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CRP.NPD Nos.837 and 2115 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30/6/2023

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

C.R.P.NPD.Nos.837 and 2115 of 2022

a n d

C.M.P.Nos.4245 and 10920 of 2022

Rajeshwari @ Eswari ... Petitioner

Vs

Meharaj ... Respondent

Prayer in C.R.P.NPD No.837 of 2022: Petition filed under Section 115 of the Code of Civil Procedure to set aside the fair and final order passed in E.A.No.74 of 2021 in E.P.No.85 of 209 in O.S.No.142 of 2014 on the file of the Sub-Court, Dharapuram, dated 17/11/2021.

Prayer in C.R.P.NPD No.2115 of 2022: Petition filed under Section 115 of the Code of Civil Procedure to set aside the fair and final order passed in I.A.No.717 of 2019 in O.S.No.142 of 2014 on the file of the



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Sub-Court, Dharapuram, dated 8/4/2022.

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For Petitioner	...	Mr.B.Kumarasamy
For respondent	...	Mr.K.Sudhakar

COMMON ORDER

Civil Revision Petition No.837 of 2022 is filed, aggrieved by the dismissal of E.A.No.74 of 2021 in E.P.No.85 of 2019 in O.S.No.142 of 204, on the file of the learned Subordinate Judge, Dharapuram, rejecting to set aside the ex parte order, dated 31/8/2021.

2. Civil Revision Petition No.2115 of 2022 is filed aggrieved by the dismissal of I.A.No.717 of 2019 in O.S.No.142 of 2014, on the file of the learned Subordinate Judge, Dharapuram, rejecting to condone the delay of 597 days in filing the application to set aside the ex parte decree, dated 22/12/2017.

3. The facts as mentioned in the affidavits enclosed in these two revision petitions are that the respondent/plaintiff has filed O.S.No.142 of 2014 for specific performance of agreement of sale dated 3/3/2011



against the petitioner.

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4. It is the submission of the petitioner/defendant that during the course of trial on account of age related ailments and on account of certain unfortunate incident happened in her family like her son Eswaramurthi died in an accident, one month thereafter her husband died and her another son Krishnamurthy went into coma thereby the petitioner went into depression on account of which the petitioner could not defend the suit and ultimately suit was decreed ex parte, on 22/12/2017.

5. As the petitioner/defendant has not executed sale deed as per the decree, the respondent/plaintiff/decreed holder has filed E.P.No.85 of 2019, on the file of the Sub-Court, Dharapuram and on receiving the notice in E.P, the petitioner/judgment debtor moved an application in I.A.No.717 of 2019 to set aside ex parte decree along with E.A.No.74 of 2021 to condone the delay of 597 days and on hearing both sides, E.A.No.74 of 2021 filed for condoning the delay of 597 days was dismissed.



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6. Heard Mr.B.Kumarasamy, learned counsel for the petitioner and Mr.K.Sudhakar, learned counsel for the respondents.

7. It is submitted by the learned counsel for the petitioner that on account of unforeseen incident in her family due to the death of petitioner's son, petitioner's husband and ill health of the petitioner's second son, she has gone into depression and thereby could not give witness to defend the suit.

8. Learned counsel appearing for the respondent has opposed the said contention stating that the petitioner is aware of the proceedings before the Court in O.S.No.142 of 2014 also in E.P.No.85 of 2019 and the Execution Court has posted the case for filing of draft sale deed, the judgment debtor filed I.A.No.717 of 2019 along with condoning the delay application without any valid reasons. According to the petitioner, her first son died in an accident and thereafter her husband died and further, her second son went into coma, thereby, she could not defend her case. At para No.13 of the impugned order, learned Subordinate Judge has put the events, datewise which are relevant to decide the



petition. On going through the same, it is clear that on 30/7/2014, the petitioner's son Eswaramurthy died; on 28/8/2014 within less than a month her husband died. However, the petitioner has filed a written statement, on 19/12/2014, i.e., four months, thereafter, issues were framed by the Court, on 4/9/2015 and P.W.1 was examined in chief on 13/9/2017. That means, as on the date of death of her son and husband, the petitioner has not even filed the written statement and on 13/9/2017, when P.W.1 was examined in chief the petitioner was set ex parte on 13/10/2017, which means more than three years and three months, after the death of her husband, she was remained ex parte.

9. When the petitioner could able to file written statement within four months from the death of her husband, it is not convincing to say that after three years and three months, she was not able to instruct her Advocate to cross-examine P.W.1 on account of depression due to the death of her husband. Further, the petitioner herself was examined as P.W.1 and has not filed any documentary evidence to show that the petitioner was in ill health, on the day when she was set ex parte.



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10. Therefore, this Court is in agreement with the observations made by the learned Subordinate Judge while dismissing the petitions. In the result, these Civil Revision Petitions are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

30/6/2023

mvs.

Index: Yes/No

Neutral Citation: Yes/No

To:

1. The Sub-Court, Dharapuram



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Dr.D.NAGARJUN,J

mvs.

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