



C.R.P.(NPD)(MD).No.2487 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(NPD)(MD)No.2487 of 2018

and

C.M.P(MD) No.10999 of 2018

Umaiya Parvathy

... Revision Petitioner/Petitioner/
Defendant

-vs-

A.Mari Selvam

... Respondent/Respondent
Plaintiff

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, against the fair and decretal order dated 27.08.2018 made in I.A.No.55 of 2015 in O.S.No.13 of 2009 on the file of the Sub-Court, Tuticorin.

For Petitioner : Mr.S.Kadarkarai

For Respondent : No appearance

ORDER

The defendant in O.S.No.13 of 2009 on the file of Sub Court, Tuticorin is the revision petitioner. The respondent herein as the plaintiff had filed a suit for the relief of specific performance. The defendant had filed written



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statement disputing the enforceability of the sale agreement. The defendant had remained *ex parte*. The plaintiff's side examination was over and the case was posted for the examination of the witnesses on the side of the defendant. Since the defendant had not chosen to let in any evidence, an *ex parte* decree came to be passed on 27.01.2011.

2. Based upon the *ex parte* decree, the plaintiff had initiated execution proceedings in September 2011 to deposit the balance amount. Due to non-filing of the counter, the judgment debtor was set *ex parte* in the execution proceedings on 13.06.2012. On 21.02.2013, the sale deed was executed by the Court in favour of the decree holder.

3. The decree holder had filed an application for delivery on 30.08.2013. New counsel who was engaged by the judgment debtor had filed his Vakalat on 10.01.2014. Since the petitioner had not filed any counter, delivery was ordered. Thereafter, the present application has been filed on 11.09.2014 to condone the delay of 1293 days in filing an application to set aside the *ex parte* decree. The trial Court after considering the above said facts, had dismissed the said application. Challenging the same, the present



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Civil Revision Petition has been filed.

4. According to the learned counsel appearing for the revision petitioner, the first counsel engaged by the defendant had not properly intimated the dates of enquiry for the defendant to let in evidence. Therefore, the defendant could not let in evidence and she was set *exparte*. Even in the execution proceedings, proper instructions were given to the counsel to file a counter. Therefore, the entire delay has happened only due to the fault on the part of the counsel engaged by the defendant. Considering the defence taken by the defendant in the written statement, the delay may be condoned.

5. Though notice was served upon the respondent/decreed holder and name was also printed in the cause list, she has not chosen to appear either in person or through her counsel.

6. I have carefully considered the submissions made by the learned counsel for the revision petitioner and perused the materials available on record.



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7. It is not in dispute that the defendant had suffered an *exparte* decree in a suit for specific performance on 27.01.2001. In the execution proceedings also, the defendant has engaged the same counsel and she was set *exparte* and the sale deed came to be executed on 21.02.2013. In the delivery application, the new counsel engaged by the defendant had filed valakath on 10.01.2014. Thereafter, the present application to condone the delay of 1293 days has been filed only on 11.09.2014. Even assuming that there is a fault on the part of the previous counsel, even after a new counsel was engaged in January 2014, the defendant had taken time in filing an application to set aside the *exparte* decree.

8. Therefore, this Court is of the considered opinion that the defendant has not properly explained the delay in filing an application to set aside the *exparte* decree despite engaging a new counsel in the delivery application. The trial Court has rightly arrived at a decision that the delay is inordinate and the defendant has not properly explained the delay and there is no illegality or infirmity in the order passed by the trial Court.



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9. Accordingly, this Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The Sub-Court,
Tuticorin.



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R.VIJAYAKUMAR,J.

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