



C.M.P.No.20103 of 2022 in C.R.P.No.12 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on 15.03.2024

Order delivered on 03.06.2024

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

C.M.P.No.20103 of 2022

in

C.R.P.(NPD)No.12 of 2022

1. G.Periyathambran

2. G.Kovi @ Kothandan
Both residing at Keevalur,
Harijan Colony,
Keeravalur Village,
Sriperumbudur Taluk,
Kancheepuram District.

.... Petitioners

Vs

1. R.Jagadeesan

S/o M.Ramalingam Aachari

2. The District Collector of Kancheepuram,
Collectorate Building,
Kancheepuram

3. The Additional District Collector of Kancheepuram,
Collectorate Building,
Kancheepuram



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4. Block Development Officer (Panchayat),
Sriperumbudur Office in Panchayat Union,
Sriperumbudur Office in Panchayat Union,
Sriperumbudur Town.

Govindasamy (Died)

5. Anjalakshmi

6. Ponnan @ Sampathu,
Keevallur Village,
Sriperumbudur Taluk,
Kancheepuram District.

(Respondents 2 to 6 are not necessary
parties in the above CRP)

...Respondents

Prayer: Civil Miscellaneous Petition filed under Section 5 of Limitation
Act to condone the delay of 224 days in filing the Restoration Petition.

For Petitioners : Mr.N.Kamaraj

For Respondents : Mr.M.E.V.Thulasi for R1
Dr.S.Suriya
Additional Government Pleader
for R2 to R4

ORDER

This civil miscellaneous petition has been filed to condone the delay of
224 days in filing the Restoration Petition which was dismissed for default on
11.01.2022, passed by this Court.

2. (i) Learned counsel for the petitioner would state that the Civil



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Revision Petition was filed before this Court against the order passed by the Execution Court for delivery of possession in E.P.No.10 of 2010 in O.S.No.799/2008 pending on the file of learned District Munsif cum Judicial Magistrate, Sriperumbudur, Kancheepuram District. In the said C.R.P, the petitioner has filed a condone delay petition in M.P.No.1 of 2013 and the same was allowed and stay of further proceedings was granted.

(ii) Learned counsel for the petitioner would state that the case was posted for admission on 7.1.2022 before this Court, after the main C.R.P. was numbered. In the month of January 2022, the petitioner's counsel was taking care of his wife's medical ailment at home who is a physically handicapped person. His Junior counsel Mr.S.Velmurugan was taking care of the case and he was aware that the case was posted on 07.01.2022. He was getting fees periodically from the petitioner and his relative Mr.Babu and totally a sum of Rs.1,60,00/- was paid to him upto March 2022. Subsequently, the case was posted on 11.01.2022 for appearance of the petitioner's counsel but the junior counsel, Mr.S.Velmurugan did not inform the same to the petitioner or his relative Babu, but he gave assurance that he will take care of the case and get positive order. He did not allow to meet his senior Mr.N.Kamaraj. He frequently called the petitioner and got money from him. Suddenly, when the



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petitioner approached his counsel Mr.N.Kamaraj , the petitioner came to know that the case was dismissed for default for non appearance of the petitioner's counsel.

(iii) Learned counsel for the petitioner would further state that during the period of severe spreading of Covid-19, this Court permitted only virtual hearing but the petitioner's counsel on record was to take care of his wife at home, due to which, he was not able to appear on 7.1.2022 and again on 11.1.2022. The junior counsel did not inform the case to his senior Mr.S.Velmurugan. So he could not follow the case and hence, the case was dismissed for default on 11.01.2022. The petitioner, after getting the dismissal order copy from the lower court counsel, approached his counsel in the 2nd week of September, 2022 to file restoration petition. The restoration petition ought to have been filed on or before 30 days from the date of default order. The petitioner came to know about the dismissal only in the 1st week of September, 2022 and he filed the same within 30 days from the date of knowledge. As per the original date of dismissal, there is a delay of 224 days in filing the restoration petition. The delay is neither wilful nor wanton but due to the above said bonafide reasons. Hence, he would pray to condone the delay of 224 days in filing the restoration petition.



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3 (i) Per contra, learned counsel appearing for the contesting respondent/1st respondent would contend that a suit in O.S.No.64 of 1998 was filed before the District Munsif Court, Thiruvallur, praying for restraining the defendants/respondents from interfering with the suit property and raising any construction in the suit property and for a declaration that the property is wholly and exclusively belongs to the plaintiff and directed the defendants 5 to 8 to remove the superstructure, failing which, for recovery of vacant possession at the cost of defendants 5 to 8. The said suit was subsequently transferred before the District Munsif cum Judicial Magistrate Court, Sriperumbathur, and renumbered as O.S.No.799 of 2008.

(ii) Learned counsel would further contend that the suit was decreed in favour of the 1st respondent on 23.12.2009 and the 1st respondent filed execution petition in E.P.No.10/2010. The 1st petitioner preferred an appeal in C.M.P.No.417/2011 in A.S.S.R.No.10660 of 2011 along with condonation of delay petition before the Sub-Judge, Kancheepuram. The same was dismissed for default on 01.07.2013. The execution petition in E.P.No.10/2010 was ordered for delivery of possession on 13.09.2011. Based on which, on 24.07.2013, the bailiff went to the schedule property to demolish



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the building constructed by the 1st petitioner. The notice sent through Court was returned stating as 'door locked'.

(iii) Learned counsel for the petitioner would state that the revision petitioner preferred C.R.P.S.R.No.53939 of 2013, in which, *status quo* was ordered only for two weeks. The main C.R.P.No.12 of 2022 was numbered and posted before court on 07.01.2022 and 11.01.2022. On both dates, the petitioners did not appear. Hence, the C.R.P. was dismissed for default.

(iv) Learned counsel would further state that the petitioners, instead of restoring the C.R.P., preferred several vexatious petitions before the execution Court in E.A.No.8 of 2023, E.A.No.9 of 2023 and E.A.No.10 of 2023 and all the E.As were dismissed. Against the said E.As, C.R.P.Nos.4449, 4450 and 2522 of 2023 were filed and all the said revision petitions were dismissed with liberty to contest the restoration of condone delay petition in I.A.No.1 of 2023 in I.A.No.417 of 2011 in A.S.S.R.No.10660 of 2011 with a direction to the Sub Judge, Kanchipuram, to dispose of the said petition within 3 months from the date of receipt of the order. The said I.A.No.1 of 2023 was again dismissed for default on 03.02.2022 for non-appearance of the petitioners. However, instead of contesting I.A.No.1 of 2023 as per the direction of this Court, the petitioners have preferred the present condone delay petition only



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to drag on the execution proceedings. Learned counsel would further state that for more than a decade, the petitioners are dragging on the proceedings though the decree was granted in favour of the 1st respondent. Hence, he would pray to dismiss the petition.

4. Heard the learned counsel for the petitioners, the learned counsel appearing for the respondents and perused the materials available on record.

5. Originally, a suit in O.S.No.64 of 1998 (renumbered as O.S.No.799 of 2008) was filed by the 1st respondent herein before the District Munsif Court, Thiruvallur, praying for restraining the defendants from interfering with the suit property and raising any construction in the suit property and for a declaration that the property is wholly and exclusively belongs to the plaintiff and directed the defendants 5 to 8 to remove the superstructure, failing which, for recovery of vacant possession at the cost of defendants 5 to 8. The suit was decreed in favour of the 1st respondent herein on 23.12.2009 and the 1st respondent filed execution petition in E.P.No.10/2010. The 1st petitioner preferred an appeal in A.S.S.R.No.10660 of 2011 along with condonation of delay petition in I.A.No.417/2011 before the Sub Judge



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Kancheepuram. The same was dismissed for default on 01.07.2013. The execution petition in E.P.No.10/2010 was ordered for delivery of possession on 13.09.2011. The Court notice sent in that regard, was returned as 'door locked'. Thereafter, order to break open the lock and police protection was obtained from the court.

6. It is seen from the records that thereafter, the revision petitioners preferred C.R.P.SR.No.53939 of 2013 and *status quo* was ordered only for two weeks. When the main C.R.P.No.12 of 2022 was numbered and posted before the Court on 07.01.2022 and 11.01.2022, the petitioners did not appear. Therefore, the C.R.P. was dismissed for default on 11.01.2022. However, instead of restoring the C.R.P., the petitioners preferred several vexatious petitions before the execution Court in E.A.Nos.8 to 10 of 2023, however, all the E.As were dismissed.

7. In order to drag on the matter further, the petitioners filed C.R.P.Nos.4449, 4450 and 2522 of 2023 and subsequently, all the said revision petitions were dismissed with liberty to contest the restoration of condone delay petition in I.A.No.1 of 2023 in I.A.No.417 of 2011 in



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A.S.S.R.No.10660 of 2011 with a direction to the Sub Judge, Kanchipuram, to dispose of the said petition within 3 months from the date of receipt of the order. Again, the petitioners did not appear and the said I.A.No.1 of 2023 was dismissed for default, which act of the petitioners would go to show they have wantonly and purposely stalled the proceedings, even though several opportunities were given to them. Without contesting the interlocutory application and leaving the said application for dismissed for default, the petitioners have now preferred the present condone delay petition only to drag on the execution proceedings. There is also no sufficient reason stated by the petitioners for condonation of delay. The petitioners had adopted total inaction and lethargic attitude in prosecuting the case. The petitioners cannot be allowed to take advantage of their own negligence or lethargic attitude. In one way or the other, the petitioners are only stalling the executing proceedings.

8. Further, the aforesaid reasons given by the petitioners for condoning the delay is vexatious without any iota of evidence. The Hon'ble Apex Court, time and again, has held that the reason for each and every day delay has to be explained in detail. Even though the 1st respondent got the decree in his



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favour in 2009, the execution petition was filed immediately in 2010 and the delivery of possession was ordered in 2013, for more than a decade, the petitioners are dragging on the proceedings by filing vexatious petitions one after the other at various courts and successfully stalled further proceedings of the execution petition pending before the District Munsif cum Judicial Magistrate Court, Sriperumbudur, which cannot be entertained by this Court.

9. For the reasons stated above, this Court is of the view that the condone delay petition is liable to be dismissed. Accordingly, the Civil Miscellaneous Petition is dismissed.

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Index : Yes / No

Internet : Yes / No



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J. NISHA BANU, J.

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