

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.978 of 2015

ORDER:

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This Civil Revision Petition, under Article 227 of the Constitution of India, by the respondent/plaintiff is directed against the orders dated 10.11.2014 of the learned I Additional District Judge, Chittoor passed in IA.no.363 of 2014 in OS.no.40 of 2012 filed by the defendant under Section 5 of the Indian Limitation Act read with Section 151 of the Code of Civil Procedure requesting to condone the delay of 632 days in filing the application to set aside the *ex parte* decree.

2. I have heard the submissions of the learned counsel for the revision petitioner/plaintiff ('the plaintiff', for brevity) and the learned counsel for the respondent/defendant ('the defendant', for brevity). I have perused the material record.

3. The case of the defendant in support of her request for condonation of delay, in brief, is as follows:

The plaintiff had filed the suit for specific performance of an agreement of sale dated 31.12.2010. The suit was decreed *ex parte*. The defendant had purchased the suit schedule property from one G. Mohan Babu under a registered sale deed dated 26.02.1996. Subsequently, she had sold the said property to one L. Gurumurthy Reddy on 17.09.2011 for valid consideration and had delivered possession of the same to him. She had also handed over her title deed dated 26.02.1996 on the same day to Gurumurthy Reddy. Having sold the property to the said vendee, she had left the village Kakarlavaripalli in the year 2009 and had settled with her family at Chennai where her mother, who is suffering from ill health due to old age, is residing. She was looking after her mother in Chennai. She used to now and then visit her village since her husband is staying in her house. She had never executed any agreement of sale or any document in favour of any person

except the above said registered sale deed in favour of Gurumurthy Reddy. On 26.07.2014 she came to know through the said Gurumurthy Reddy that the present plaintiff had filed the above suit against her. On enquiries, she further came to know that the plaintiff had forged and fabricated her signatures and created some documents and filed the false and frivolous suit against her knowing fully well that she had left the village long time back. Knowing fully well that she had left the village long time back, the plaintiff had intentionally sent the notices and suit summons to Kakarlavaripalli village and managed the Court officials and the postal authorities and had obtained endorsements of refusals on the notices and suit summons. Basing on such endorsements, the Court was pleased to set the defendant *ex parte*. The defendant has no knowledge about the filing of the suit. She has got large stakes in the matter and fair chance of success in the suit. Her absence before the trial Court is not due to either willful or wanton reasons but for the reasons stated above. If the delay is not condoned and the *ex parte* decree is not set aside she would suffer serious and irreparable loss.

4. The relevant case of the plaintiff, in brief, is as follows:

The material allegations in the affidavit filed in support of the petition are false. The allegations that the defendant had sold the property to L.Gurumurthy Reddy for valid consideration and that she had delivered possession of the property to him along with the parental deed on the same day and that she had left the village in the year 2009 along with her family members and that she had settled at Chennai where her mother, who is suffering from ill health, is residing and that she is looking after her mother and that she had come to know about the suit through Gurumurthy Reddy are all false. The allegations that the suit of the plaintiff is false and frivolous and that the suit document is fabricated are all false. The suit for specific performance is based on a true and valid agreement of sale whereunder the defendant had received Rs.2,00,000/- out of the total consideration of Rs.3,00,000/-. The defendant, having agreed to receive the balance of sale consideration and execute the regular registered sale deed, had failed to do so. Hence the suit is filed. The balance of sale consideration was deposited

into court. The court had executed a registered sale deed in favour of the plaintiff pursuant to the decree in the suit for specific performance and had closed the EP. The defendant had deliberately refused to receive the suit summons and notices. She had also deliberately refused to receive notices sent to her in the Execution Petition. The contents of her documents are self contradictory. The documents are produced by her to make an unlawful gain. The alleged registered sale deed in favour of Gurumurthy Reddy is void and not binding on the plaintiff. After delivering the schedule mentioned property physically to this plaintiff, she had fabricated all the documents. Bald allegations are made in support of the request for condonation of delay. The petition is liable for dismissal.

5. On merits, the trial Court had allowed the petition filed by the defendant. Therefore, the plaintiff had filed this revision.

6. The learned counsel for both the sides advanced arguments in line with the pleadings.

7. The learned counsel for the plaintiff would further contend as follows:

The delay of 632 days is an abnormal delay. The suit summons and the notices in the EP were deliberately refused by the defendant, when sought to be served upon her. She had intentionally remained *ex parte* in the suit and in the EP as she has no tenable defence. The trial court without application of mind and without appreciation of the facts and the evidence had erroneously allowed the petition filed by the defendant for condonation of delay even though the delay is not explained by showing valid and sufficient reasons. She had made reckless allegations against the Court and the postal department. Ignoring the said reckless allegations, the Court below had allowed the petition and condoned the delay. The allegations that the plaintiff had managed the Court and postal authorities and got refusal endorsements on the summons and notices and that basing on such endorsements, the court was pleased to set the defendant *ex parte* and granted an *ex parte* decree in favour of the plaintiff are not only false but are also unholy. If the said allegations are accepted it would amount to accepting

that the plaintiff had managed the court and postal officials. Hence, the trial Court ought to have dismissed the petition instead of allowing it.

8. *Per contra*, the learned counsel for the defendant while reiterating the pleaded case of the defendant and while supporting the orders of the Court below had contended as follows: "The court below had considered the facts correctly and the evidence borne out by the record in proper perspective and had recorded findings that there was no service of suit summons and the notices in the execution petition on the defendant as the same were sent to the address of the suit house where she was not residing by the time of filing of the suit and that, therefore, the delay can certainly be condoned. The Court below having adverted to the contentions and appreciated the facts had also held that it strongly believes that the suit summons was not served on the defendant. When the Court below had allowed the petition and condoned the delay on proper exercise of the judicious discretion, this Court generally need not interfere with such well considered orders of the Court below while exercising Revisional jurisdiction. The revision is devoid of merit and is liable to be dismissed."

9. I have bestowed my attention to the facts and given earnest consideration to the submissions.

10. The case of the plaintiff in the suit for specific performance is that the defendant having agreed to sell the suit schedule property had executed the suit agreement of sale and had also delivered possession of the suit schedule house to the plaintiff. The specific case of the defendant is that she is the owner of the property and that she had sold the property under a regular registered sale deed to one L. Gurumurthy Reddy and that she had delivered possession of the suit property to the said vendee and that after such sale she had left for Chennai in the year 2009 and that since then she is staying at Chennai with her mother, who is unwell, and that she is looking after her mother and that she is now and then coming to visit her village where her husband is staying in a house belonging to her and that she is not aware of the suit and the execution proceedings as neither the suit summons

nor the notices were served on her and that on 26.07.2014 she had come to know through Gurumurthy Reddy about the suit and the *ex parte* decree and that, therefore, she had immediately filed the petition for condonation of delay and also the application to set aside the *ex parte* decree and that in the circumstances the delay had occasioned in seeking to set aside the *ex parte* decree and that the said delay is neither wilful nor wanton. The crux of the case of the defendant is that neither the suit summons nor notices in the EP which were sent to the address of the suit house were ever served upon her as she was not residing in the suit house. Whereas the case of the plaintiff is that the defendant had deliberately remained *ex parte* having refused to receive the suit summons sought to be served upon her. From the order of the Court below it is evident that certain documentary evidence was adduced at the time of enquiry. The court below had considered the contents of the voters list filed by the plaintiff and had further adverted to the contentions of the plaintiff that the plaintiff had occupied the suit property in May 2011 and that the defendant has been residing in another house along with her husband. The court below had also observed in its orders that it is also the case of the plaintiff that the defendant is residing in the house of one Damodar after giving possession of the suit property to the plaintiff, but, the plaintiff has not sent the suit summons to the said house address of Damodar for service on the defendant. The Court below had recorded categorical findings that there is no possibility of the defendant residing in the suit house as, even according to the plaintiff, the defendant had sold the property under the suit agreement to the plaintiff and had delivered possession of the property to the plaintiff and that the said aspect needed consideration. Further, the Court below had also observed that even as per the pleadings of the defendant she had sold the property to Gurumurthy Reddy under a registered sale deed dated 17.09.2011 and that the possession of the property was delivered to him and that, therefore, she was not in possession of the suit house by the date of the filing of the suit as she had already sold the property to third parties even as per her version. The Court below had also noted that the summonses and notices were sent to the same suit property address where the defendant was not residing even as per the

contentions of the plaintiff and the defendant and that under such circumstances the delay can be condoned as there is no service of summons on the defendant at any point of time. The court below had noted in its order that the pattern of service of summons in the suit as well as in the EP is the same. It is pertinent note from the orders of the Court below that the postal cover sent with suit summons was returned with postal endorsement dated 04.08.2012 showing that the defendant had 'refused' to receive the cover; and that the suit summonses sent through Court to the same address were returned with an endorsement dated 03.08.2012 that 'the party left for Chennai without intimation' and that therefore, the suit summons were served by affixture. Thus, on a perusal of the order impugned it appears that the court below after going through the material record and after considering the contentions and the documentary evidence had recorded a categorical finding that the service of suit summons on the defendant does not appear to be proper and that it sincerely believes that the summonses were not properly served on the defendant. The court below had thus held that it strongly believes that the summonses in the suit were not served on the defendant and, therefore, the delay can certainly be condoned. On a consideration of all the facts and circumstances borne out by the record, this Court is satisfied that the well reasoned order of the Court below does not warrant interference. When the court below had exercised the discretion judiciously and had allowed the petition for condonation of delay by recording valid reasons, this Court while exercising the Revisional jurisdiction will generally not interfere with such discretion. In the case on hand there are no circumstances, much less exceptional circumstances, warranting interference with the order of the Court below, which is a well considered order. Therefore, it follows that the order impugned does not brook interference.

11. Viewed thus, this court finds that the well reasoned order of the court below is sustainable both under facts and in law and that in the facts and circumstances of the case the court below is justified in allowing the petition filed by the defendant and in condoning the delay in seeking to set aside the ex parte decree.

12. In the result, the Civil Revision Petition is dismissed confirming the orders of the court below. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this revision shall stand closed.

JUSTICE M. SEETHARAMA MURTI

1st June, 2016
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