



C.R.P.(MD)No.416 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 04/03/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P(MD)No.416 of 2024

and

CMP(MD)No.2088 of 2024

1.Ramar

2.Solamalai

: Petitioners/Petitioners/
3rd and 4th Defendants

Vs.

K.Paraman

: Respondent/Respondent/
Plaintiff

PRAYER:- Civil Revision Petition has been filed under section 115 of the Civil Procedure Code, to set aside the order in IA No.345 of 2020 in OS No.537 of 2007 on the file of the Principal District Munsif, Thirumangalam, dated 07/07/2022 within the stipulated time.

For Petitioners : Mr.J.Gunaseelan Muthiah

For Respondent : Mr.T.Ponram Kumar

O R D E R

This civil revision petition has been filed seeking to set aside the fair and decreetal order, dated 07/07/2022 passed in IA No.345 of 2020 in OS No.537 of 2007 by the Principal District Munsif, Thirumangalam.



2. The facts in brief:-

A suit in OS No.537 of 2007 was filed by the respondent herein seeking the relief of specific performance and for costs. The defendants entered appearance and filed their written statement. The defendants 3 and 4 remained *ex-parte*, on 30/08/2016. So an *ex-parte* order was passed on that date. To set aside the *ex-parte* decree and judgment, they filed IA No.345 of 2020 stating that on the date of hearing, they were affected by physical illness. So, they could not contact his Advocate and instructed him to get adjournment. Later, they went outside on their job. After returning their village, they enquired with their Advocate. At that time, he was stated that because of the non-appearance, *ex-parte* decree was passed, on 30/08/2016.

3. That was resisted by the respondent stating that there was huge delay of 1284 days; Proper reason has not also assigned; He filed the execution petition in EP No.9 of 2017; Even in the execution proceedings, they remained *ex-parte*. Draft sale deed was filed. The sale deed was also executed, on 04/03/2019; Later, EA No.49 of 2019 was filed for delivery. Now pending delivery process, the petition is filed with huge delay.



C.R.P.(MD)No.416 of 2024

WEB COPY

4.After hearing both parties, the trial court dismissed the petition stating that no proper reason was assigned and the reasoning mentioned by the petitioners is also not acceptable.

5.Challenging the above said dismissal order, this civil revision petition is preferred. Even that was not properly prosecuted. Originally, the civil revision petition was returned due to some defects in CRP(MD)SR.No.81346 of 2022 on the ground that there was a delay of 211 days in making representation. That was allowed by this court, on 22/01/2024 on payment of costs. So this shows that the petitioners not only prosecuted the original suit before the trial court, but even before this court, they exhibited the lethargic attitude.

6.Now coming to the facts, it has been simply stated that on the date of hearing, they affected by physical illness. What sort of illness, they suffered, no particulars are mentioned. Later, they say that after recovery from the illness, they went out of place to attend their job. On which day, they went out of station is not mentioned. It is further stated that after returning from the out-station, they made enquiry with the Advocate, who is appearing for them. At that time,



C.R.P.(MD)No.416 of 2024

only, they were told that *ex-parte* decree was passed.

Again, on which date, they contacted their Advocate is not clear. From which date, the delay is calculated is also not mentioned in the affidavit.

7.Perusal of the order of the trial court shows that this is the second attempt, they remained *ex-parte*. Previously, they remained *ex-parte* on 17/03/2008 due to non filing of the written statement. That application was allowed and written statement was filed and when the second default committed at the time of trial, they ought to have vigilant in prosecuting the matter. That was also not exhibited by them. Under this circumstance, whether the order passed by the trial court suffers from any illegality or irregularity is the point to be decided by this court.

8.The learned counsel appearing for the respondent would rely upon various judgments passed by various courts as to how such application must be dealt. Apart from that, it is also submitted that against the *ex-parte* decree and judgment, only appeal will lie. For that purpose, he would rely upon the judgment of the Hon'ble Supreme court in ***Koushik Mutually Aided Cooperative Housing Society Vs. Ameena Begum and another (2023 SCC OnLine SC 1662)***.



C.R.P.(MD)No.416 of 2024

WEB COPY

9.No doubt that against the *ex-parte* decree, appeal will lie, as per Order XLIII Rule 1 CPC. But here, revision is preferred against the order of dismissal passed in the petition filed under section 5 of the Limitation Act. Whether this IA was taken up along with the application to set aside the *ex-parte* decree or not is not clear on record.

10.Only in case of such nature, appeal will lie. But here, as mentioned above, what happened to the petition filed by the petitioners along with the present subject petition is not known. So, the contention raised by the petitioners herein is not acceptable.

11.Now coming back to the order passed by the trial court, as mentioned above, unless satisfactory explanation is offered by the petitioners to condone the delay, no leniency can be shown.

12.The Hon'ble Supreme Court in ***University of Delhi Vs. Union of India (Civil Appeal Nos.9488-9489, dated 17/12/2019)*** held as follows:-

"28.In the matter of condonation of delay and laches, the well accepted position is also that the accrued right



WEB COPY



C.R.P.(MD)No.416 of 2024

of the opposite party cannot be lightly dealt with. In that regard, rather than taking note of the hardship that would be caused to the respondent No.13 as contended by the learned Senior Counsel, what is necessary to be taken note is the manner in which the respondent No.11-DMRC has proceeded in the matter. The respondent No.11-MRC is engaged in providing the public transport and for the said purpose the Government through policy decision has granted approval to generate resources through property development and in that regard the development as earlier indicated, is taken up. Pursuant thereto the respondent No.11 has received a sum of Rs.218.20 crores from respondent No.13 as far back as in the year 2008. The said amount as indicated is used for its projects providing metro rail service to the commuting public. In such circumstance, if at this stage the inordinate delay is condoned unmindful of the lackadaisical manner in which the appellant has proceeded in the matter, it would also be contrary to public interest."

13.Now, the case reached finality. In the execution petition also, the petitioners remained ex-parte. The sale deed was executed by the Court. Now pending for



WEB COPY



C.R.P.(MD)No.416 of 2024

delivery. At the fag end of the process, that petition is filed. Already the right is accrued to the respondent herein in the form of delivery. So, at the fag end of the delivery process, it appears that this petition came to be filed, even without assigning any reason. So, it has been rightly decided by the trial court, which requires no interference.

14.In the result, this civil revision petition is **dismissed**. No costs. Consequently connected Miscellaneous Petition is closed.

04/03/2024

Index:Yes/No
Internet:Yes/No
er

To,

- 1.The Principal District Munsif,
Thirumangalam, Madurai District.
- 2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P.(MD)No.416 of 2024

G.ILANGO VAN, J

er

C.R.P (MD) No.416 of 2024

04/03/2024