



C.R.P.(PD)(MD) No.83 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.03.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

C.R.P.(PD)(MD) No.83 of 2020

and

C.M.P.(MD) No.402 of 2020

M.Angaiyarkanni

... Petitioner/Respondent/
Plaintiffs

Vs.

1.Pushpam

2.Dinesh

... Respondents/Petitioners/
Defendants

Prayer: Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 25.07.2019 made in I.A.No.687 of 2018 in O.S.No.331 of 2010 on the file of the Principal Sub Court, Dindigul.

For Petitioner : Mr.J.Lawrance

For Respondents : Mr.G.S.Ashok Adhithyan



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ORDER

This Civil Revision Petition is directed against the order dated 25.07.2019 passed in I.A.No.687 of 2018 in O.S.No.331 of 2010 on the file of the Court of the Principal Subordinate Judge, Dindigul. The said application was filed by the respondents herein under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 600 days in filing an application under Order IX Rule 13 of the Code of Civil Procedure. The said application was allowed by the learned trial Court subject to payment of cost of Rs.3,000/- to the petitioner/plaintiff. Aggrieved by the said order, the petitioner/plaintiff filed the present revision petition.

2. This matter earlier came up for consideration before this Court on 21.02.2024 and again on 29.02.2024. On both the occasions, at the instance of the learned counsel for the petitioner, the matter was adjourned. Today, when the matter is listed for consideration, once again a request is made for adjournment. This Court declined to entertain such request, as this



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Court has already made it clear on 21.02.2024 itself that no request for further adjournment will be entertained.

3. The learned counsel for the petitioner strenuously contended that the learned trial Court has erroneously exercised its discretion in condoning the delay of 600 days, in spite of the fact that the respondents have not furnished even the actual date of death of the husband of the 1st respondent, nor explained the abnormal delay of 600 days in a satisfactory manner.

4. The suit in O.S.No.331 of 2010 was filed by the petitioner herein seeking specific performance of an agreement of sale and in the said suit, the respondents herein were arrayed as Defendants No.1 and 2. It is the case of Respondents No.1 and 2 that they are not aware of the suit proceedings, as the husband of Respondent No.1 was looking after the said case and he passed away on 08.02.2013 and thereafter, for want of knowledge, they could not contest the said suit and in view of the same, the said suit was decreed on 30.11.2016 ex-parte and it is only after the notices are received by Respondents No.1 and 2 herein in the execution petition filed by the



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petitioner herein, they came to know about the suit proceedings and immediately thereafter, they taken steps to file application under Order IX Rule 13 of the Code of Civil Procedure together with application to condone the delay under Section 5 of the Limitation Act, 1963.

5. The learned trial Court having set ex-parte Defendants No.1 and 2, passed an ex-parte decree without discussing the entitlement of the petitioner herein for granting decree of specific performance. It is only on setting the defendants ex-parte, a cryptic judgment was passed. The said decree and judgment are sought to be set aside at the instance of Respondents No.1 and 2 herein, who are Defendants No.1 and 2 in the suit with a view to contest the said suit on merits along with an application to condone the delay of 600 days in filing such application. The learned trial Court having taken note of the totality in circumstances, passed an elaborate order dated 25.07.2019 condoning the delay with a view to afford an opportunity to Defendants No.1 and 2 to contest the matter on merits.



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6.This Court, having perused the order under revision and after having heard the learned counsel for the petitioner, is convinced that it is not a fit case for interfering with the discretion exercised by the learned trial Court. In the circumstances, this Court does not find any merit in the Civil Revision Petition and the same is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

7. Considering the fact that the suit is of the year 2010, the learned trial Court is directed to conclude the proceedings as expeditiously as possible, at any rate, within a period of six months from the date of setting aside the ex-parte decree, in case if the ex-parte decree is set aside.

07.03.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes

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MUMMINENI SUDHEER KUMAR, J.

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To

The Principal Sub Judge,
Dindigul.

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