

A.No.4016 of 2011
in C.S.No.291 of 2006

M.SATHYANARAYANAN, J.

An agreement of sale dated 15.07.2004 came into being between the first respondent/first plaintiff and the applicant/defendant for sale of land and building situated at Plot No.141, Sri Ayyappa Nagar, Chinmaya Nagar, Chennai-600 092, for approved layout admeasuring to an extent of 2 Grounds and 200 sq.ft., for a sum of Rs.49,50,000/- and the applicant/defendant has also received a sum of Rs.1,00,000/- towards advance and part sale consideration. Since the applicant/defendant did not come forward to perform his part of obligation, the present Suit came to be filed for specific performance and for other consequential reliefs. It is the case of the first respondent/first plaintiff that he subsequently came to know that there are other Legal Heirs of Thiru.P.V.Seshiah, namely his daughter Mrs.Sheshamma and her son Mr.Arvind Prasad, having 50% of the undivided share in the property and both of them had already entered into a sale agreement for their respective 50% share in favour of one Mr.M.Purushothaman as per the registered Agreement of Sale dated 12.01.2004 for a valid sale consideration of Rs.25,00,000/-. Thereafter the first plaintiff and the agreement holder, namely Mr.M.Purushothaman has engaged the second plaintiff to deal with the property.

2. The applicant/defendant was served and he also entered appearance through Counsel and thereafter changed as many as six Counsel and since she did not file the written statement, she was called absent and set *exparte* and after taking evidence, an *exparte* decree came to be passed on 08.09.2009 and the present application is filed to condone the delay of 669 days in filing the application to set aside the *exparte* decree dated 08.09.2009 made in C.S.No.291 of 2006.

3. The learned counsel appearing for the applicant/defendant would submit that though in para 6 of the affidavit, reason has been assigned to the effect that she is the resident of Hyderabad and Suit summons have been taken to her place at Chennai, the fact remains that she did engage Advocates to defend her case and therefore, the said plea may not appear to be tenable. Alternatively, it is the submission of the learned counsel appearing for the applicant/defendant that the Suit for Specific Performance of the agreement in respect of the property, lies within the City of Chennai and after the *exparte* decree was passed, without knowing the same, the defendant has filed the written statement in Diary No.28045 on 09.08.2011 and when an attempt made to serve the same on the learned counsel for the plaintiffs, it was refused to be received on the

ground that the Suit has already been decreed and immediately, she has taken out the application for condonation of delay in filing the application to set aside the exparte decree and would further add that in the above facts and circumstances, the said delay cannot be said to be either wilfull or wanton and prays for condonation of delay.

4. *Per contra*, learned counsel appearing for the respondents/plaintiffs has drawn the attention of this Court to the counter affidavit and would submit that there was an understanding reached between the agreement holder, namely Mr.M.Purushothaman and both of them nominated the second plaintiff to deal with the property and it is an admitted fact that the defendant did engage very many Counsel and therefore, she cannot plea that since she is the resident of Hyderabad at relevant point of time, could not be served. It is the submission of the learned counsel appearing for the respondents/plaintiffs that the since the applicant/defendant has failed to approach the Court with clean hands, she is not entitled to get any indulgence from this Court and prays for dismissal of the application with exemplary costs.

5. This Court has carefully considered the rival submissions and also perused the affidavit, typed set as well as the counter affidavit.

6. When the application was listed for hearing, the learned Judge has directed the parties to let in evidence and accordingly, oral evidence was let in and documents in Exs.P1 to P17 were came to be marked and evidence was also let in on the merits of the main matter also. The fact remains that the defendant/applicant has engaged very many Counsel by change of vakalat and therefore, it is not open to her to contend that since she is a resident of Hyderabad at the relevant point of time, she could not effectively defend the case. It is to be pointed out at this juncture that the defendant, when knowing the fact that the Suit has been decreed exparte on 08.09.2009, filed the written statement on 09.08.2011 in Diary No.28045 and the same is available on record, however, it was not taken on file may be on account of the reason that it was not supported by any application for condonation of delay in filing the written statement. This Court, taking into consideration that the Suit is in respect of the property located in the City of Chennai and taking into consideration the overall facts and circumstances, especially the fact that the written statement filed by the defendant, though available on record, not yet taken on file, is of the view that one more final opportunity is to be given to the defendant/applicant so as to enable her to contest the Suit on merits. However, this Court is of the view that for condonation of delay, the applicant/defendant is to be put on terms.

7. In the result, this Application is allowed only in respect of condonation of delay and the delay of 669 days in filing the application to set aside the exparte decree dated 08.09.2009 is condoned, subject to the condition that the applicant/defendant shall pay a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) by way of Pay Order/Demand Draft drawn in favour of the first plaintiff on or before 19.02.2016, failing which this application shall stand automatically dismissed.

List the matter "For Reporting Compliance" on 23.02.2016.

28.01.2016

jvm

M.SATHYANARAYANAN, J.

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