

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(MD)Nos.1957 and 1958 of 2019

C.R.P(MD) No.1957 of 2019:

S.Rani ... Petitioner/Petitioner/Plaintiff

-vs-

Abdul Nasar ... Respondent/Respondent/Defendant

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, against the fair and decretal order dated 19.03.2019 in I.A.No.32 of 2019 in O.S.No.106 of 2018 on the file of the Sub Court, Aranthangi, Pudukkottai District.

For Petitioner : Mr.R.Paranjothi

For Respondent : Mr.N.Balakrishnan

C.R.P(MD) No.1958 of 2019:

S.Rani ... Petitioner/Petitioner/Plaintiff

-vs-

Abdul Nasar ... Respondent/Respondent/Defendant

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, against the fair and decreetal order dated 19.03.2019 in I.A.No.33 of 2019 in O.S.No.106 of 2018 on the file of the Sub Court, Aranthangi, Pudukkottai District.

For Petitioner : Mr.R.Paranjothi

For Respondent : Mr.N.Balakrishnan

COMMON ORDER

The present Civil Revision Petitions have been filed by the petitioner under Section 115 of Civil Procedure Code, against the fair and decreetal order dated 19.03.2019 in I.A.Nos.32 and 33 of 2019 in O.S.No.106 of 2018 on the file of the Sub Court, Aranthangi, Pudukkottai District.

2. The petitioner herein is the plaintiff. The respondent herein is the defendant before the Court below.

3. For the sake of convenience, the parties will be referred to as per the litigative status before the trial Court.

4. The brief facts which give rise to the instant Civil Revision Petitions are that the petitioner/plaintiff has filed the suit in O.S.No.106 of 2018 for the relief of specific performance, based upon the registered sale agreement dated 17.11.1998. It appears that the ex-parte decree was passed on 31.01.2005 and to set aside the ex-parte order, the petitioner appears to have filed an application. Since there was some defect in the said application, the same was returned. However, the petitioner has represented the said application. There was a delay of 1472 days. The represented application has been again returned for some other defects. Even while representing application, there was a further delay of 681 days. Therefore, there was a total delay of 2153 days in representing the application to set aside the ex-parte decree.

5. The learned counsel for the petitioner would submit that since the petitioner shifted his residence, he was not in a position to contact his counsel.

6. However, the said ground was strongly objected by the learned counsel for the respondent and would also rely upon the judgement of the Hon'ble Supreme Court reported in **2015(5) CTC 534 (H.Dohil**

Constructions Company Private Ltd Vs. Nahar Exports Ltd) and would submit that the Hon'ble Supreme Court has not condoned even the delay of 1720 days in representing the appeal.

7. This Court has given anxious consideration to the submissions of the learned counsel on either side.

8. The suit which was filed by the petitioner herein is for a specific performance. In the suit for specific performance, every day is very much crucial and there is a bounden duty on the part of the plaintiff to prove the ready and willingness to execute the sale agreement. Notwithstanding the said legal position to look at the factual position of the case, originally the suit was dismissed on 31.01.2005. Though the application has been filed with some delay, the same was earlier allowed in I.A.Nos..816 and 817 of 2012 and the delay of 50 and 79 days respectively were condoned. Even in spite of condonation of delay, when the Court below has returned the application for some defects, there was a delay of 1472 days and 681 days. Totally, there was a delay of 2153 days. The reason assigned by the petitioner was that in the Advocate office, the petition mixed up with the other papers and they were

not able to represent the same in time. However, the Court below after taking into consideration of the evidence of the petitioner, has disbelieved the version of the plaintiff. The Court below has also disbelieved the contention of the petitioner that the petitioner did not reside at Karaikudi and resided only at Unchanai village. With the above background, the Court below has ultimately arrived at a conclusion that the reason assigned by the petitioner is not a bonafide one.

9. On harmonious readings of the order of the Court below and also from the submissions of the learned counsel for the respondent, this Court could not find any material to interfere with the well considered order of the Court below.

10. In the result, both the Civil Revision Petitions are **dismissed**.
There shall be no order as to costs.

07.09.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Sub Court, Aranthangi,
Pudukkottai District.

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C.KUMARAPPAN,J.

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