



C.R.P.No.2806 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.03.2023

Pronounced on : 28.04.2023

CORAM : JUSTICE N.SESHASAYEE

C.R.P.No.2806 of 2019
and CMP.No.18407 of 2019

Kalyani

.. Petitioner/Petitioner/Defendant

Vs

K.K.Senthil Kumar

.. Respondent/Respondent/Plaintiff

Prayer : Civil Revision Petition filed under Section 115 of CPC., praying to set aside the order dated 14.02.2019 passed by the Subordinate Judge of Uthangarai, dismissing the application in I.A.No.20 of 2018 in O.S.No.181 of 2010, and allow the application in I.A.No.20 of 2018, and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.C.T.Mohan
for Mr.R.Ramesh Raja

For Respondent : Mr.V.Vijayakumar



C.R.P.No.2806 of 2019

ORDER

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This revision is filed challenging the order of the Sub Court, Uthangarai dismissing the application in I.A.No.20/2018 filed by the revision petitioner, the defendant in O.S.No.181/2010, which she had laid for condoning the delay of 2,387 days in filing an application under Order IX Rule 13 CPC for setting aside the exparte decree for specific performance dated 29.04.2011 in O.S.No.181 of 2010.

2.1 The suit was laid for specific performance of a registered sale agreement dated 20.11.2009, under which the plaintiff was under an obligation to pay a sale consideration of Rs.2.0 lakhs towards purchase of the suit property that belonged to the defendant, that out the said amount, the plaintiff had already paid Rs.1.50 lakhs. Since the defendant had failed to perform her part of contract, the suit came to be laid, and on 29.04.2011, it came to be decreed exparte.

2.2 For executing the decree passed against her, the plaintiff / decree holder (DH) had laid E.P.No.52/2014, and the notice of EP was served on the defendant. This alerted her and she approached the trial Court for setting



C.R.P.No.2806 of 2019

aside the exparte decree along with her written statement, plus an application to condone the earlier mentioned application. In her affidavit filed in support of this application, the defendant/revision petitioner has averred that for contesting the suit, she had engaged a counsel who had told her that she needed to respond only upon the information of the counsel, and that she came to know about the exparte decree only when she was served with the notice of E.P.96 of 2013 and REP.No.52 of 2016, filed by the plaintiff. It is also averred in the affidavit that this defendant even prior to the filing of this application, she had entrusted her counsel with a set of applications for condonation of delay and to set aside the exparte decree, and that his counsel had assured that after these applications are allowed, he would inform her, but that appeared not to have been done. Thereafter, there is no response from her counsel and hence, she filed the present application in I.A.No.20 of 2018.

3. In his counter, the plaintiff/respondent had pleaded:

- It is utterly wrong to state that the revision petitioner became aware of the exparte decree passed, only upon the service of notice on her in REP No. 96/2013 and REP No.52/2014. The suit was laid before the



C.R.P.No.2806 of 2019

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Sub Court, Krishnagiri, and REP No.96/2013 too was filed before the same court. On 30.10.2013, the revision petitioner was set exparte as she did not chose to enter appearance.

- Subsequently E.P.No.96/2013 was transferred to Sub Court, Uthangarai, where it was taken on record as REP No.52/2014 and again a notice was served on the revision petitioner along with a copy of the draft sale deed, and on 31.8.2015 an ex-parte order was issued against the petitioner as she chose not to make her appearance.
- For setting aside the order setting her exparte, the revision petitioner had filed REA.3/2016, and on 21.10.2016 it came to be dismissed. Thereafter, the plaintiff/respondent was directed to provide stamp paper for Rs.58,400/- and it was duly done, following which on 12.09.2017, a sale deed was executed by the Execution Court in the name of the plaintiff/respondent, for which purpose the respondent had paid Rs.8,935 towards registration fee. On 30.01.2018, E.P. Was terminated.
- It is after the order in REA.3/2016, the revision petitioner has filed this petition for condonation of delay of 2,387 days. The reasons



C.R.P.No.2806 of 2019

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given by the petitioner for explaining the delay of 2,387 days is unacceptable, that she was callous in defending the action against her.

- This respondent filed a complaint against the petitioner/defendant, in 2010 and subsequently filed an execution petition in 2013, and in 2018, got the remedy through the execution petition, which took about 8 years to get the remedy, after obtaining the remedy i.e. after handing over the stamp paper of the deed, the statement of the petitioner that the respondent does not face any loss in an event of cancellation of the decree is completely wrong and unacceptable.
- The circumstances which the petitioner has stated for condonation of delay, blaming her counsel in essence is untenable. The petitioner resides opposite to the court, and might have to cross her Advocate's office on a daily basis. The petitioner's statement that she believed that her advocate had filed necessary applications to set aside the exparte decree and that was not done for so many years, is not true.

4. The trial Court dismissed her application and in its order, it has reasoned that when the revision petitioner resides opposite to the Court and when she has received the notices in execution petition etc., it is unbelievable to



C.R.P.No.2806 of 2019

accept her theory in explaining the delay of over 6 ½ years.

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5. Heard both sides, and both sides stuck to the line of arguments as was advanced before the trial Court.

6. This Court is not convinced about the reasons adduced by the revision petitioner. In a given case it is possible where a certain defendant, illiterate and gullible, might have entrusted the matter with a counsel, far away from the place of residence making it difficult for obtaining the information, but, not in this case, where the revision petitioner is residing right opposite to the Court and that too, in a era of cellphone where information is only a call away.

7. In fine, this revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

28.04.2023

Index : Yes / No

Speaking order / Non-speaking order
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C.R.P.No.2806 of 2019

To:

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1.The Sunordinate Judge
Uthangarai.

2.The Section Officer
VR Section, High Court, Madras.



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C.R.P.No.2806 of 2019

N.SESHASAYEE.J.,

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Pre-delivery order in
C.R.P.No.2806 of 2019

28.04.2023