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CMP Nos.12297, 12335 & 12336 of 2023
in AS SR Nos.17948, 17949 & 17950 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

**CMP Nos.12297, 12335 & 12336 of 2023
in AS SR Nos.17948, 17949 & 17950 of 2023**

Judgment reserved on 11.06.2024	Judgment pronounced on 05.07.2024
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V.Ranganathan ... Petitioner in all petitions

Vs

1.Smt.Kulandhaimani
Smt.Latha (deceased)
2.E.Deepika ... Respondents in CMP No.12297 of 2023

1.R.Kalidass
Smt.Latha (deceased)
2.E.Deepika ... Respondents in CMP No.12335 of 2023

1.R.Ramasamy
Smt.Latha (deceased)
2.E.Deepika ... Respondents in CMP No.12336 of 2023

Prayer in CMP No.12297 of 2023 : This petition has been filed under Order XLI Rule 3A of CPC to condone the delay of 1754 days in filing the First Appeal.

Prayer in CMP No.12335 of 2023 : This petition has been filed under Order XLI Rule 3A of CPC to condone the delay of 1743 days in filing the First Appeal.



CMP Nos.12297, 12335 & 12336 of 2023
in AS SR Nos.17948, 17949 & 17950 of 2023

Prayer in CMP No.12336 of 2023 : This petition has been filed under Order XLI Rule 3A of CPC to condone the delay of 1740 days in filing the First Appeal.

Prayer in ASSR No.17948 of 2023 : This appeal has been filed against the judgment and decree dated 23.01.2018 passed by the I Additional District Judge, Coimbatore in O.S.No.137 of 2014.

Prayer in ASSR No.17949 of 2023 : This appeal has been filed against the judgment and decree dated 23.01.2018 passed by the I Additional District Judge, Coimbatore in O.S.No.138 of 2014.

Prayer in ASSR No.17950 of 2023 : This appeal has been filed against the judgment and decree dated 23.01.2018 passed by the I Additional District Judge, Coimbatore in O.S.No.136 of 2014.

For Petitioner : Mr.G.Karthikeyan,
Senior Counsel for
Ms.A.Jagadeeswari

For Respondents : Mr.P.V.Ramachandran for R1
Mr.G.Mutharasu for R2

ORDER

All these miscellaneous petitions have been filed to condone the delay of 1754, 1743 and 1740 days in filing the above First Appeals, on the ground that the family members have been tested positive for Corona and



CMP Nos.12297, 12335 & 12336 of 2023
in AS SR Nos.17948, 17949 & 17950 of 2023

thereafter they recovered. The petitioner tried for compromise and on failure, he has preferred the present appeals with delay.

2. Counter has been filed.

3. The 1st respondents herein are the plaintiffs in the suit in O.S.No.137, 138 & 136 of 2014 respectively. The suits have been filed for recovery of money from the appellant/defendant based on Varthamana agreement dated 20.12.2012. After trial, the suit was decreed. For more than five years, the petitioner/defendant has not taken any steps. On 23.01.2018, the decree was passed and the 1st respondents herein have filed E.P.No.204 of 2022 on 25.04.2022 and the same has been served upon the petitioner herein.

4. Heard the learned Senior Counsel appearing for the petitioner as well as the learned counsel appearing for the respondents 1 & 2 and perused the materials available on records.

5. The 1st respondent in CMP No.12297 of 2023 in ASSR No.17948 of 2023 filed suit in O.S.No.137 of 2014 and the same was tried alongwith



CMP Nos.12297, 12335 & 12336 of 2023
in AS SR Nos.17948, 17949 & 17950 of 2023

other two suits filed by her husband and daughter in O.S.Nos.138 & 136 of 2014 and a common judgment dated 23.01.2018 has been passed by the 1st Additional District Judge, Coimbatore.

6. From the lower court records, I find that all the suits are arising out of sale agreement dated 09.08.2011 entered into between Ramasamy and the 2nd defendant Smt.Latha, on the presentation that the second defendant Smt.Latha is the absolute owner of the property. These three petitioners seems to have paid a sum of Rs.28,25,000/- and taken three separate sale deeds for an extent of 3 cents each. The petitioner herein/1st defendant signed in all the documents namely partition deed, sale agreement and also sale deed in favour of the 1st respondents/plaintiffs, as attesor.

7. It is further averred that after the sale deed, when these three petitioners / plaintiffs have visited the suit property for cleaning, one Lourdhusamy informed them that the said property was already sold to him by the father of the second defendant in the year 1968 itself. A criminal complaint has already been lodged and pending before the Lang Grabbing Cell, Coimbatore. Hence, the plaintiffs approached the defendant/appellant for refund of the amount and accordingly, respective sale deeds were



CMP Nos.12297, 12335 & 12336 of 2023
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cancelled and an unregistered vardhamana agreement was entered into and the petitioner/first defendant stood as a guarantor. They also executed a demand promissory note however, he has not paid the amount. Hence, the three separate pro-note for a sum of Rs.10,18,260/- for the plaintiff in O.S.No.136 of 2014, another pro-note for a sum of Rs.9,64,790/- to the plaintiff in O.S.No.137 of 2014 and another pro-note for a sum of Rs.9,67,110/- to the plaintiff in O.S.No.138 of 2014 totalling the entire sale property of the said amount. Post dated cheque have also been bounced and hence suit for recovery of money based on pro-note was filed.

8. After trial, the learned First Additional District Judge, Coimbatore has given a categorical finding that the second defendant alongwith first defendant have sold the property with full knowledge that the property no longer belongs to them and the property was already sold by their father in the year 1968 which resulted in cancellation of the sale deed entered into vardhamana agreement and pro-note and bouncing of the cheque are true and accordingly decreed the suit, against which, these present appeals have been filed with condonation of delay.

9. It is the contention of the learned Senior Counsel appearing for the



CMP Nos.12297, 12335 & 12336 of 2022
in AS SR Nos.17948, 17949 & 17950 of 2023

petitioner that due to corona, the petitioner could not file appeal in time. The period of corona is different from the date of decree. The suit was decreed as early as on 23.01.2018. The period of corona is between 2020 to February 2021 and even thereafter, for more than three years, no steps have been taken by the petitioner/appellant. Two years prior to Corona period and 2½ years after the corona period, the petitioner has not taken any steps. E.P No.204 of 2022 was filed on 25.04.2022 and served upon the petitioner/appellant. Even then, the petitioner has not moved the Appellate Court and hence, I find that there is no sufficient cause for condoning the huge delay of 1754 days, 1743 days and 1740 days respectively and it appears that it is only to defend the money decree.

10. On the discussion of the Trial Court, I find that the second defendant has sold the property which she is not the owner and her father has already sold the very same property as early as 1968 and criminal case is also pending before the land grabbing cell. Hence, both the defendants 1 & 2 had knowledge that they are not the owners of the property from the date of the sale in favour of the respective plaintiffs / 1st respondents. Hence, even on the merits, I am not inclined to show any indulgence considering the nature of transaction that has been effected by the petitioner / appellant, as



CMP Nos.12297, 12335 & 12336 of 2023
in AS SR Nos.17948, 17949 & 17950 of 2023

reflected by the Trial Court judgment from the registered document filed before the Court.

11. In short, the petitioner in all the three cases has not made out sufficient cause, much less, any reasonable cause for condoning the huge delay of 1754 days, 1743 days and 1740 days respectively which is more than five years. Accordingly, in the absence of any sufficient cause for condoning the delay, I am not inclined to allow these petitions.

12. In the result, all these Civil Miscellaneous Petitions are dismissed. Consequently, AS SR Nos.17948, 17949 & 17950 of 2023 are rejected at the SR stage itself.

05.07.2024

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RMT.TEEKAA RAMAN, J.

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To

1. The I Additional District Judge,
Coimbatore

2.The Section Officer



VR Section, High Court,
Madras.

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Common Order in
CMP Nos.12297, 12335 & 12336 of 2023
in AS SR Nos.17948, 17949 & 17950 of 2023

05.07.2024