



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.09.2016

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P. NPD (MD) No.1913 of 2016

M.Mohamed Athiff : Petitioner

Vs.

1.P.Sankaralingam
2.Krishnavadivoo Ammal
3.Murugananthamathi
4.Shahibha : Respondents

Prayer: Civil Revision petition is filed under Section 115 of C.P.C., to set aside the fair and decreetal order dated 11.02.2016 made in I.A.No.45 of 2015 in A.S.S.R.No.18 of 2014 on the file of Principal Sub Court, Nagercoil.

For Petitioner : Mr.A.Arumugam

ORDER

The civil revision petition is filed against the fair and decreetal order dated 11.02.2016 made in I.A.No.45 of 2015 in A.S.S.R.No.18 of 2014 on the file of Principal Sub Court, Nagercoil.

2.According to the learned counsel for the petitioner, the first respondent herein filed a suit in O.S.No.685 of 2006 before the learned Principal District Munsif, Nagercoil, against the respondents 2 to 4 herein, for specific performance. The said suit was decreed by the trial Court on 11.10.2011. Against the said judgment and decree, the petitioner herein, who is the subsequent bonafide purchaser of the suit properties has filed an unnumbered appeal in A.S.S.R.No.18 of 2014 before the learned Principal Sub Court, Nagercoil, along with an application in I.A.No.45 of 2015, to condone the delay of 1073 days in filing the appeal against the judgment and decree passed in O.S.No.685 of 2006 dated 11.10.2011 on the file of the Principal District Munsif, Nagercoil. The first respondent/plaintiff filed his detailed counter affidavit. After considering the submissions made on either side, the trial Court dismissed the said



application stating that the petitioner is not a bonafide purchaser and he has not given any satisfactory explanation, to condone the delay in filing the above said appeal. Aggrieved against the said order, the petitioner has come forward with this present civil revision.

WEB COPY

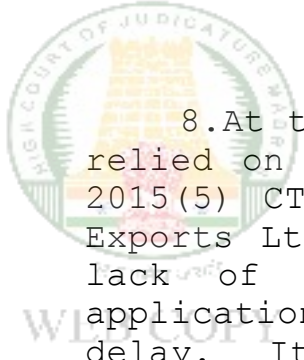
3. According to the petitioner, the petitioner is the bonafide purchaser of the property purchased from the third defendant. However, on 01.09.2014, the first respondent/plaintiff attempted to enter into the property and thereafter, he came to know that the plaintiff got decree with connivance of the defendants and thereafter he applied the certified copy of the said judgment and decree and he got the same on 14.10.2014 and hence, the delay of 1073 days has been occurred for filing the above appeal. It is true that there is delay of 1073 days in filing the appeal. However, the trial Court has not considered the case of the petitioner and erroneously dismissed the said application and hence, he prayed for allowing of the present revision.

4. According to the respondents, there is inordinate delay in filing the appeal. However, the petitioner is not a party to the suit and he has no right or possession over the suit property. The petitioner is not a bonafide purchaser for valid consideration. The delay has not been properly explained. The defendants have not preferred any appeal.

5. Heard the learned counsel for the petitioner and perused the available materials.

6. The first respondent herein filed a suit in O.S.No.685 of 2006 before the learned Principal District Munsif, Nagercoil, against the respondents 2 to 4 herein, for specific performance. The said suit was decreed by the trial Court on 11.10.2011. Against the said judgment and decree, the petitioner herein, who is the subsequent bonafide purchaser of the suit properties has filed an unnumbered appeal in A.S.S.R.No.18 of 2014 before the learned Principal Sub Court, Nagercoil, along with an application in I.A.No.45 of 2015, to condone the delay of 1073 days in filing the appeal against the judgment and decree passed in O.S.No.685 of 2006 dated 11.10.2011 on the file of the Principal District Munsif, Nagercoil. The first respondent/plaintiff filed his detailed counter affidavit. The said application was dismissed. Aggrieved against the said order, the petitioner has come forward with this present civil revision.

7. Perusal of the affidavit would show that the petitioner has not adduced any satisfactory explanation to condone the delay in filing the appeal. Further, the petitioner has not filed any documents to show that he is the bonafide purchaser of the suit property.



8. At this juncture, it is appropriate to consider the decision relied on by the learned counsel for the respondent reported in 2015(5) CTC 534 - H.Dohil Constructions Co. Pvt. Ltd., V. Nahar Exports Ltd., wherein, in paras 20 to 23, it was held that total lack of bonafides and without assigning reason for filing application for condonation is not a ground for condoning the delay. It is appropriate to incorporate paras 22 and 23 of the said decision.

"22. We may also usefully refer to the recent decision of this Court in Esha Bhattacharjee (supra), where several principles were culled out to be kept in mind while dealing with such Applications for condonation of delay. Principle Nos.(iv), (v), (viii), (ix) & (x) of Paragraph 21 can be usefully referred to which read as under:

"(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

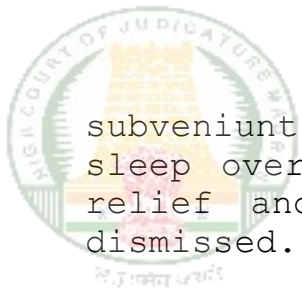
(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the Courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the Application are fanciful, the Courts should be vigilant not to expose the other side unnecessarily to face such



23. When we apply those principles to the case on hand, it has to be stated that the failure of the Respondents in not showing due diligence in filing of the Appeals and the enormous time taken in the re-filing can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bona fides as displayed on the part of the Respondents. Further, when the Respondents have not come forward with proper details as regards the date when the papers were returned for re-filing, the non-furnishing of satisfactory reasons for not re-filing of papers in time and the failure to pay the Court-fee at the time of the filing of Appeal papers on 6.9.2007, the reasons, which prevented the Respondents from not paying the Court-fee along with the Appeal papers and the failure to furnish the details as to who was their Counsel, who was previously entrusted with the filing of the Appeals cumulatively considered, disclose that there was total lack of bona fides in its approach. It also requires to be stated that in the case on hand, not re-filing the Appeal papers within the time prescribed and by allowing the delay to the extent of nearly 1727 days, definitely calls for a stringent scrutiny and cannot be accepted as having been explained without proper reasons. As has been laid down by this Court, Courts are required to weigh the scale of balance of justice in respect of both parties and the same principle cannot be given a go-by under the guise of liberal approach even if it pertains to re-filing. The filing of an Application for condoning the delay of 1727 days in the matter of re-filing without disclosing reasons, much less satisfactory reasons only results in the Respondents not deserving any indulgence by the Court in the matter of condonation of delay. The Respondents had filed the Suit for Specific Performance and when the Trial Court found that the claim for Specific Performance based on the Agreement was correct but exercised its discretion not to grant the relief for Specific Performance but grant only a payment of damages and the Respondents were really keen to get the Decree for Specific Performance by filing the Appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its Appeals registered."

9. Considering the above said decision along with the facts and circumstances of the case, I am of the view that the petitioner has not given sufficient cause for condonation of delay and the trial Court has rightly dismissed the application filed by the petitioner on the reason that the petitioner has not shown any reason to condone the inordinate delay in filing the appeal. Therefore, applying the maxim *Vigilantibus non-dormientibus jura*



subveniunt (Law assists those who are vigilant and not those, who sleep over their rights), the petitioner is not entitled to any relief and this civil revision fails and the same is hereby dismissed. No costs,

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1 The Principal Subordinate Judge, Nagercoil.

2 The Principal District Munsif, Nagercoil.

+1CC to M/S.Ajmal Associates, Advocate, SR.No. 55103

Order made in
C.R.P. NPD (MD) No.1913 of 2016
22.09.2016

Arul

AM/MR/SAR 4/18.04.2017/5P/4C