



CRP.No. 530 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2023

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

CRP.No. 530 of 2021

and

CMP.No. 4590 of 2021

V.S. Muniyammal

...Petitioner

Versus

N.M. Chitambaram

.. Respondent

Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, prays to set aside the judgment and decree dated 12.01.2012 in I.A.No. 643 of 2010 in O.S.No. 62 of 2006 on the file of District Munsif Court, Tiruttani.

For Petitioner : Mr.S. Udayakumar
For Respondent : No Appearance

ORDER

This Civil Revision Petition has been filed seeking to set aside the judgment and decree dated 12.01.2012 in I.A.No. 643 of 2010 in O.S.No. 62 of 2006 on the file of District Munsif Court, Tiruttani.



CRP.No. 530 of 2021

WEB COPY

2. Heard both sides and perused the records.

3. The respondent/plaintiff filed a suit in O.S.No. 62 of 2006 before the District Munsif Court, Tiruttani, for directing the defendant to submit the sale deed with regard to specific performance of the sale agreement dated 21.04.2003 in respect of the suit property in favour of the plaintiff and if she failed to do so, the Court may execute the registered sale deed in favour of the plaintiff for the suit property. The defendant has contested the suit by filing written statement and denied all the averments made in the plaint. After perusing the records, the trial Court passed an ex-parte decree on 11.07.2006 on the ground that the petitioner/defendant has not appeared before the trial Court. Subsequently, the petitioner/defendant has filed I.A.No.643 of 2010 under Order 9 Rule 13 of CPC., seeking to condone the delay of 1495 days in filing petition to set aside the ex-parte decree dated 11.07.2006 and it was dismissed by order dated 12.01.2012. Aggrieved by the said order, the petitioner/defendant filed the present Civil Revision Petition.



CRP.No. 530 of 2021

WEB COPY

4. According to the revision petitioner, as her younger son, by name, Saravanan met with an accident and succumbed to multiple grievous head injuries and died on 05.10.2005, on 11.07.2006, she was called absent and set ex-parte and ex-parte decree was passed against her for non appearance. Due to her son's death, the petitioner suffered mental shock, anxiety and depression, which resulted not in good state of mind in concentrating house-hold affairs. Subsequently, she shifted from nuptial home and took shelter at parental home at O.G. Kuppan Village near Nagari, Andhra Pradesh for mental peace. She came back to nuptial home in the year 2006. During that period, she was not conscious as to what had happened and she often suffered from giddiness. After five years, she came to normal position i.e., about 20 days ago before filing the application before the Court below. Then she came to know that the respondent/plaintiff was attempting to grab her property through Court auction in E.P.No. 31 of 2009. Hence the petitioner's non appearance is neither willful nor wanton. Therefore, the petitioner prays to set aside the findings of the trial Court.



CRP.No. 530 of 2021

WEB COPY

5. According to the respondent/plaintiff, he resisted the petition by contending that at the time of execution of sale deed only, the petitioner/defendant filed the application to protract the proceedings. The delay is highly belated and the reasons adduced were untenable. There are no merits as such and each and every day's delay has not been properly explained and the delay is only to protract the proceedings. Hence, the respondent prays to dismiss the above Civil Revision Petition.

6. On a perusal of the records, it reveals that the respondent/plaintiff filed the suit for specific performance of the sale agreement, dated 21.04.2003 with regard to the suit property in favour of the plaintiff. The petitioner/defendant in her affidavit states that her younger son, by name Saravanan died on 05.10.2005. Due to her son's death, she could not appear before the trial Court and she could not contact her counsel. Therefore, the above delay has occurred. On the other hand, the aforesaid reason cited by the petitioner/defendant that owing to her son's sudden death, she was suffering from mental shock and depression is acceptable, which has not been considered by the trial Court.



CRP.No. 530 of 2021

WEB COPY

7. On a perusal of the documents, it reveals that the trial Court erred in holding that the petitioner fails to prove the case by tendering oral evidence and documents. When the respondent did not dispute the fact that the petitioner was suffering from mental shock and depression due to the sudden death of her son, the trial Court ought to have allowed the petition seeking condonation of delay in filing the petition to set aside the ex-parte decree. The trial Court erred in holding that there is no explanation on the part of the petitioner as to why she has not taken any action to set aside the ex-parte decree even after having knowledge of it. The trial Court ought to have held that there is sufficient cause shown by the petitioner to condone the delay and the trial Court has not given sufficient opportunities to prove her case. Therefore, one more opportunity should be given to prove her case by letting evidence. Therefore, the trial Court has wrongly come to the conclusion and it warrants interference of this Court. Hence, this Court is inclined to allow the above Civil Revision Petition.



CRP.No. 530 of 2021

WEB COPY

8. Accordingly, the Civil Revision Petition is allowed by setting aside the fair and decretal order dated 12.01.2012 in I.A.No. 643 of 2010 in O.S.No. 62 of 2006 on the file of District Munsif Court, Tiruttani. No costs. Consequently, connected Miscellaneous Petition is closed.

09.02.2023

Index :Yes/No
Speaking order : Yes/No
Neutral citation : Yes/No
msm

To

1. The District Munsif, Tiruttani.
3. The Section Officer, High Court, Madras.



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CRP.No. 530 of 2021

V.BHAVANI SUBBAROYAN, J.

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CRP.No. 530 of 2021

09.02.2023