

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 24.09.2025

Order pronounced on : 26.09.2025

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THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.No.4962 of 2023

& CMP.No.29089 of 2023

A.Vijaya

... Petitioner

Vs.

1.P.Nagalingam

2.Alageswari

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of CPC, to set aside the fair and decretal order dated 24.10.2018 in I.A.No.273 of 2017 in O.S.No.48 of 2015 on the file of the V Additional District Court, Coimbatore.

For Petitioner : Mr.P.Mani

For Respondents : Mr.V.Venkatasamy

ORDER

The Defendant in O.S.No. 48 of 2015 on the file of the V Additional District Court, Coimbatore, is the Revision Petitioner. The Revision Petitioner had filed I.A.No. 273 of 2018, seeking condonation of delay of 741 days in filing the Application to set aside the ex-parte decree. The Trial



Court dismissed the said application, as against which, the present revision petition is filed.

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2.I have heard Mr.P.Mani, learned counsel for the Revision Petitioner and Mr.V.Venkatasamy, learned counsel for the Respondent. I have gone through the records, including the order impugned in the present revision petition.

3.Mr.P.Mani, learned counsel for the Petitioner would submit that the Respondent, claiming under an agreement of sale dated 18.09.2013, filed a suit seeking the relief of specific performance. It is the contention of Mr.P.Mani, learned counsel for the Petitioner that the Petitioner's husband had borrowed money and it is only in respect of the said borrowing the suit Sale Agreement came to be executed and in fact, the Petitioner's husband prevailed upon her to execute the sale agreement, which was not a voluntary act on the part of the revision Petitioner.

4.The learned counsel for the petitioner would also state that the decree came to be passed on 29.01.2016 and only when the Petitioner received notice in the Execution Petition on 18.07.2017, she came to know



about the ex-parte decree having been passed in the suit for specific performance. Thereafter the application has been filed for setting aside the ex-parte decree, along with an application to condone the delay of 741 days under Section 5 of the Limitation Act.

5.The learned counsel would further state that the Petitioner's husband is not in good terms with the Petitioner and has abandoned the family and the Petitioner has to take care of not only herself, but also two girl children. He would further state that it is a valuable property measuring 1500 sq.ft and an opportunity ought to have been given to the Petitioner to defend the suit on merits. He would therefore pray for the revision being allowed.

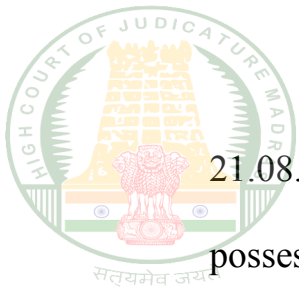
6.Per contra, Mr.V.Venkatasamy, learned counsel for the Respondent would state that the suit agreement was entered into by the Petitioner herself on 18.09.2013 and it is too late in the day to contend that her signature was obtained by force. He would also state that a pre-suit notice was issued on 05.07.2014 which was returned unserved and thereafter the Plaintiff issued a second notice on 25.01.2015 which was received by the revision Petitioner. He would also point out that the acknowledgment card for having received the said lawyer's notice dated 25.01.2015 was, in fact, exhibited at trial, as



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7.As regards the contentions regarding the delay, Mr.V.Venkatasamy, learned counsel for the Respondent would state that the Petitioner was served with summons in the Suit and entered appearance on 07.08.2015. However, the Petitioner chose not to file a written statement and the Trial Court proceeded to decree the suit ex-parte, on 29.01.2016. The learned counsel would further state that E.P.No. 41 of 2016 was filed for execution of the sale deed pursuant to the decree for specific performance and in the said Execution Petition, notice was served on the petitioner on 18.07.2017 and the petitioner also entered appearance in the execution proceedings on 03.08.2017, however the application to set aside the ex-parte decree was only filed on 12.02.2018. The learned counsel would therefore state that there is absolutely no explanation on the side of the Petitioner with regard to the six months from the date of receiving the notice in the EP, till the date of filing of the setting aside application.

8.The learned counsel for the respondents would further state that the Executing Court has already executed the sale deed in favour of the Respondents on 22.07.2019 and E.P.No.41 of 2016 was also closed on



21.08.2019. Thereafter E.P.No. 2103 of 2019 has been filed for recovery of possession from the Petitioner and pointing out to the delay even in filing the present Revision Petition, Mr.V.Venkatasamy would contend that the Revision was filed along with an application to condone a delay of 250 days. He would therefore state that the Petitioner has not been diligent throughout and does not deserve any indulgence whatsoever. In support of his contentions, the learned counsel for the respondents would also rely on the decision of the Hon'ble Supreme Court in *Delhi Development Authority v Tejpal and Others* reported in (2024) 7 SCC 433.

9.I have carefully considered the submissions advanced by the learned counsels for the parties.

10.The suit agreement has been admittedly executed by the revision Petitioner. The Respondent, after having issued two notices, one of which was unserved and the other having been served on the Petitioner evoking no response, proceeded to institute the suit for Specific Performance. The revision Petitioner has chosen to enter appearance in the said suit, by engaging a counsel. However, she has not filed written statement and did not diligently take steps to defend the suit. The suit was therefore decreed ex-



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parte and subsequently, the Respondent has filed E.P.No.41 of 2016 for a direction regarding execution of sale deed in favour of the Respondent. In the EP proceedings as well, the Petitioner was served with notice on 18.07.2017 which factum has been set out by the petitioner in paragraph No.6 of the affidavit filed in support of the condonation of delay application. However, the Application to set aside the ex-parte decree has not been taken out within a period of 30 days, at least from 18.07.2017. The Petitioner has apparently taken her own sweet time to approach the Court with a request to set aside the ex-parte decree, by making an application only on 12.02.2018.

11.As rightly contended by Mr.V.Venkatasamy, learned counsel for the Respondent, the Petitioner has failed to justify or explain the inaction between 18.07.2017 and 12.02.2018. The Trial Court, in the impugned order has rightly found that even before passing of the ex-parte decree, ample opportunities were granted to the Petitioner to defend the suit and even in the Execution Petition, the Petitioner was served with notice and entered appearance through an advocate and no reasonable cause was shown by the Petitioner for non-appearance and the delay of 741 days in filing the application to set aside the ex-parte decree.



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12. The Hon'ble Supreme Court in *Delhi Development Authority's case* (cited Supra), has held that a party who is insensible to the value of civil remedies and who does not assert his claim with promptitude is denied the ability to enforce even in an otherwise rightful claim. Reliance has been placed on the latin maxim, *vigilantibus et non dormientibus jura subveniunt*, meaning the law aids the vigilant and not those who sleep on their rights. The Hon'ble Supreme Court further held that though limitation extinguishes the ability to enforce rights, without either creating or destroying the underlying cause of action or entitlement itself, Section 5 provides exception to the general rule. The Act permits admitting an action, if sufficient cause is shown and the Courts are vested with discretion to extend the period of limitation, if the applicant can show "sufficient cause" in not preferring an application within the prescribed period and that the Section requires an analysis of two ingredients, firstly, an examination of whether sufficient cause has been made out; and secondly, whether such cause has been shown for not filing such an application within the prescribed period.

13. Applying the ratio laid down by the Hon'ble Supreme Court to the facts of the present case and in view of the foregoing discussion, it is amply clear that the Petitioner has failed to show any sufficient cause. There is



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absolutely no explanation, much less, satisfactory explanation as to what prevented the Petitioner from not approaching the Court, at least within 30 days from the date of being served notice in the execution proceedings. The Hon'ble Supreme Court has also time and again held that while considering an application for condonation of delay, the Court should not be swayed by the merits of the claim, but should restrict the enquiry to the reasons assigned for the condonation of delay and only if sufficient cause is shown, the Court can even consider the respective rights of the parties in order to balance equities, if permissible.

14. In the present case, I do not find the Petitioner to have shown sufficient cause in the first place and further, the Trial Court has rightly found that the Petitioner is not entitled to delay condonation. The order is a well reasoned order, which in my considered opinion, does not require any interference.

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

26.09.2025



Neutral Citation: Yes/No
Speaking Order/Non-speaking Order
Index : Yes / No
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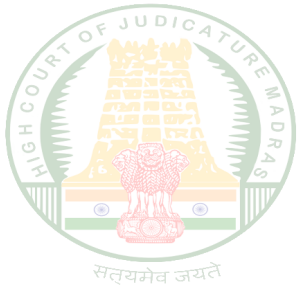
P.B. BALAJI,J.

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To
The V Additional District Court, Coimbatore.

Pre-delivery order made in
CRP.No.4962 of 2023

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