

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2016

CORAM

THE HON 'BLE **Dr. JUSTICE. S.VIMALA**

Civil Revision Petition (NPD) Nos.966 of 2016
and C.M.P.No.5405 of 2016

Mr. T.Seetharaman ... Petitioner / Defendant
Vs.

Mr. M.Subramanian ... Respondent / Plaintiff

Prayer :- Civil Revision Petition (NPD) filed under Section 115 of the Code of Civil Procedure to set-aside I.A.No.770 of 2015 in O.S.No.76 of 2011, dated 29.02.2016, on the file of the II Additional Subordinate Court, Villupuram.

For Petitioner : Mr. P.B.Sampath Kumar, for,
M/s. M.Ravibharathi
For Respondent : Mr. N.Suresh

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ORDER

The defendant in O.S.No.76 of 2011 is the Revision Petitioner herein.

1.1. The defendant filed I.A.No.770 of 2015, seeking condonation of delay of 1,160 days in filing the application to set-aside the exparte decree. That application was dismissed by the order, dated 29.02.2016. Challenging the same, this Civil Revision Petitioner has been filed.

2. It is the contention of the learned counsel for the Revision Petitioner that the petitioner himself met with an accident during July 2011 and subsequently, petitioner's wife also suffered multiple fracture in the spinal-cord, on account of the accidental fall and therefore, he was not in a position to contest the case and therefore, the delay ought to have been condoned.

2.1. The learned counsel for the Revision Petitioner relied upon the medical records filed before the Court below.

2.2. It is further submitted by the learned counsel for the Revision Petitioner that, when a property is worth more than Rs.50 lakhs and when the plaintiff alleges that the property was agreed to be sold for Rs.5,50,000/-, the genuineness of the transaction itself is doubtful and therefore, when the stake involved is higher, the delay ought to have been condoned.

2.3. Despite the huge delay, the case of the parties, on merits, is a relevant issue to be considered, the decision reported in **2015 (1) CTC 811 (Ajay Kumar Gulecha v. J.Vijayakumar and another)** is relied upon by the learned counsel for the petitioner, where-under, it has been held as follows:-

“16. As already stated, the Law of Limitation cannot be invoked for destroying the rights of the parties. **No**

prejudice would be caused to the petitioner, if the first respondent is given an opportunity to contest the case on merits. If the petitioner is so sure about the case that he can get favourable order on merits instead of getting exparte Decree, as the First Respondent has denied the petitioner's claim and many issues are to be adjudicated after full pledged trial. While comparing the loss to the petitioner and the loss to be caused to the first respondent, namely loss of property worth about crores, the delay has to be excused and the case has to be decided on merits."

3. Therefore, the issue to be considered is whether by condoning the delay the cause of otherside would remain prejudiced.

4. Per contra, the learned counsel for the respondent would submit that the delay, which was inordinate, has been proved to be deliberate and therefore, there is no justifiable cause to condone the delay and in support of the same, the decision reported in **CDJ 2014 MHC 330 (Ayyanar v. Arumugam and another)** is relied upon, where-under, it has been held as follows:-

"12. The above said factual matrix relating to the execution proceedings will make it abundantly clear that the respondents herein were watching the proceedings and they did approach the court with a false affidavit, only

when the second proclamation for sale was made after reduction of the upset price and the sale was scheduled to be conducted. All these aspects, surprisingly escaped the attention of the learned trial judge. Had the trial judge considered the above said aspects, it would have readily rejected the application holding that a false reason had been alleged and the inordinate delay was not explained. The very tenor of the order passed by the learned trial judge will show that the learned trial judge, while exercising jurisdiction conferred on her, has committed illegality and material irregularity fitting in clause (c) of sub clause (1) of Section 115 CPC. This court does have no hesitation in coming to the conclusion that the order of the learned trial judge is to be reversed and set aside in exercise of the power of revision of this court.”

5. In order to appreciate the contentions raised on both sides, it is necessary to look into the factual aspect of the case.

6. The suit has been filed by the plaintiff, seeking the relief of specific performance in O.S.No.76 of 2011.

6.1. The defence by the defendant is that the plaintiff is a money lender and as such, there was no intention to sell the property. The truth, validity, execution and attestation of the suit sale agreement

have been specifically denied. It is also alleged that the guideline value of the property is more than Rs.50 lakhs and therefore, the defendant would not have agreed to sell the suit property for Rs.5,50,000/-, which is neither just nor proper.

7. Now coming to the conduct of the defendant / petitioner herein, the following circumstances have been stated in the counter filed by the respondent, in this Revision Petition (plaintiff in the suit):-

(i) when the suit notice was issued, the defendant did not issue any reply;

(ii) exparte decree was passed on 11.09.2012;

(iii) when notice was issued calling upon the defendant to execute the sale deed, as per the decree, there was no reply;

(iv) on 07.06.2013, the defendant appeared through counsel before the Executing Court, but did not file the counter for three months and he was set exparte;

(v) even thereafter, personal notice has been issued to the party and though appeared through another counsel, on 27.11.2013, no counter was filed and again the defendant was set exparte on 24.01.2014;

(vi) notice was issued intimating the execution of sale deed by

the Court, for which also there was no reply;

(vii) Execution Petition in E.A.No.7 of 2015 was filed for delivery of possession; in Execution Petition also the respondent appeared through counsel and took time for filing counter; thereafter, delivery was ordered on 26.08.2015;

(viii) as the execution was resisted, application to break open the lock was filed and it is stated to be pending;

(ix) only on 15.09.2015, the application to condone the delay has been filed.

8. When the rights of the parties get partly crystallised and when the sale deed has already been executed and the delivery ordered could not be effected on account of wilful obstruction caused by the judgment-debtor, whether the judgment-debtor can expect the indulgence of the Court, is the issue to be considered.

9. The medical records of wife of the Revision Petitioner have been filed before the Court below, from which, it is evident that she suffered multiple level fracture and when she declined to have the surgery, she was advised to take treatment as outpatient.

10. No doubt, the fracture is in the spinal-cord. But, this incident had happened in the year 2011. The Execution Proceedings have been initiated and continued during the years 2011 and 2013. If the defendant had taken effective steps atleast after the service of notice or during the execution proceedings, the delay would have been averted. In other words, it is only an avoidable delay.

11. Considering the circumstances, rightly the Court below has dismissed the Application to condone the delay.

11.1. Under normal circumstances, when the proceedings are pending, the Courts can adopt liberal approach and give opportunity to the parties having regard to the merits of the matter. But, once the rights are partly crystallised and the decrees are nearing execution and the matter is attaining near finality, reopening of the matter may not be justifiable, especially when the delay is avoidable delay.

12. When the suit for specific performance has been decreed and when the court has executed the sale deed and possession could not be taken on account of the conduct of the Revision Petitioner, it may not be proper for the Court to condone the delay, at this stage.

Therefore, the order passed by the Court below, declining to condone the delay, is confirmed and this Civil Revision Petition is dismissed. No costs. Consequently, the connected CMP is closed.

28.04.2016

Index : Yes / No
Web : Yes / No
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To

1. II Additional Subordinate Court, Villupuram
2. The Section Officer, V.R.Section,
Madras High Court, Chennai - 104

S.VIMALA, J.,

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