

Reserved on : 21.11.2016

Delivered on : 23.11.2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2016

CORAM

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.3407 of 2015
and M.P.Nos.1 & 2 of 2015

1.K.Geetanjali

2.S.Murugan

... Petitioners

Vs

1.M.Aathilakshmi

2.M.Sambamurthy

... Respondents

Civil Revision Petition under Section 115 of the Code of Civil Procedure against the fair and decreetal order dated 31.07.2015 passed in C.M.P.No.385 of 2015 in A.S.SR.No.14526 of 2015 on the file of the Principal City Civil Court Judge, Chennai.

For Petitioners : Mr.S.R.Rajagopal
for Mr.A.Kalaivanan

For Respondents : Mr.T.T.Ravichandran
for Mr.R.Muthukumar

ORDER

The above Civil Revision Petition arises against the fair and final order passed in C.M.P.No.385 of 2015 in A.S.SR.No.14526 of 2015 on the file of the Principal Judge, City Civil Court, Chennai.

2.The revision petitioners are the defendants in O.S.No.4580 of 2010 on the file of the XVI Assistant Judge, City Civil Court, Chennai.

3.The respondents/plaintiffs filed the suit in O.S.No.4580 of 2010 for recovery of possession and for mandatory injunction restraining the defendants 1 & 2 from disturbing their peaceful possession and enjoyment of the suit property.

4.Since the defendants failed to appear before the trial Court, they were set exparte and an exparte decree was passed on 13.09.2013.

5.Pursuant to the decree passed in O.S.No.4580 of 2010, the plaintiffs filed an Execution Petition in E.P.No.2320 of 2014 on the file of the X Assistant Judge, City Civil Court, Chennai. The 2nd petitioner is the son of

the 2nd respondent and the 1st respondent is the mother of the 2nd respondent. The 1st petitioner is the wife of the 2nd petitioner.

6.On 12.11.2014, the defendants/Judgment Debtors filed a memo before the Executing Court stating that in view of the close relationship between the parties, the matter may be referred to Lok Adalat.

7.On 20.11.2014, the plaintiffs/Decree Holders filed objections for the memo filed by the defendants stating that with a *malafide* intention to prolong the proceedings, the Judgment Debtors have filed the memo for referring the matter to Lok Adalat. Further, they have stated that if the matter is referred to Lok Adalat, it would cause great prejudice to them. Further, they have prayed for rejection of the memo dated 12.11.2014.

8.Thereafter, on 23.03.2015, the defendants filed an appeal in A.S.SR.No.14526 of 2015 as against the judgment and decree passed in O.S.No.4580 of 2010 with a petition in M.P.No.385 of 2015 to condone the delay of 518 days in filing the appeal. In the affidavit filed in support of the petition, in paragraph no.5, the defendants have stated that they were under the impression that the matter was almost settled and due to which they did not instruct their counsel to proceed further. The 2nd petitioner has

further stated that he married the 1st petitioner against the wishes of the respondents since the 1st petitioner belongs to a different community. Further, in paragraph no.7, the 2nd petitioner has stated that due to his health problem and frequent visits to out station, he was not in a position to get himself examined before the trial Court and only because of the various talks held between the family members, he did not take steps to file the appeal in time. The plaintiffs disputed the averments stated in the affidavit filed in support of the petition specifically stating that knowing fully well that the suit was decree against them, they remained silent deliberately without taking steps either to get the exparte decree set aside or to file an appeal in time.

9.The Lower Appellate Court, taking into consideration the case of both parties, dismissed the petition finding that the appellants failed to explain the reasons for the delay of 518 days in filing the appeal in a proper manner. As against the order passed by the Lower Appellate Court, the defendants have filed the above Civil Revision Petition.

10.Heard Mr.S.R.Rajagopal, learned counsel appearing for the petitioners and Mr.T.T.Ravichandran, learned counsel appearing for the respondents.

11.Mr.S.R.Rajagopal, learned counsel appearing for the revision petitioners submitted that the defendants have explained the reasons for the delay in a proper manner before the Lower Appellate Court and however, inspite of the same, the Lower Appellate Court had erroneously dismissed the petition. Further, the learned counsel submitted that the prayer sought for in the suit are mutually inconsistent and should not have been granted by the trial Court. The learned counsel submitted that the prayer for recovery of possession and for permanent injunction will not go together. The learned counsel also submitted that only because there was settlement talks between the parties, the defendants did not file the appeal in time.

12.Countering the submissions made by the learned counsel for the petitioners, Mr.T.T.Ravichandran, learned counsel appearing for the respondents/plaintiffs submitted that the defendants deliberately filed the appeal belatedly, therefore, the Lower Appellate Court has rightly dismissed the petition. Further, the learned counsel submitted that there was no settlement talks between the parties and the said contention raised by the defendants was denied by the plaintiffs as early as on 20.11.2014 itself before the Executing Court.

13. With regard to the prayer sought for in the suit, the learned counsel submitted that the plaintiffs are willing to not press the prayer for permanent injunction and the 1st respondent, being the grand-mother of the 2nd petitioner, is an aged woman and therefore, she requires only the possession of her property from the defendants. Further, the learned counsel submitted that the plaintiffs are not pressing the prayer for permanent injunction and has also made an endorsement to that effect in the grounds of revision.

14. In support of his contentions, the learned counsel relied upon the following judgments:

(i)(2010) 5 Supreme Court Cases 459 [Oriental Aroma Chemical Industries Limited Vs. Gujarat Industrial Development Corporation and another] wherein the Apex Court held that in the case of false statement made by a party to explain the delay, the delay should not be condoned. Further, the Apex Court held that unless the party seeking for condonation of the delay gives sufficient cause, the delay should not be condoned.

(ii)An un-reported judgment dated 16.12.2014 made in C.R.P.(MD) (NPD).No.2641 of 2014, wherein in the said judgment, I held as follows:

“...

5.The plaintiff disputed the averments stated in the affidavit filed in support of the application. The reasoning of the defendant that since the parties entered into the compromise deed, she did not file the appeal in time cannot be accepted, for the reason that even in the affidavit she has not mentioned the date of agreement. Further, the petitioner has enclosed a copy of the alleged compromise deed dated 14.02.2010 in the typed set of papers. When the plaintiff is disputing the execution of the compromise deed, the defendant should have proved the execution petition by adducing a proper evidence before the Court below. In the absence of any evidence to prove that there was compromise between the parties, the lower Appellate Court has rightly rejected the application. The delay is inordinate. Unless the defendant gives sufficient reason for condoning the long delay of 1728 days, the same cannot be condoned. In the case on hand, the defendant has not given any acceptable reason for condoning the long delay of 1728 days. The Lower Appellate Court has rightly dismissed the application. I do not find any error or irregularity in the order passed by the Lower Appellate Court.”

15. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the respondents/plaintiffs filed the suit in O.S.No.4580 of 2010 for recovery of possession and for permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit property. No doubt, the prayer sought for in the suit are mutually inconsistent and conflicting to each other. However, admittedly, the defendants are in possession of the property.

16. Now, the learned counsel appearing for the respondents/plaintiffs submitted that the respondents are not pressing the prayer for permanent injunction. In view of the submission made by the learned counsel for the respondents/plaintiffs not pressing the decree for permanent injunction, it is made clear that the plaintiffs are not entitled for a decree for permanent injunction. However, the present Civil Revision Petition has been filed under Section 115 of the Civil Procedure Code challenging the order passed in C.M.P.No.385 of 2015 in A.S.SR.No.14526 of 2015. The petition in M.P.No.385 of 2015 has been filed by the revision petitioners to condone the delay of 518 days in filing the appeal in A.S.SR.No.14526 of 2015 challenging the judgment and decree passed in O.S.No.4580 of 2010. In

these circumstances, the only issue that has to be decided in this Civil Revision Petition is whether the revision petitioners/defendants have properly explained the delay in filing the appeal or not?

17. Before the trial Court, though the defendants entered appearance and filed their written statement, subsequently, they remained absent and based on the available oral and documentary evidences let in by the plaintiffs, the trial Court decreed the suit on 13.09.2013. Pursuant to the decree passed in O.S.No.4580 of 2010, the plaintiffs filed an Execution Petition in E.P.No.2328 of 2014 on the file of the X Assistant Judge, City Civil Court, Chennai. It is not in dispute that the defendants received the summons in the Execution Petition and their counsel appeared before the Executing Court on 21.08.2014 and undertook to file vakalat on their behalf. Subsequently, 10.09.2014, the defendants' counsel entered appearance and sought time for filing counter and the matter was adjourned to 10.10.2014. On 10.10.2014, the defendants again sought for filing counter and the matter was posted on 12.11.2014. On 12.11.2014, the defendants filed a memo before the Executing Court seeking to refer the matter to Lok Adalat for settlement. However, on 20.11.2014, the plaintiffs filed their objections to the memo filed by the defendants objecting for referring the matter to Lok Adalat. In view of the objections raised by the plaintiffs, the Executing

Court did not refer the matter to Lok Adalat and hence, posted the matter on 08.12.2014 for filing of counter by the defendants. Thereafter also, the defendants took time for filing counter on 02.01.2015, 05.01.2015 and finally filed the counter on 19.01.2015. Subsequently, the defendants did not appear before the Executing Court on 06.02.2015, 20.02.2015, 06.03.2015 and on 10.03.2015. When the matter was taken up on 23.03.2015, the defendants filed a memo stating that they have filed an appeal before the Principal Judge, City Civil Court, Chennai as against the judgment and decree passed in O.S.No.4580 of 2010.

18.From the dates mentioned above, it is clear that the defendants had knowledge about the judgment and decree passed in O.S.No.4580 of 2010 at least on 21.08.2014, when their counsel undertook to file vakalat on their behalf before the Executing Court. In spite of having knowledge about the judgment and decree passed in the suit, they chose to file the appeal only on 23.03.2015. In order to condone the delay of 518 days in filing the appeal, the defendants have stated that there were compromise talks between the parties, hence, they did not file the appeal in time. This averment stated in the affidavit cannot be accepted for the reason that even before the Executing Court, they filed a memo on 12.11.2014 stating that there is a possibility of settlement and that the matter may be referred

to Lok Adalat. However, as early as on 20.11.2014 itself, the plaintiffs raised strong objections for referring the matter to Lok Adalat. In the objections dated 20.11.2014, the plaintiffs have specifically stated that only to harass them and with a *malafide* intention to prolong the proceedings, the defendants have filed the memo for referring the matter to Lok Adalat. Further, they have stated that if the matter is referred to Lok Adalat, it would cause great prejudice to them. In the objections, the plaintiffs have also stated that the 1st petitioner/1st defendant filed a Domestic Violence case against them in D.V.No.3656 of 2010 on the file of the XVIII Metropolitan Magistrate Court, Saidapet, Chennai and the same was also dismissed on merits.

19. When the plaintiffs have specifically stated that there was no settlement talks between them, the reasoning given by the defendants in the affidavit filed in support of the petition in M.P.No.385 of 2015 that only because of the settlement talks, they did not file the appeal, cannot be accepted. When the defendants had the knowledge about the judgment and decree passed in the suit at least on 21.08.2014, the reasoning for not filing the appeal till 23.03.2015 has not been explained properly by the defendants. When the plaintiffs made their mind very clear that there was no possibility of settlement in their objections filed before the Execution

Court on 20.11.2014, inspite of the same, the appeal was filed before the Lower Appellate Court after a lapse of nearly four months. The objections filed by the plaintiffs on 20.11.2014 clearly falsified the case of the defendants.

20.It is settled position that unless the party seeking for condonation of the delay gives sufficient cause for the delay, the delay should not be condoned.

21.In the case on hand, the averment stated in the affidavit filed in support of the petition are found to be false. The defendants have not produced any evidence before the Lower Appellate Court to substantiate the averments stated in the petition with regard to the alleged settlement talks. Inspite of receiving the summons in the Execution Petition prior to 21.08.2014, the defendants chose to file the appeal only on 23.03.2015. Since the defendants failed to explain the reasons for the delay in a proper manner, the Lower Appellate Court has rightly dismissed the petition. The defendants were not diligent in prosecuting the matter in a proper manner.

22.In these circumstances, I do not find any error or irregularity in the order passed by the Lower Appellate Court. The Civil Revision Petition is

devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Index : No
Internet : Yes
va

23.11.2016

To

The Principal Judge,
City Civil Court,
Chennai.

M.DURAIWAMY,J.
va

Order made in
C.R.P.(NPD).No.3407 of 2015
and M.P.Nos.1 & 2 of 2015

23.11.2016