



C.R.P. No. 355 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

C.R.P. No. 355 of 2022

and

C.M.P. No. 1845 of 2022

Kalaiselvi

... Petitioner

Vs.

Karnal

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside fair and decreetal order in R.E.A.No.3 of 2019 in R.E.P. No. 20 of 2014 in O.S. No. 46 of 2002 on the file of Sub Court, Uthangarai, Krishnagiri District, dated 29.01.2021 and thus render justice.

For Petitioner : Ms. Kalaiselvi
for Mr. K. Thiruvengadam

For Respondent : Mr. R. Sankarasubbu



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ORDER

This Civil Revision Petition has been filed against the order dated 29.01.2021 in R.E.A. No. 3 of 2019 in R.E.P. No. 20 of 2014 in O.S. No. 46 of 2002 on the file of Sub Court, Uthangarai.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3. The petitioner is the third defendant and the respondent is the plaintiff in the suit in O.S. No. 46 of 2002. The said suit was filed for specific performance and the same was decreed ex pare on 10.04.2004.

4. The case of the petitioner is that the petitioner is the third respondent in the execution proceedings. The execution petition has been filed on the strength of decree obtained against the respondents 1 and 2. The first respondent / Judgment Debtor, who is the father of the petitioner died pending execution proceedings. Hence, the petitioner herein has been added



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as necessary party to the execution proceedings. The petitioner is a married woman, she having been living at her matrimonial home, the Judgment Debtors never disclosed about the suit and execution proceedings, so the petitioner was unaware about the proceedings of the case. After service of notice in execution petition, the petitioner made an enquiry about the case and came to know about the ex parte order. The second judgment debtor did not conducted the case in an appropriate manner. Hence, an ex parte order has been passed against the petitioner on 06.08.2016. The petitioner filed a petition to set aside ex parte order and along with the said petition, the petitioner filed a petition under Section 5 of Limitation Act, to condone the delay of 1086 days in filing to set aside ex parte order in R.E.A. No. 3 of 2019. The Executing Court has dismissed the said application holding that the application is filed to protract the proceedings and prevent the decree holder from getting fruits of decree and there is no merit in the said petition.

5. Aggrieved by the order dated 29.01.2021, this civil revision petition has been filed.



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6. Having heard the submissions of the respective counsel and upon careful perusal of the material available on record, it appears that on 06.08.2016, execution petition came up for filing counter of the third respondent, who is the petitioner herein. On that day, counter is not filed. Consequently, an ex parte order has been passed. Thereafter, on behalf of judgment debtors, the execution Court has executed a sale deed on 22.08.2019 in favour of the decree holder. Under those circumstances, the petitioner filed the application to condone the delay of 1086 days in filing petition to set aside ex parte order dated 06.08.2016.

7. Infact, the petitioner has appeared in the case through her counsel on 13.04.2016 and sought time till 06.08.2016 for filing counter. It appears that even after getting several adjournments, the petitioner did not choose to file her counter and hence, the Court below constrained to pass an ex parte order against the petitioner. It is to be noted that in the meantime, the sale deed has been executed by the lower Court in favour of decree holder. The sufficient cause also not shown by the petitioner to condone the delay of 1086 days.



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8. In view of the reasons stated by the Court below while dismissing the petition filed by the petitioner, this Court is of the considered opinion that there is no illegality or infirmity in the order passed by the Court below in dismissing the petition filed by the petitioner. As such, this Court is not inclined to interfere into the order dated 29.01.2021 passed by the Court below.

9. Accordingly, the Civil Revision Petition is dismissed.

10. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Index : Yes / No

Neutral Citation : Yes / No

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BATTU DEVANAND, J.

AT

To
The Sub Court, Uthangarai, Krishnagiri District.

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