



Crp No.434 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 01.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRP No.434 of 2024 and
CMP No.2083 of 2024

K.Kaliappan

... Petitioner

Vs.

P.Geetha

... Respondent

Prayer: Civil Revision Petition filed under under Section 115 of Code of Civil Procedure to set aside the order dated 29.11.2023 made in I.A.No.523/2013 in AS CFR No.19181/2013 by the Principal Subordinate Judge, Coimbatore.

For Petitioner : Mr.A.E.Ravichandran

For Respondent : Mr.L.Mouli

ORDER

This Civil Revision Petition has been filed to to set aside the order dated 29.11.2023 made in I.A.No.523/2013 in AS CFR No.19181/2013 by the Principal Subordinate Judge, Coimbatore.



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2. The petitioner herein is the defendant and the respondent herein is the plaintiff in O.S.No.2060/2004, which was filed seeking specific performance. After full contest, the said suit was decreed in favour of the respondent/plaintiff on 13.02.2007. Subsequently, the petitioner herein has filed I.A.No.523/2013 in AS CFR No.19181/2013, to condone the delay in filing the appeal as against the above said decree passed in O.S.No.2060/2004 and the same was dismissed. Challenging the above order, the present civil revision petition has been filed.

3. The learned counsel for the petitioner submitted that the petitioner had met with an accident on 03.12.2007 and sustained fracture and had taken treatment. Therefore, he could not file the appeal in time, however, without considering the sufficient cause, shown by the petitioner, the learned judge had dismissed the petition for condoning the delay in filing the appeal. Hence, he seeks to set aside the impugned order.

4. Per contra, the learned counsel for the respondent submitted that the reasons stated in the affidavit are not accepted. The petitioner met with an accident on 13.12.2007, but he ought to have filed the appeal on or before 13.03.2007, because, the decree was passed on 13.02.2007. He further



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submitted that, the petitioner has not executed the sale deed, as per the decree and hence, the respondent has filed execution petition in E.P.No.268/2007, in which, the petitioner had participated through counsel and the above E.P. was allowed on 10.01.2012. But, the petitioner has filed the condone delay petition only on 25.07.2013, without any acceptable reason. Therefore, the appellate court has rightly dismissed the condone delay petition and in view of the same, the civil revision petition is liable to be dismissed.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondent and I have perused the materials on record.

6. On perusal of the records shows that, the respondent has filed the above suit in O.S.No.2060/2004 for specific performance and it was decreed on 13.02.2007, directing the petitioner to execute the sale deed in favour of the respondent/plaintiff, within two months, after receiving the balance sale consideration of Rs.10,000/-. Therefore, if the petitioner is aggrieved by the above said decree, he has to file appeal on or before 13.03.2007. In the affidavit, the petitioner has stated that he had met with an accident on 03.12.2007 and he was taking treatment as inpatient till 16.12.2007 and also taking further treatment and hence, he was not able to file the appeal in time.



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But, the above reason cannot be accepted, because, he met with an accident on 03.12.2007, subsequent to the limitation period on 13.03.2007.

7. Apart from that, the respondent herein had filed the execution petition in E.P.No.268/2007, and the petitioner had participated in the above proceedings, which was not denied by the petitioner. When the petitioner was able to participate in the execution proceedings, he could have filed the statutory appeal during that time. Further, during the execution proceedings, the sale deed was also executed in favour of the respondent through Court. Afterwards, the petitioner has filed the appeal that, too after a lapse of 2326 days, without any valid and acceptable reasons. Therefore, I find no infirmity in the impugned order passed by the learned Principal Subordinate Judge, Coimbatore to interfere over the same. As such, the civil revision petition is liable to be dismissed, as it has no merits.

8. In the result, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

01.03.2024

Index:Yes/No
Internet:Yes/No
mst
To

The Principal Subordinate Judge, Coimbatore.



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V.SIVAGNANAM, J.

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