

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :29.04.2016

Pronounced on :03.06.2016

CORAM

The Hon'ble Mr.Justice **M.V.MURALIDARAN**

**CRP (PD) No.436 of 2013
and
M.P.No.1 of 2013**

N.Ganesan

.. Petitioner

Versus

Vadivel

Respondent

..

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying against the judgment and decreetal order in I.A.No.161 of 2012 in O.S.No.102 of 2011, on the file of the District Munsif Court, Palacode, dated 28.08.2012.

For Petitioner

...Ms.R.Sripriya
for Mr.V.Raghavachari

For Respondent

...Mr.V.R.Anna Gandhi

ORDER

Heard the arguments of M/s.R.Sripriya, learned counsel appearing on behalf of the Revision Petitioner and Mr.V.R.Anna Gandhi, learned counsel appearing on behalf of the Respondent.

2. It is the submission of Ms.R.Sripriya, learned counsel for the Petitioner, that the original plaintiff in O.S.No.102 of 2011 has filed the suit for specific performance of an alleged reconveyance agreement dated 26.11.2002 before the District Munsif Court, Palacode, on 24.11.2005 without paying the proper Court fees and without any Petition to take leave of the Court for payment of the deficit Court Fee under Section 149 of C.P.C and so the Court has returned the Plaint for want of payment of deficit Court fee. It was further submitted by the learned counsel that even after the Plaint was returned by the Court, the Plaintiff did not pay the deficit Court Fee and resubmit the same within the stipulated time fixed by the Court and after a long period of 4 years, on 19.11.2009, the Plaintiff resubmitted the Plaint without paying the deficit Court Fee but with a Petition to condone the delay of 1330 days for resubmission and it has been submitted that the Petition was filed without giving any notice to

the Revision Petitioner and was returned on 09.12.2009 for want of defects to be rectified. However, the plaintiff after a delay of another 523 days, resubmitted the Plaint along with I.A.No.463 of 2011 to condone the delay in resubmission and the same was allowed by the District Munsif Court without giving any notice to the Revision Petitioner and thereafter the suit was numbered as O.S.No.102 of 2011. Hence, the Revision Petitioner filed in I.A.No.161 of 2012 in O.S.No.102 of 2011 under Order VII Rule 11 r/w Section 151 of C.P.C for rejection of Plaint. The main submissions that were advanced by the Revision Petitioner in the said Application were on the ground of limitation and non-payment of proper Court Fee, the Plaint was liable to be rejected. The Trial Court by order dated 28.03.2012 dismissed the said Application and aggrieved by which, the present Civil Revision Petition has been filed.

3. The primary ground of attack of the Revision Petitioner is that since time was the essence of the agreement, the Suit ought to have been filed within three years from the date of the agreement and in the instant case, the same has not been properly complied with for the reason that in the first instance itself, the Plaint has been presented without proper Court Fee and though the same was returned, the Plaint was represented again without proper Court Fee

after a long delay of four years and the same also having been returned, the Plaintiff has again after a long lapse of 523 days, resubmitted the Plaint with a petition to condone the delay in representation of the plaint only during which the Revision Petitioner was never heard nor given notice.

4. Hence, it has been urged that on the ground of limitation and improper payment of Court Fee, the Plaint ought to have been rejected since it has been well settled by the Hon'ble Supreme Court in ***A.Nawab john & Others Vs.V.N.Subramaniam reported in 2012 (4) CTC 206*** that "Judicial discretion is required to be exercised in accordance with the settled principles of law. It must not be exercised in a manner to confer an unfair advantage on one of the parties to the litigation. In a case where the Plaint is filed within the period of limitation prescribed by law but with deficit Court Fee and Plaintiff seeks to make good the deficit of the Court Fee beyond the period of limitation, the Court, through has discretion under Section 149, C.P.C, must scrutinize the explanation offered for the delayed payment of the Deficit Court Fee carefully because exercise of such discretion would certainly have some bearing on the rights and obligations of the Defendants or persons claiming through the Defendants. "Followed by this Court in ***Rafeeqe Ahmed***

Vs.Lickmichand Jain and others, 2014-1-LW.883 by this Court, wherein it was held that "When the Plaintiff has not offered any acceptable explanation and has not shown 'sufficient cause' for the inordinate delay, the Court below ought not have numbered the suit and therefore, the plaint is liable to be struck off under Order 7 Rule 11 of C.P.C."

5. On the other hand, it was contended by the learned Counsel for the Respondent/Plaintiff that the Suit was filed very much within the period of limitation on 24.11.2005 and that it was returned on 29.11.2005 for want of defects to be rectified. The learned counsel contended that the suit was taken on file only after the delay of 1330, 27 and 523 days were condoned and hence, on the ground that the suit was taken up only after the permission granted by the Court for payment of the Deficit Court Fee, the Plaint shall not be rejected for the said reason. In support of his submissions, the Respondent would rely upon the decision of the Hon'ble Supreme Court in ***P.K.Palanisamy Vs.N.Arumugham & Another, 2009-4-L.W.75.***

6. The very objective behind order VII Rule 11 of C.P.C is to ensure that a plaint shall be rejected at the threshold itself in the cases stipulated therein. The crucial issue that has been raised by the

Revision Petitioner is with regard to limitation and payment of Court Fee which ought to have been properly considered by the Trial Court since the Suit that ought to have been filed properly in 2005 has been numbered only in 2011 due to the fault and delay on the part of the respondents. The party who is lackadaisical and complacent cannot be allowed to take the Court for a ride and especially once when the conduct of the party shows that he has not taken any sincere steps in pursuing the litigation, the same ought to be viewed with circumspection. Here, it is very clear that the Suit has been barred both on the question of limitation and payment of Court Fee since the Respondent has failed to comply with the condition imposed by the Court within the time period prescribed therein.

7. Though, it has been argued by the Respondents that the delay of 1330 days has been condoned, it is unclear why the Respondents had to take such a long period of time in representation of the Plaint especially when time is the essence of the contract. In the decisions referred above that have been relied upon by the Revision Petitioner, it has been reiterated that when the Plaintiff has not offered any acceptable explanation and has not shown any sufficient cause for the inordinate delay, the Court ought to have numbered the Suit and therefore, the plaint is liable to be struck off

under Order VII Rule 11, C.P.C.

8. It is also quite well settled in law that the payment of Court Fee cannot be made according to the whims and fancies of the Plaintiff and Section 149 of C.P.C cannot be taken as a license to justify the inordinate delay on the part of the Plaintiff.

9. I entirely find force in the reliance of the above two judgments by the Revision Petitioner and accordingly, the Petitioner has made out a case for interference in the order passed by the Trial Court since the Court below has not examined the issue in the right perspective. Further, I do not find any relevance in the decision relied upon by the Respondent and the same is not applicable to present scenario.

10. For the reasons stated above, the impugned order is set aside and the Civil Revision Petition is allowed. The numbering of the Suit as O.S.No.102 of 2011, by the District Munsif Court, Palacode, is set aside and consequently, the suit is struck off from the file. No costs. Consequently, connected miscellaneous petition is closed.

.05.2016

Index:Yes/No
Internet:Yes/No
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To
District Munsif Court,
Palacode.

M.V.MURALIDARAN, J.
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**PRE-DELIVERY ORDER MADE IN
C.R.P(PD)No.436 of 2013**

.05.2016