

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.12.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.2165 of 2011
and
M.P.No.1 of 2011**

The Tamil Nadu Industrial
Investment Corporation Limited,
with its Head Office
at Arulmani, 27, Whites Road,
Chennai – 600 014

.. Petitioner

Vs.

1.Subhamakeswari
2.Sundarambal
3.K.Thenmozhi
4.K.Karuppaiyan
5.Dhanabaggiyam

..Respondents

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the order dated 16.11.2010 made in C.F.R.No.330 of 2005 in un-numbered Appeal Suit, on the file of the Principal District Judge, Erode District at Erode.

For Petitioner : Mr.K.V.Sundararajan

For Respondents : Mr.V.Meenakshi Sundaram (for R1 to R3)

ORDER

The case of the revision petitioner Corporation is that the 4th respondent namely K.Karuppiayan has offered and put some of his properties as collateral security for a Loan advanced to the 5th respondent's brother namely A.Kathirvel. Whereupon the 4th respondent deposited the concerned Title Deeds with the revision petitioner corporation on 25.03.1991 and thereby created an Equitable Mortgage. In furtherance of the Mortgage the revision petitioner corporation has advanced a Loan to the tune of Rs.8.60 Lakhs. The 4th respondent offered collateral security, since the said A.Kathirvel is none other than his wife's brother. It is relevant to note here that the said A. Kathirvel is the maternal Uncle of the respondents 1 to 3. In the meantime the above said Loan remained default as unpaid, for which the revision petitioner corporation took efforts to realize the loan by taking appropriate legal action. Whereas immediately the respondents 1 to 3 with a malice intention to defeat the claim of the revision petitioner corporation, at the instigation and in collusion with respondent 4 and 5 herein being their parents, have filed the above suit in O.S.No.795 Of 1999 praying for partition,

wherein the properties rendered as collateral security before the revision petitioner corporation was mentioned as the suit schedule properties in O.S.No.795 of 1999. The said suit is absolutely a collusive suit, so as to defraud this revision petitioner corporation.

2.However, the learned trial Judge without proper appreciation of facts and law, has erroneously decreed the suit vide order dated 19.07.2004. Aggrieved over the said decree and judgment, the revision petitioner herein filed an appeal under Order 41 Rule 1 r/w Section 96 of CPC within the limitation period of 30 days. Being so, due to some defect in the memorandum of appeal, it was returned by the appellate Court. However, misfortunately the Counsel for the revision petitioner failed to represent the appeal memorandum. Thereafter the said bundle got misplaced with some other bundles in the Counsel's office and was untraceable. However, the same was not communicated to the revision petitioner Corporation. Whereas the bundle was traced and complied the defects therein, it was re-presented before the appellate Court on 29.07.2010, with the delay of 5½ years in representation of the appeal. Again the appeal memorandum was returned by the Appellate Court by holding that there was no delay condonation petition filed in support of the appeal memorandum. Thereafter when the Counsel for the revision petitioner

corporation prayed to condone the delay in representation, it was dismissed by an order dated 16.09.2010. The said order of dismissal of the unnumbered appeal is impugned herein.

3.I heard Mr.K.V.Sundararajan, learned counsel appearing for the petitioner and Mr.V.Meenakshi Sundaram, learned counsel appearing for the respondents 1 to 3 and perused all the records.

4.The learned counsel for the revision petitioner submitted that the delay caused in representing the appeal is neither wanton nor willful and the same can be ascertained from the very fact that originally the memorandum of appeal was filed well within the 30 days limitation period. Whereas the above said delay is only due to the cumbersome situation of that the case bundle papers stood misplaced by the counsel for the petitioner corporation. The petitioner corporation being a public authority and vested with public money will be put to irreparable loss provided if the appeal is dismissed without appreciation of facts. Therefore in the interest of justice the above said delay is to be condoned. Furthermore the suit is a collusive one, came to be filed to defraud the petitioner corporation, which is impermissible under law or facts.

5. Per contra, the Learned Counsel for the respondent submitted that the reason for delay in representing the appeal is not at all explained by the revision petitioner. Further the respondents 1 to 3 cannot be held liable and their share in the suit properties cannot be defeated for the above said illegal equitable mortgage made by the respondents 4 and 5 in respect of their ancestral property. In any way the respondents 1 to 3 is neither responsible nor their share liable to be defeated, so as to realize the above said loan advanced to their maternal uncle.

6. On perusal of the typed set of papers, it is obvious that the appeal was filed within the limitation period, before the 1st appellate Court, whereas a delay is caused in representing the returned memorandum of appeal. The reason put forth by the revision petitioner is that the case bundle stood misplaced and untraceable. Thereafter having traced the case papers, the appeal memorandum after complying and rectification of defects was represented with the delay of 5½ years. It is noticeable from the impugned order that there is an omission on the part of the Court in mentioning the date within which the appeal memorandum has to be represented.

7. Further the revision petitioner being a body corporate vested with public money and taking into account that the above said loan also ought to have been advanced from such public money, this Court in the interest of justice feels that the appeal of the revision petitioner is liable to be decided on merits. At the same time this Court is of the opinion that for a fault of Counsel, his client should never be prejudiced. It is needless to say that an appeal under Order 41 Rule 1 r/w Section 96 of CPC is a statutory right of the losing party in a suit, besides the first Appellate Court being the Court of appeal on facts and law.

8. At this juncture, it is noticeable from the impugned order that the trial Court has decreed the partition suit by holding that the revision petitioner since remained without taking action from the year 1991 to 1999 to recover / realize the loan amount, is legally barred from recovering the said loan from the respondents. The said finding of the trial Court vide para 18 is unwarranted. It is needless to say that any person, who has availed a loan is legally and morally duty bound to repay the same. Therefore, this Court in the interest of justice and fair play, feels as just and necessary to condone the delay in representing the appeal, so as to decide the issue on merits. It is made clear that the case on hand will not act as a binding precedent,

since the facts and circumstances of the case is peculiar and is of greater public importance.

9.In the result:

(a) the Civil Revision Petition is allowed by setting aside the order passed in in C.F.R.No.330 of 2005 in un-numbered Appeal Suit, dated 16.11.2010, on the file of the Principal District Judge, Erode District at Erode, on a condition that the revision petitioner Corporation shall pay a cost of Rs.10,000/- as compensation towards the delay caused in representing the above first appeal to be paid to the respondents within a period of four weeks from the date of receipt of copy of this order;

(b) the learned Principal District Judge, Erode is hereby directed to number the Appeal Suit and dispose the same on merits, by giving notice to both parties within a period of four months from the date of production of the payment receipt. Consequently, connected miscellaneous petition is closed.

07.12.2016

Note:Issue order copy on 28.04.2017.
Internet:Yes/No.
Index:Yes/No.

vs

To

The Principal District Judge,
Erode District at Erode.

M.V.MURALIDARAN, J.

VS

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