



CRP No.3816 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06-01-2023

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

CRP No.3816 of 2022

And

CMP No.20062 of 2022

R.Revathy

.. Petitioner

vs.

M.Sivakumar

.. Respondent

PRAYER : This Civil Revision Petition is filed under Section 115 of CPC against the order and decree dated 02.09.2022 in IA No.570 of 2022 in OS No.70 of 2019 on the file of II Additional District Judge, Puducherry.

For Petitioner : Mr.R.Rajarajan

For Respondent : Mr.V.Rajesh Babu



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ORDER

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The present Civil Revision Petition is filed against the order dated 02.09.2022 passed by the learned II Additional District Judge, Puducherry in IA No.570 of 2022 in OS No.70 of 2019.

2. The revision petitioner is the defendant and the respondent instituted the suit for specific performance.

3. The respondent instituted the suit on 18.03.2019 and summon was served to the defendant. She did not appear in the suit and accordingly the defendant was set ex parte on 01.07.2019. Thereafter the plaintiff was examined as PW-1 in the suit and Exhibits A-1 to A-13 documents were marked on 07.08.2019 on the side of the plaintiff.

4. The Trial Court passed decree on 23.08.2019. Subsequently, the decree-holder/plaintiff filed EP No.117 of 2020 on 05.02.2020 and notice was issued to the defendant in the Execution Petition and it was



served. Even in the Execution Petition, she failed to appear and accordingly she was set ex parte. Subsequently, the revision petitioner filed a petition along with the counter in the Execution Petition on 29.09.2021. Even after filing counter, the respondent called absent and the case was not argued on behalf of the respondent. Thereafter the Execution Petition was allowed on 08.03.2022 and the respondent herein was directed to send draft copy of the Sale Deed. At that point of time, the revision petitioner filed IA No.570 of 2022 under Section 5 of Limitation Act to condone the delay of 205 days in filing Order 9, Rule 13 CPC to set aside the ex parte decree along with the written statement on 18.04.2022. IA No.570 of 2022 and 572 of 2022 were dismissed on 02.09.2022. On 31.10.2022, Sale Deed was executed in favour of the decree holder/respondent herein by the II Additional District Court, Puducherry. Consequently, Execution Petition was closed on 16.11.2022 as the Sale Deed was executed on 31.10.2022.

5. The learned counsel for the petitioner mainly contended that the delay is about 205 days and it is to be condoned and the petitioner may be



provided with an opportunity to contest the suit.

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6. This Court is of the considered opinion that no doubt the delay of 205 days, the Courts ordinarily condone by taking a lenient view. The delay of 205 days cannot be construed as enormous and in the normal circumstances, the Courts condone the delay if the reasons are adequate and acceptable.

7. In the present case, the revision petitioner has stated that he was taking treatment at ZIPMER Hospital at Puducherry and thus unable to contest the case. However, the fact remains that the revision petitioner has not only contest the civil suit, but failed to contest the execution proceedings and allowed the Court to execute the Sale Deed in favour of the decree holder and now after execution of the Sale Deed if the delay is condoned, the same would cause greater prejudice to the interest of the decree holder. Thus, this Court is not inclined to consider the case of the revision petitioner.



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8. Accordingly, the present Civil Revision Petition stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is also dismissed.

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Speaking Order/Non-Speaking Order.

Neutral Citation : Yes/No.

Internet : Yes/No.

Index: Yes/No.

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To

The II Additional District Judge,
Puducherry.



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S.M.SUBRAMANIAM, J.

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