



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-11-2025

CORAM

THE HONOURABLE MR.JUSTICE P.B. BALAJI

CRP.No.496 of 2022

& CMP.No.2618 of 2022

T.Palanisamy

Petitioner

Vs.

1.Kothandasamy (Died)

P.Boopathy (Died)

2.M.Duraisamy

3.Kamalathal

4.Krishnaveni

5.Shanthi

6.Mohanraj

Respondents

Prayer: Civil Revision Petition filed under Section 115 of CPC, to set aside the fair and decretal order dated 11.01.2021 made in I.A.No.142 of 2020 in O.S.No.199 of 2010 on the file of the Sub-Court, Dharapuram, now at Sub-Court, Kangayam.

For Petitioner : Mr.D.Gopal
for M/s.D.Raghu

For Respondents : Mr.P.Navaneethakrishnan for RR3 to5
R1 Died
No appearance for RR2 & 6



ORDER

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The revision petition has been filed, challenging the order in I.A.No.142 of 2020 in O.S.No.199 of 2010 on the file of the Sub Court, Dharapuram by the 3rd defendant.

2.The revision petitioner filed an application under Section 5 of the Limitation Act, seeking condonation of delay of 1414 days in seeking to set aside the ex-parte decree passed against the revision petitioner. The said application came to be dismissed by the trial Court, as against the same, the instant revision petition has been filed.

3.I have heard Mr.D.Gopal, learned counsel for M/s.D.Raghu, learned counsel for the petitioner and Mr.P.Navaneethakrishnan, learned counsel for the respondents 3 to 5.

4.Mr.D.Gopal, learned counsel for the petitioner would submit that the suit was filed for specific performance of an agreement of sale and though a



written statement was filed by the revision petitioner even in August 2014, the petitioner was suffering from Jaundice and he was not in a position to contact his counsel, which resulted in the ex-parte decree being passed. He would therefore state that when the valuable property of the revision petitioner is at stake, an opportunity to be given to the petitioner to contest the suit on merits. The learned counsel for the petitioner would rely on the decision of this Court in *Ramesh Vs. Sadhasivamoorthy*, in *CRP(NPD).No.2887 of 2018* dated 05.10.2018. He would pray for the revision being allowed.

5.Per contra, Mr.P.Navaneethakrishnan, learned counsel for the respondents 3 to 5 would submit that the petitioner is a *pendente lite* purchaser, who has proceeded to purchase the property, knowing about the pending litigation and that too, for a throw away price of Rs.1 lakh. The certified copy of the sale deed, under which, the petitioner purchased the property on 11.01.2011, is also produced by the counsel for the respondents. He would therefore state that the delay of 1414 days has not been properly explained and the trial Court has rightly found that even despite receiving notice in the execution petition, for three years, no application came to be



filed seeking to set aside the ex-parte decree. He would rely on the decision of this Court in *Palaniammal and others Vs. Ragunathan and another*, reported in *CDJ 2024 MHC 8192*. He would pray for dismissal of the revision petition, confirming the order of the trial Court.

6.I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the order impugned in the revision petition.

7.The petitioner suffered an ex-parte decree in the suit. In fact, the revision petitioner was not arrayed as a defendant at the first instance and only after the contesting defendants, namely the vendors, who had brought it to the notice of the Court that the property had been sold in favour of the revision petitioner, an interlocutory application was filed and the revision petitioner was impleaded in the suit as the 3rd defendant. Despite being impleaded, the petitioner did not file his written statement and he was set ex-parte on 20.06.2013 and after trial commenced, the petitioner filed an application to set aside the ex-parte order, which came to be allowed by the



trial Court on payment of cost of Rs.1,000/-. However, the petitioner did not avail of the indulgence shown by the trial Court and cost was not paid. Therefore, the said application to set aside the ex-parte order was dismissed on 20.03.2015. It is thereafter, the suit has been decreed in favour of the respondents/plaintiffs in November 2015 and the application filed by the revision petitioner under Order IX Rule 7 to set aside the ex-parte order was dismissed in March 2015.

8.It is seen that after the decree in favour of the plaintiffs, they had filed E.P.No.56 of 2016 and in the said EP, the petitioner has entered appearance on 01.09.2016 and he has not taken any steps thereafter until October 2019, when he chose to file the application to condone the delay, which was numbered as I.A.No.142 of 2020.

9.The trial Court has found that the said delay has not been explained and even the reasons assigned in the affidavit have not been established and having remained a silent spectator for several years, it is not open to the petitioner to suddenly wake up from slumber and seek to set aside the ex-parte decree. The trial Court also rightly found that the petitioner only



alleged Jaundice as a reason, but however, disbelieved the said excuse put forth by the petitioner, on the ground that it was improbable for a person to allege illness due to Jaundice for four years. I do not see any infirmity in the findings arrived at by the trial Court, dismissing the application.

10. Though this Court condoned the delay of 1379 days in setting aside the ex-parte decree in *Ramesh's case*, states supra, that was a case where the revision petitioner therein had already purchased the property, when there was no encumbrance in the suit properties and in such circumstances, the Court felt that an opportunity ought to have given to a bonafide purchaser and condone the delay. The facts of the present case are entirely different. As rightly contended by the learned counsel for the respondents, the petitioner is only a *lis pendens* purchaser and his purchase is hit by Section 52 of the Transfer of Property Act.

11. Further, when the suit for specific performance has been filed in respect of an agreement entered into in the year 2009 for a sale consideration of Rs.7,10,000/-, it is highly improbable that the petitioner could have proceeded to purchase the property for a mere sum of Rs.1 lakh. This itself goes to show that the petitioner is not a bonafide purchaser for a value. In



any event, the petitioner has not made out sufficient cause for explaining the delay of 1414 days.

12. In similar circumstances, I had an occasion to reject the Section 5 application, finding that despite service of notice in the execution petition, the application to condone delay was not immediately taken out. In the light of the above, there is absolutely no merit in the revision petition, warranting interference.

13. In fine, the Civil Revision Petition is dismissed. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

04-11-2025

Speaking Order/Non-speaking order

Index: Yes/No

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P.B. BALAJI.J.,

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To

1. The Sub Court, Dharapuram.

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2.The Sub Court, Kangayam.

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