

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :20.04.2016

Pronounced on :03.06.2016

CORAM

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

**CRP (PD) No.51 of 2013
and
M.P.No.1 of 2013**

1.Minor.Vikneshkumar
2.S.Velmurugan
3.S.Bakthavatchalam
4.S.Jagaveerapandian

.. Petitioners

Versus

Karthik

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying against the Order made in I.A.No.87 of 2012 in O.S.No.113 of 2009, on the file of the First Additional Subordinate Judge, Cuddalore, dated 23.11.2012.

For Petitioner ...Mr.K.A.Ravindran

For Respondent ...Mr.C.Prakasam

ORDER

Heard the submissions of Mr.K.A.Ravindran, learned counsel appearing on behalf of the Revision Petitioners and Mr.C.Prakasam, learned counsel appearing on behalf of the Respondent. The present Civil Revision Petition has been filed challenging the order passed by the I Additional Subordinate Judge, Cuddalore, made in I.A.No.87 of 2012, in O.S.No.113 of 2009, dated 23.11.2012, whereby the Trial Court has dismissed the condone delay petition seeking setting aside of the Ex-parte decree.

2. O.S.No.113 of 2009 was filed seeking specific performance of the agreement dated 25.09.2006. It is the case of the Petitioners that they are the Defendants in the Suit and the agreement dated 25.09.2006 was executed as security for the loan advanced to the Petitioners and that taking advantage of the disadvantaged position of the Petitioners, the Respondent herein had filed the Suit seeking specific performance of the said agreement. It was submitted by the Petitioners that after receiving the suit summons, the matter was brought to notice of the Village Panchayat wherein the Respondent/Plaintiff agreed to withdraw the Suit and insisted that the

Petitioners need not appear before the Trial Court and the Petitioners, believing the words of the Respondent have not appeared before the Trial Court. Consequently, the suit has been decreed Ex-parte on 12.11.2009. Aggrieved by the same, the Petitioners filed in I.A.No.87 of 2012 for condoning the delay of 793 days in filing the Application of setting aside the Ex-parte decree in O.S.No.113 of 2009. Upon hearing both sides in the said Application, the Trial Court dismissed the same on the ground that the case of the Petitioners was not proved with sufficient cause that the Petitioners have remained absent before the Trial Court even after receiving the suit summons.

3. Mr.K.Ravindran, learned counsel for the Petitioner would submit that the non-appearance of the Petitioners before the Trial Court was neither wilful nor wanton but only due to certain valid and justifiable reasons which have been stated in the Application filed before the Trial Court and the same had not been considered in the right perspective by the Trial Court. It is his submission that the Petitioners did not appear before the Trial Court since they were not aware of the Court proceedings and since, the matter was assured of being settled in the Village Panchayat, they, with bonofide belief, have thought that there is no reason to appear before the Trial Court since

the matter could be amicably settled at the Village Panchayat.

4. In support of his contention, he would rely upon the following judgments:

G.P.Srivastava Vs.R.K.Raizada and others, AIR 2000 SC 1221, N.Balakrishnan Vs.M.Krishnamurthy, 1999-1-L.W.739, Rajangam and others Vs.Senthamaraj and others, 2016 (2) CTC 714. It is the submission of the Petitioners that the Rule of limitation is not meant to destroy the Rights of the parties and there is no presumption that delay in approaching the Court is deliberate. The words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice. Hence, the learned counsel for the Petitioner prayed that the present Revision Petition be allowed.

15. Per contra, the learned counsel Mr.C.Prakasam, appearing for the respondent would contend that the non-appearance of the Petitioner before the Trial Court was wilful and the Trial Court is perfectly justified in dismissing the Application since there was no sufficient cause shown by the Petitioner.

16. As it is settled in law that in every case of delay, there can

be some lapse on the part of the litigant concerned but that alone cannot be a ground to shut the doors and deny him an opportunity to put forth his case. The purpose for prescribing a period of limitation is to ensure that a litigant does not adopt dilatory tactics and prolong the adjudication of a matter and as it is often said that the law helps only the vigilant and not those who sleep and this is precisely, the underlying spirit of the limitation law. In the instant case, it could be seen that the reason for non-appearance of the Petitioners before the Trial Court is neither wilful nor wanton and there is no malafide or deliberate reason pointed out by the Respondent for the non-appearance of the Petitioners. It ought not to be forgotten that if a party is denied of his right to defend and the same would result in irreparable hardship and injury to him, the same ought not to be done and he has to be afforded an opportunity to put forward his case. Apart from this, the suit is for specific performance the alleged exception of sale agreement to be proved by way of evidence unless an opportunity will be given to the Defendant to disprove the alleged execution of the sale agreement, dated 25.09.2006, irreparable loss will be caused to the Defendant.

10. In view of the above said discussions, I am of the view that the petitioners have made out a case for condoning the delay and hence, the impugned order passed by the Trial Court is set aside and accordingly, the present Civil Revision Petition is allowed subject to the payment of costs of Rs.3,000/- to the Respondent's counsel, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

.05.2016

Index:Yes/No
Internet:Yes/No
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To
The First Additional Subordinate Judge,
Cuddalore.

M.V.MURALIDARAN, J.

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**PRE-DELIVERY ORDER MADE IN
C.R.P(PD)No.51 of 2013**

.05.2016