application for setting aside an exparte decree.

2. The suit was originally laid before this Court in C.S.No.321 of 2009, which later came to be transferred to City Civil Court, and taken on its file in O.S.No.9024/2010, and that summons were duly served, and the written statement was also filed. The defendant however did not participate in the trial, consequent to which, the suit was decreed exparte on 23.12.2011. Thereafter, the plaintiff has laid an execution petition and the defendant/JD entered appearance and filed their counter there. In the meantime, the defendant preferred an application in I.A.No.8242/2012 for setting aside the exparte decree along with an application for condonation of delay, and that was allowed on payment of cost of Rs.500/-, but the said cost was not paid, and as a consequent of which, the application was dismissed. After the dismissal of the interlocutory application for condonation of delay, the plaintiff has filed E.P.No.2131/2012, in which notice was ordered and served on the defendant. Subsequently, this EP came to be closed. Following this sometime in 2013, the plaintiff filed yet another execution petition in E.P.No.5019/2013, in which delivery was ordered. Thereafter, the JD is said to have been negotiating with the decree holder, consequent to which, that EP was not



prosecuted. Since delivery was not given to the plaintiff, the plaintiff/decreed holder had filed yet another petition in E.P.No.1581/2018 for executing the decree passed on 23.12.2011. At this juncture, the judgment debtor, under Section 148 CPC., moved the trial Court in I.A.No.12585/2018, for extension of time to comply with the conditional order earlier passed while allowing that application in I.A.No.8242/2012 for condonation of delay. This was dismissed, and that is now in challenge in this revision.

3. In the course of hearing, the counsel for the decree holder submitted that in this ongoing 15 years old litigation, the revision petitioner / judgment debtor are dilly-dallying the judicial process and comes out with multiple reasons for delaying and deviating the rights of the decree holder. He added that the revision petitioner had even demolished the property sold to the plaintiff."

2. This Court thereafter proceeded to appoint Ms.M.Meena Rukmani, Advocate as a Commissioner to ascertain if there has been any demolition of the property sold by the defendant to the plaintiff. The learned Commissioner has filed a report today and indicated that there has been demolition.



C.R.P.No.1398 of 2019

WEB COPY

3. The learned counsel for the revision petitioner submitted that the revision petitioner / defendant is no way responsible.

4. If *res ipsa loquitur* can be applied to evaluate the conduct of the parties vis-a-vis the decision to be taken in this case, then the conduct of the revision petitioner fits in aptly to deny her the relief she seeks in this revision. It may be that the scope of the order falls within a very narrow space. But this Court senses a strategy behind the very conduct. Courts are not the casinos for the litigant to gamble upon, and poverty of the litigant is no excuse when a litigant is expected to pass the litmus test of fairness required of a litigant. Here in this case, this Court does not consider that the revision petitioner deserves an opportunity.

5. In the result, this revision petition is dismissed. No costs. The Execution Court is required to expedite the disposal of execution petition. Consequently, connected miscellaneous petition is closed.

18.04.2023

Index : Yes / No

Speaking Order / Non-speaking Order



C.R.P.No.1398 of 2019

WEB COPY

To:

- 1.The IV Additional City Civil Judge
Chennai.
- 2.The Section Officer
VR Section, High Court, Madras.



WEB COPY



C.R.P.No.1398 of 2019

N.SESHASAYEE.J.,

ds

C.R.P.No.1398 of 2019

18.04.2023