

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED: 22.12.2016****CORAM****THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN****CRP(NPD)No.346 of 2012
and
M.P.No.1 of 2012**

Kolanji

.. Petitioner

Vs.

Ramachandran

..Respondent

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the Order in I.A.No.496 of 2010 in O.S.No.139 of 2008, on the file of the learned Principal Subordinate Court at Virudhachalam, dated 12.09.2011.

For Petitioner : Mr.G.Surya Narayanan

For Respondent : Mr.S.Senthilnathan

ORDER

The defendant in the suit is the revision petitioner. The respondent herein as plaintiff filed a suit in O.S.No.139 of 2008 against the revision petitioner for specific performance on having basis upon

an alleged sale agreement dated 04.08.2006 said to have been entered between the revision petitioner as vendor and the respondent as purchaser in respect of the suit schedule property. In the said suit the revision petitioner filed a written statement and resisted that there was no any sale agreement executed as alleged by the respondent herein.

2. In the meantime inadvertently and beyond the control of the revision petitioner, the said suit came to be decreed ex-parte due to the non-appearance of the revision petitioner herein as well as his counsel before the trial Court on 05.01.2009. Because of ill health and medical reasons, the revision petitioner was not in a position to file an application to set aside the ex-parte decree dated 05.01.2009 within the prescribed period of limitation. Therefore the revision petitioner filed an application in I.A.No.732 of 2009 to condone the delay in filing the application to set aside the ex-parte decree.

3. Since the revision petitioner was employed at Chennai at that relevant point of time, he was under a bonafide expectation that his counsel would take care of the I.A.s and thereby he would inform the revision petitioner to be present on hearings as and when required by the Court. As such the fact remained, when the revision petitioner

visited his counsel in the month of July 2010 on verification about the suit status, it revealed that the revision petitioner's application in I.A.No.732 of 2009 to condone the delay came to be allowed by the trial Court on 19.03.2009 and the petitioner's application in I.A.No.215 of 2010 to set aside the ex-parte was taken on file. On hearing upon the parties, the said application in I.A.215 of 2010 to set aside the ex-parte came to be allowed on 10.06.2010 on a condition that cost of Rs.500/- is to be paid to the respondent on or before 28.06.2010. However, said imposition of cost of Rs.500/- was not communicated by the counsel of the revision petitioner and in result the cost remained unpaid within 28.06.2010. Whereupon immediately having engaged a new counsel the petitioner filed an application in I.A.No.496 of 2010 U/s 151 CPC praying to extend the time for payment of cost of Rs.500/-.

4.In the meantime, the respondent filed an Execution petition in E.P.No.86 of 2010 to execute the ex-parte decree and the same was ordered on 26.10.2010 and the corresponding sale deed came to be executed on 09.12.2010. Thereafter the respondent on 23.09.2011 filed yet another an Execution petition in E.P.No.100 of 2011 to execute the decree in respect of the prayer sought in Relief No.2 which is for possession and the same is pending. Being so, the revision

petitioner's application in I.A.No.496 of 2010 for extension of time to pay cost came to be dismissed by the executing Court on 12.09.2010 by holding that the Court has become functus-officio as E.P.No.86 of 2010 is closed. Aggrieved over the same the revision petitioner has come up with the above Civil Revision Petition.

5.I heard Mr.G.Surya Narayanan, learned counsel appearing for the petitioner and Mr.S.Senthilnathan, learned counsel appearing for the respondent and perused the entire records.

6.Though very many contentions was raised on either sides, the short question to be answered in the present CRP is as to whether a trial Court become functus officio and have no power to enlarge the time beyond the time provided by the Court to comply with an order of cost.

7.Firstly this Court finds that the petitioner herein has sought for enlargement of time for payment of cost imposed on him which is to be paid within the stipulated time/dead line set out by the Court to set aside the ex-parte decree. It is noteworthy that the petitioner is not before this Court praying with an application for relaxation of time, as against any prescribed limitation defined under the Code or under

Limitation Act. This instant application was sought for an extension of time set out by the trial Court. Admittedly in the case on hand the E.P in E.P.No.100 of 2011 remain pending and the same is noticed by this Court, vide pg.No.17 of the typed set of papers, whereas the revision petitioner's application for extension of time came to dismissed on 12.09.2010 by.

8. With regard to scope of Court's power to enlarge the time it would be relevant to look into the following decisions of this Court made in the matter of

i) **Pichammal wife of Chinnaian & Another Versus Annamalai son of Chinnaian & Another reported in 2008 (1) CTC 47** wherein in the light of an earlier decision of this Court reported in 2006 (3) CTC at page 418 (GOWRI AMMAL v. MURUGAN AND OTHERS) it was held as follows:

"23. In the present case, the Trial Court simply dismissed the application, stating that it had no power. But, we have concluded that the Court has got power to entertain an application under Sections 148 and 151, C.P.C., to consider the merits of the matter for condoning the delay or for extending time. Admittedly, in this case, the application has been filed before the Trial Court under Sections 148 and 151, C.P.C."

Further it was held that

“8. In view of the decision of Honourable Supreme Court in **2005 (6) SCC page 344 (SALEM ADVOCATE BAR ASSN. v. UNION OF INDIA)** at special page 372 and also as per decision 2006 (3) CTC at page 418 (**GOWRI AMMAL v. MURUGAN AND OTHERS**) this Court is of the view that the principles laid down in these decisions squarely apply to the facts of the present case on hand and that trial Court has power to extend time for payment by costs and in that view of the matter, the conclusion arrived at by the Trial Court in I.A.No.883 of 2003 that it has become functus officio and has no power to extend the time etc., cannot be sustained in the eye of law and in that perspective the dismissal of I.A.No.390/2003 by the trial Court is not valid in law.”

ii. **A.P. Subramanian Versus R. Sivasamy & Another reported in 2008 (4) CTC 499**, wherein it was held that extension of time for payment of cost beyond the prescribed maximum period can be permitted by Court, if the act was not performed within the specified period, for reasons beyond the control of party. In such circumstances, the Court does not become functus officio and it has power to extend time for making such a payment.

9. Thus this Court finds that the facts and circumstances in the above referred decisions squarely apply to the revision petitioner's

case.

10. Therefore, for the foregoing reasons and in the light of the above legal proposition, this Court reiterates that extension of time for payment of cost beyond the prescribed maximum period can be permitted by Court, if the act was not performed within the specified period, for reasons beyond the control of party. In such circumstances, the trial Court does not become functus officio and it has power to extend time for making such a payment.

11. In the result:

- a) the Civil Revision Petition is allowed by setting aside the order in I.A.No.496 of 2010 in O.S.No.139 of 2008, dated 12.09.2011, on the file of the Principal Subordinate Court, Virudhachalam, by extending the time for payment of Rs.500/- as cost to the respondent/plaintiff within a period of two weeks from the date of receipt of a copy of this order, as per the order passed in I.A.No.732 of 2009, dated 19.03.2010;
- b) the learned Principal Subordinate Court, Virudhachalam, is hereby directed to number the set aside application and pass orders within a period of 15 days from the date of receipt of a

copy of this order, by giving notice to both the parties;

- c) on passing the order in the set aside application, the learned Principal Subordinate Court is hereby directed to dispose the suit within a period of one month, on day today basis without giving any adjournments to either parties. Both the parties are hereby directed to co-operate for early disposal of the suit. Consequently, connected miscellaneous petition is closed.

22.12.2016

Note: Issue order copy on 06.12.2017

vs

Index: Yes/No

Internet: Yes/No

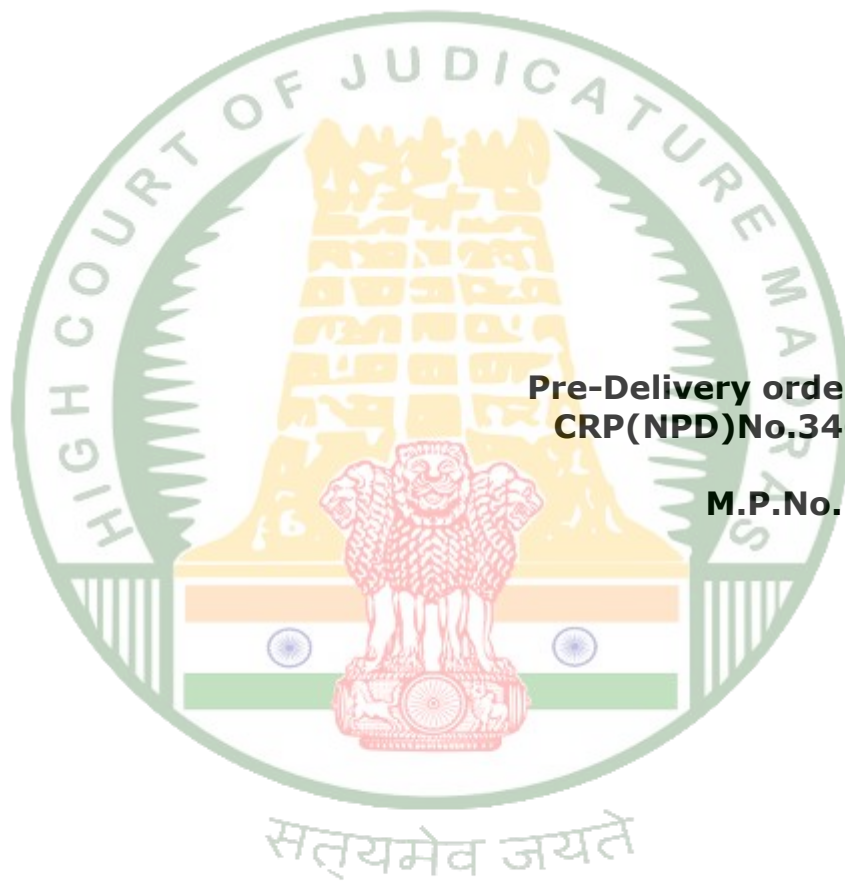
To

The Principal Subordinate Court,
Virudhachalam.

WEB COPY

M.V.MURALIDARAN, J.

VS



**Pre-Delivery order made in
CRP(NPD)No.346 of 2012
and
M.P.No.1 of 2012**

WEB COPY 22.12.2016