



C.R.P.(MD).No.2560 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.11.2023

Delivered on: 01.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.R.P.(MD)No.2560 of 2018

and

C.M.P.(MD)No.11257 of 2018

Mariyammal ... Petitioner/Petitioner / Appellant

Vs.

1.G.Latha

2.Meena ... Respondents / Respondents / Respondents

Prayer:-Civil Revision Petitions filed under Section 115 of the Code of Civil Procedure, against the order, dated 13.07.2018, made in I.A.No.20 of 2017 in A.S.No. un numbered of 2017, on the file of the Principal District and Sessions Judge, Theni.

For Petitioner : Mr.D.Srinivasa Ragavan for Mr.M.Maran

For Respondents : Mr.R.J.Karthick for R1

: No appearance for R2



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ORDER

The appellant in an unnumbered first Appeal, who filed an application for condonation of delay of 712 days, is the revision petitioner herein.

2. The case of the revision petitioner is that she was the first defendant in the suit in O.S.No.150 of 2008. The said suit came to be decreed and the relief of specific performance was granted. It is further stated by the revision petitioner that because of cardiac problem and also financial difficulties, she was not able to contact her counsel in time and therefore, a delay of 712 days was occasioned in preferring the appeal.

3. The said application was resisted by the plaintiff on the ground that the reasons assigned by the revision petitioner, namely, cardiac problem and financial difficulties were untrue and without proof and there has been no proper explanation for the delay of 712 days. It is further contended that after the decree was passed, the plaintiff initiated E.P.No.83 of 2015 and the petitioner entered appearance in the said execution proceedings and in her presence, enquiry was conducted and the Execution



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Court ordered the E.P and the sale deed was also registered in favour of the plaintiff on 22.02.2016. Thereafter, the plaintiff took out E.A.No.91 of 2017 for taking possession of the property and despite notice, the petitioner did not choose to contest the said application and therefore, the Executing Court also ordered for delivery on 30.11.2017 and thereafter alone, the present appeal has been filed along with the application for condonation of delay.

4. The trial Court, after hearing the parties, dismissed the application for condonation of delay, as against which, the present Civil Revision Petition has been preferred on the grounds that the trial Court ought to have offered an opportunity to contest the suit as the valuable rights of the revision petitioner would be lost; the Court below failed to see that the reasons assigned by the revision petitioner were *bonafide* and that she would be thrown out of her house, if the delay is not condoned.

5. I have heard Mr.D.Srinivasa Ragavan, the learned counsel for the revision petitioner and Mr.R.J.Karthick, learned counsel for the first respondent. I have also perused the records.



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6. The revision petitioner has stated in her affidavit to condone the delay that because of cardiac problem and financial difficulties, she could not meet her counsel and that in view of the same, the appeal could not be filed in time. I am not able to find any other reason assigned by the revision petitioner in the affidavit in support of her application under Section 5 of the Limitation Act. Unfortunately, for the revision petitioner, I am able to see that not only she appeared and contested the suit, which fact is not denied by the revision petitioner, also subsequent to the decree passed against her, granting a relief of specific performance, the plaintiff has filed an Execution Petition in E.P.No.83 of 2015 and the revision petitioner has chosen to appear in the said E.P. as early as on 28.10.2015. Subsequently, about four months later, the Execution Court ordered that the sale deed should be executed and registered in favour of the plaintiff. In furtherance of the said order, the sale deed was also duly executed and registered by the Court on behalf of the judgment debtor in favour of the plaintiff on 22.02.2016. Thereafter, the plaintiff has also filed E.A.No.91 of 2017 for taking possession of the property from the revision petitioner. Despite service of notice in the said E.A., the revision petitioner did not



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even choose to contest the said application, as result of which the Executing Court ordered delivery of property on 30.11.2017. Having participated in the Execution proceedings and also suffered adverse orders, the revision petitioner never chose to file her statutory First Appeal, even thereafter. Conveniently, the revision petitioner states that as she was suffering from cardiac problem and financial difficulties and therefore she could not meet her counsel.

7. From the above discussion, it is clearly seen that during the very same period, she has engaged a counsel and also contested the Execution Proceedings and invited adverse orders for execution and registration of sale deed and for delivery of possession. Only thereafter, she has chosen to approach the First Appellate Court and filed the First Appeal along with the delay of 712 days. It is also seen from the affidavit in I.A.No.20 of 2017, that the said application has been signed on 15.02.2017 only. However, there is nothing to show as to when the said Appeal came to be filed. In any event, she appeared in the Execution Proceedings, way back on 28.10.2015. The revision petitioner did not think it fit to file an Appeal until 15.02.2017. Such careless and indifferent



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attitude can never be accepted as a just or sufficient cause, to condone the delay, on medical and financial grounds, besides also invoking a sympathetic ground of being deprived of her right to property.

8. I do not find any infirmity in the findings of the Lower Appellate Court, in rejecting the application for condonation of the delay and the same does not warrant any interference.

9. In fine, the Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Internet : Yes
Index: Yes/No
Neutral Citation: Yes/No
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01.12.2023



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To

1. The Principal District and Sessions Judge,
Theni.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.B.BALAJI,J.

LS

order in
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