

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2016

CORAM

THE HONOURABLE Mr. JUSTICE M.V.MURALIDARAN

C.R.P(NPD)No.3038 of 2007

and

M.P.No.1 of 2007

1.Jayakani (Deceased)

2.Jaya

3.Mythili

4.Rajesh

5.Ramesh anand

6.Latha Kandeepan

... Petitioners

(Petitioners 2 to 6 brought on record as Lrs

of the deceased sole petitioner vide order

of Court dated 22.04.2014 made in MP.

Nos.1 to 3 of 2014 in CRP.No.3038 of 2007)

Vs.

M.Sivasami

... Respondent

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the Fair Order and Decretal Order, dated 24.07.2007, passed in I.A.No.73 of 2007 in O.S.No.274 of 1996, on the file of the Subordinate Judge's Court, Tiruppur.

For Petitioners : Mr.R.Subramanian

For Respondent : No Appearance

ORDER

The second defendant in O.S.No.274 of 1996 is the revision petitioner before this Court, challenging the order passed in I.A.No.73 of 2007 in O.S.No.274 of 1996 dated 24.07.2007, this Civil Revision Petition has been filed.

2.The case of the plaintiff is that he has filed the suit in O.S.No.274 of 1996 against the defendant one Mr.K.Eswaramoorthy and Jayakani, for specific performance.

3.The case of the plaintiff is that the petitioner and the defendants were entered into the sale agreement on 09.08.1995 for selling the suit property at the rate of Rs.1,50,000/- on the date of execution of the sale agreement itself as a part of the sale consideration the defendant have received a sum of Rs.75,000/- given to the defendant in advance and the balance amount should be paid within a period of three months thereafter, the time was extended upto 07.02.1996 by way of an endorsement dated 05.11.1995.

4.When the defendants failed to execute the sale deed, he has

issued a notice on 06.02.1996, but even then, he has not ready to execute the sale deed. Therefore, he filed the above suit for specific performance.

5. On receipt of the summon, the defendants were appeared through their Advocate and filed the written statement, denying the execution of sale agreement. The defendants also state that the plaintiff has to prove the alleged sale agreement dated 09.08.1995 strictly and also to prove that the sale price was fixed at Rs.1,50,000/- and that he has paid Rs.75,000/- in advance. Therefore, the defendants denied the said sale agreement alleged to be executed on 09.08.1995. The said suit was decreed exparte on 05.12.2003 and challenging the said decree, the second defendant has filed the set aside application along with condone delay of 1155 days. In the said application in I.A.No.73 of 2007, this petitioner/2nd defendant stated that it is true that the plaintiff himself has colluded with the first defendant filed the suit with a view to extract money from the petitioner are false and claimed the execution of sale deed against this petitioner/second defendant.

6. The petitioner/second defendant also states that the

respondent/ plaintiff known that the first defendant has executed the sale deed in favour of the petitioner/second defendant, but, suppressing the said fact with an aim to extract money from the petitioner/ second defendant, the suit in O.S.No.274 of 1996 was initiated.

7.After filing of the suit, he has also engaged the counsel and filed written statement. But, due to his old age and retired from service, he was very much suffering from illness and he was not even able to talk with others and hence he could not able to enquire with his counsel and due to that originally the case was posted on 06.11.2003 for cross examination of PW1, but that was not done. Therefore, the suit was decreed exparte on 05.12.2003, against the said exparte decree, he has to file the application to set aside the exparte decree on or before 05.01.2004. But, due to the above genuine reason, there was a delay of 1155 days in filing the application. Therefore, he prayed the said Court for condoning the delay.

8.On receipt of notice, the respondent/plaintiff has filed his counter and stated that it is true that the sale agreement dated 09.08.1995 was executed by the petitioner/second defendant and

hence the suit was specific performance filed against him. The respondent/plaintiff also states that while pendency of the above suit, this petitioner/second defendant has purchased the property. Therefore, knowingly the allegations that this respondent had colluded with the first defendant with a view to extract money from the plaintiff, the suit has been filed are false.

9.The respondent/plaintiff also states that the suit is of the year 1996, for the past several years to execute the suit sale since the petitioner has hale and healthy and wantonly and willfully omitted to contest the suit knowingly that no case on merits and left the suit to be decreed exparte.

10.Pursuant to the above exparte decree dated 05.12.2003, this respondent/plaintiff has filed E.P.No.23 of 2006, to register the sale deed as per decree and accordingly the Execution Court also executed the sale deed, the respondent/ plaintiff has filed the petition for delivery of possession of the property is still pending. At this juncture, this petition for set aside the exparte decree and condone delay application has been filed.

11.The respondent/plaintiff also states that the petitioner / second defendant has not given any proper reason for the huge delay of 1155 days in filing the above set aside application. This Court and the Hon'ble Apex Court very categorically held that each and every day delay should be properly explained, but in this case it was not done. Therefore, the respondent/plaintiff sought for dismissal of the petition in I.A.No.73 of 2007.

12.Considering both sides arguments, the learned Sub-Judge, Tirupur, has dismissed the application in I.A.No.73 of 2007 on 24.07.2007 on the ground that the suit has been originally posted on 06.11.2003 for cross examination of PW1, but he has not filed the petition before the trial Court. Though, the petitioner/second defendant has taken treatment at Palani and he has also produced the Doctor certificate issued by the Varshini Sidha Hospital and Research Centre. But, it was not stated in his affidavit. Apart from this, he has not received any summon in O.S.No.274 of 1996 and he has also stated in his examination that he has not appeared in the suit along with his Advocate, but as per the record, it shows that he has received the summon in the suit in O.S.No.274 of 1996 and also filed his written statement on 24.07.2001 under Order VII Rule I C.P.C., this would

clearly shows that the petitioner has given a false statement before this Court. In his cross examination, he has given so many facts falsely. Therefore, the petitioner/second defendant is not entitled for condoning the delay, and accordingly the learned Judge has dismissed the petition.

13.At the time of filing of I.A.No.73 of 2007, on verification of the records, this Court came to know that the petitioner/second defendant was aged about 63 years. It is admitted fact that he has filed the written statement in the suit, but due to his illness, he has not appeared, and thereafter also not appeared, on 06.11.2003 for cross examination of PW1.

14.It is an admitted fact that he has filed the set aside application with huge delay of 1155 days, but this Court came to know that the suit filed for specific performance and the alleged sale agreement and receipt of the advance amount to be decided only in the trial.

15.The case of the respondent/plaintiff is that he has executed the sale agreement by receiving advance amount of Rs.75,000/-, but

later on, he filed the Execution Petition to execute the sale deed in favour of him. But, in the counter affidavit in paragraph 3, it is stated by the respondent/plaintiff that the present petitioner/second defendant had purchased the property during the pendency of the suit, if it is the case that this petitioner/second defendant has purchased the suit property, which is the suit property, while pendency of the suit, how the respondent/plaintiff has filed the suit for specific performance, has alleged that this petitioner/second defendant has executed the sale agreement in respect of the suit property on 09.08.1995, when the petitioner/2nd defendant was not the owner of the property. Therefore, he filed the Execution Petition to execute the sale deed in respect of the suit schedule of property. All that points must be examined in the trial Court and accordingly to give one opportunity to the petitioner/second defendant, this petition ought to be allowed, but the petitioner/second defendant would compensate to the respondent/plaintiff, since the second defendant was died, the legal heirs were brought on record.

16. In the result:

(a) this civil revision petition is allowed by setting aside the order passed in I.A.No.73 of 2007 in

O.S.No.274 of 1996, dated 24.07.2007, on the file of the Subordinate Court, Tiruppur, on condition that the petitioner shall pay a sum of Rs.3,000/- to the respondent or his counsel in this Civil Revision Petition, within a period of two weeks from the date of receipt of a copy of this order and if the respondent or his counsel refused to receive the amount, the petitioner/second defendant is hereby directed to deposit the said amount before the trial Court in O.S.No.274 of 1996.

(b)the trial Court is directed to number the set aside application filed by the petitioner/second defendant and to dispose the same within a period of one month from the date of receipt of a copy of this order, by giving opportunity to both the parties.

(c)thereafter, on passing the order in the set aside application, the trial Court is directed to dispose of the suit in O.S.No.274 of 1996, within a period of two months on day today basis, without giving any adjournment to either of the parties and both the parties are hereby directed to co-operate for the early disposal of the suit.

17. Accordingly, this Civil Revision Petition is allowed. No costs.
Consequently, connected miscellaneous petition is closed.

31.08.2016

Note: Issue order copy on 19.12.2016.
vs

Index: Yes
Internet: Yes

To

The Subordinate Court,
Tiruppur.

M.V.MURALIDARAN, J.

VS

C.R.P(NPD)No.3038 of 2007
and
M.P.No.1 of 2007

31.08.2016

**C.R.P(NPD)No.3038 of 2007
and
M.P.No.1 of 2007**

M.V.MURALIDARAN, J.

When the civil revision petition has been taken up for hearing on 31.08.2016, no one appeared on behalf of the respondent. Hence, the civil revision petition was allowed.

2.Today i.e. (23.12.2016), this matter is listed for hearing under the caption 'For Being Mentioned' at the instance of the learned counsel for the respondent.

3.It is stated by the learned counsel for the respondent that his name is to be included for appearance of the respondent in the order dated 31.08.2016 in CRP(NPD).No.3038 of 2007.

4.Accordingly, the Registry is directed to issue a fresh order copy after including the name of the learned counsel appearing for the respondent in the order dated 31.08.2016 in CRP(NPD).No.3038 of 2007.

13

23.12.2016

vs

<http://www.judis.nic.in>