

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2017

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

C.R.P.(NPD)NOS.1757, 1941 AND 2673 of 2017

1. Maliga
2. Saroja
3. Valliammal
4. Vishalatchi
5. Ammaniyammal
6. Kannammal
7. Vijaya
8. B. Amudha
9. Paravthy
10. Arukkani
11. Valliyammal
12. Thangamani
13. Easwari
14. Vasanthamani
15. Papathi
16. Shanthi
17. Kannammal
18. Nachammal
19. Muthuammal
20. Papammal
21. Kuppal
22. Palaniammal
23. Suppal
24. Pappal
25. Pazhanal
26. Shanthi
27. Arukkuani
28. Selvi
29. Kanniammal
30. Sevli
31. Ponnammal
32. Palanathal
33. Lakshmi



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34. Karuppal
35. Velammal
36. Saraswathi
37. Thangal
38. Pushpal
39. Jeya
40. Veerammal
41. Chellammal
42. Cavery
43. Mayeelal
44. Rangammal
45. Arukkani
46. Shanthal
47. Lakshmi
48. Muthal
49. Santhamani
50. Kamalam

..Petitioners/Defendants/Judgment Debtors

Vs.

Murugesan (Died)

1.Dhanalakshmi

2.Thangasamy

..Respondents/Plaintiffs/Decree Holder

Prayer in CRP.(NPD)No.1757 of 2017 :The CRP Petition is filed to set aside the order dated 26.04.2017 made in E.A. No.14 of 2017 in E.P.No.91 of 1997 in O.S.No.193 of 1996 on the file of the District Munisiff Court, Tirupur.

Prayer in CRP.(NPD)No.1941 of 2017 :The CRP Petition is filed to set aside the Fair and Final order dated 07.02.2017 made in E.A. No.8 of 2017 in E.P.No.91 of 1997 in O.S.No.193 of 1996 on the file of the District Munisiff Court, Tirupur.

Prayer in CRP.(NPD)No.2673 of 2017 :The CRP Petition is filed to set aside the Fair and Final order dated 08.06.2017 made in un-numbered E.A. In R.No.2432 of 2017 in E.P.No.91 of 1997 in O.S.No.193 of 1996 on the file of the District Munisiff Court, Tirupur.

For the above All CRP.(NPD) Cases:

For Petitioners : Mr.K. Karthik Raja

For Respondents: Mr. P. Subba Reddy

COMMON ORDER

Since the issues involved in all the Civil Revision Petitions are similar in nature, they are tagged together and a common order is being passed.

2.The C.R.P.(NPD) No.1757 of 2017 has been filed by the Judgment debtors in O.S. No.193 of 1996 against the order passed by the learned District Munsif, Tirupur, dated 26.4.2017 in E.A.No.14 of 2017 in E.P.No.91 of 1997 in O.S.No.193 of 1996 dismissing the application filed by the petitioners herein to condone the delay of 6981 days in filing the petition to set aside the ex-parte order passed against them on 2.12.1997.

3. The C.R.P.(NPD) No.1941 of 2017 has been filed against the order of the District Munsif Court, Tirupur, dated 7.2.2017 made in E.A.No.8 of 2017 in E.P.No.91 of 2017 in O.S.No.193 of 1996 granting police aid to enforce the decree dated 17.7.1997.

4. The C.R.P.(NPD) No.2673 of 2017 has been filed against the

order of the District Munsif Court, Tirupur, dated 8.6.2017 made in un-numbered E.A. R.No.2432 of 2017 in EP.No.91 of 2017 in O.S.No.193 of 1996 under Section 47 of the Civil Procedure Code.

4.1. Originally, the respondents/plaintiffs filed the suit in O.S.No.193 of 1996 before the District Munsif Court, Tirupur for declaration, recovery of possession and mandatory injunction. The suit was decreed in the year 1997. The respondents/plaintiffs filed Execution Petition in E.P.No.91 of 1997 for delivery of possession of the property as per the decree dated 17.7.1997 made in O.S.No.193 of 1996. Subsequently, the plaintiff died in the year 2014. Thereafter, an application has been filed by the respondents herein in E.A.No.21 of 2015 in E.P.No.91 of 1997 in O.S.No.193 of 1996 to implead themselves as legal heirs of the deceased plaintiff. The Court below, by its order dated 28.3.2016 allowed the said application.

4.2. Thereafter, petitioners were set ex-parte in Execution proceedings on 2.12.1997 after due notice. The respondents herein also filed an application in E.A.No.8 of 2017 seeking police protection to execute the decree and the same was allowed on 07.02.2017.

4.3. Aggrieved by the said order, an application in E.A.No.14 of 2017 has been filed in E.P.No.91 of 1997 in O.S.No.193 of 1996 to condone the delay of 6981 days in filing the petition to set aside the ex-parte order passed against them in E.P. No.91 of 1997 on 2.12.1997. The petitioners/Judgment Debtors have also filed an un-

numbered E.A. in R.No.2432 of 2017 in EP.No.91 of 1997 in O.S.No.193 of 1996 under Section 47 of the Civil Procedure Code stating that the order passed by the Court below is unsustainable in law.

5.It is the specific case of the petitioners that the plaintiff/decreed holder died in the year 2014. Claiming as legal heirs of the deceased plaintiff/decreed holder, the respondents impleaded themselves in E.A.No.21 of 2015 in the E.P.No.91 of 1997 on the basis of the fabricated Will alleged to have been executed by the deceased plaintiff. The second respondent herein is the real estate broker. The first respondent is colluding with the third respondent forged the Will. However, without considering the submissions made by the petitioners/Judgment Debtors, the Court below dismissed condone delay application in E.A. No.14 of 2017 and an un-numbered application filed u/s.47 CPC in E.A. R.No.2432 of 2017 in EP.No.91 of 2017 in O.S.No.193 of 1996, by its order dated 26.4.2017 and 8.6.2017 respectively. According to the petitioners, though *bona fide* reasons had been stated in the affidavit filed in support of the application in E.A.No.14 of 2017 for non appearance before the execution Court resulting in the ex-parte order, dated 2.12.1997, the reasons stated by the petitioners have not been considered by the Court below and dismissed the application.

6.The learned counsel appearing for the respondents/Decree

holders submits that even though the deceased plaintiff obtained decree well before 20 years, the respondents herein who are the legal heirs of the deceased plaintiff, could not enjoy the fruits of the decree for one reason or the other. The contentions of the petitioners are nothing but frivolous and vexatious. The learned counsel appearing for the respondents/Decree holders also drawn the attention of this Court to the affidavit filed in support of the application in E.A.No.14 of 2017 wherein no *bona fide* reason has been stated to condone the delay of 6981 days in filing the petition to set aside the ex-parte order. Therefore, the trial Court has considered the submissions in detail and dismissed the application. Therefore, there is no warrant to interfere with the said orders passed by the Court below. Hence, the said Civil Revisions Petitions are liable to be dismissed.

7. Heard the learned counsel appearing for the petitioners/Judgment Debtors and the learned counsel appearing for the respondents/Decree holders and perused the materials available on record.

8. The deceased plaintiff, namely, Murugesan, filed the suit in the year 1996 in O.S.No.193 of 1996 and obtained decree on 17.7.1997. Thereafter, since the deceased plaintiff died in the year 2014, the respondents herein claiming legal heirs of the deceased plaintiff impleaded themselves in E.A.No.21 of 2015 in the E.P.No.91 of 1997 on the basis of the Will alleged to have been executed by the deceased

plaintiff. The petitioners/Judgment Debtors disputing the said Will, filed an application in E.A. in R.No.2432 of 2017 in EP.No.91 of 2017 in O.S.No.193 of 1996. However, the Court below dismissed the said application filed under Section 47 of C.P.C.

9.On a perusal of the affidavit filed in support of the application in E.A.No.14 of 2017, it is seen that the petitioners/Judgment debtors have not furnished particulars to condone the inordinate delay of 6981 days in filing the petition to set aside the ex-parte order. The petitioners have to furnish the oral and documentary evidence to prove that the inordinate delay, in the light of the decision of the Hon'ble Supreme Court in **DOHIL CONSTRUCTIONS COMPANY PRIVATE LIMITED Vs. NAHAR EXPORTS LIMITED AND ANOTHER [(2015) 1 SCC 680]**. The relevant paragraphs of the said decision read as follows:

"19. ... It is true that the delay in filing the appeals was only 9 days and that the longer delay was only relating to the refiling of the appeal papers. But even if it is related to refiling of the appeals, the net result is that the appeals could be taken into records only when such a delay in refiling is condoned. Therefore, if the refiling had been made within the time granted by the Registry of the High Court, no fault can be found with anyone much less with the concerned party or whomsoever was entrusted with the filing of the papers into the Registry. But when an enormous delay of nearly five years occurred in the matter of refiling, it definitely calls for a closer scrutiny as to what was the cause which prevented the concerned party from refiling the papers in time to enable the Registry to process the papers and ascertain whether the papers were in order for the purpose of numbering the

appeals.

20. In the case on hand, the delay in refiling was 1727 days. As rightly pointed out by the learned Senior Counsel for the Appellant(s), the Respondents paid the scrutiny charges on 11.04.2008 as disclosed in the Receipt No.73 issued by the High Court of that date. When the appeal papers were filed on 06.09.2007 and the scrutiny charges were paid on 11.04.2008, it was quite apparent that the processing of papers of the appeals for its registration did commence in the month of April 2008. Thereafter, if rectification of whatever defects were not carried out by the Respondents or its counsel between April 2008 and May 2012, it is the bounden duty of the Respondents to have satisfactorily explained such a long delay in refiling. When we refer to the applications filed on behalf of the Appellant(s), we find that there was no convincing explanation as to how the Respondents were disabled from rectifying the defects pointed out by the Registry and refiling the appeal papers within time. The Respondents only attempted to throw the blame on the previous counsel to whom appeal papers were entrusted for filing in September 2007. As pointed out by the learned Senior Counsel for the Appellant(s), there were no details as to whom it was entrusted and what were the steps taken to ensure that the appeals filed were duly registered for pursuing further remedy as against the said judgment of the trial Court. As a matter of fact the appeal papers were filed without payment of any Court fee. This only affirms the stand of the Appellant(s) that there was no bona fide in the Respondents' claim and that they were seriously interested in challenging the judgment of the trial Court as against the non-grant of relief of specific performance. We also fail to see as to how the Respondent No.1 which is a limited company involved in the business of exports, which would certainly have its own legal department, can plead that after entrusting the papers to some counsel whose name was not disclosed even before this Court did not even bother to take any follow-up action to ensure that its appeals were duly registered in the High Court. In this context the maxim *Vigilantibus Non Dormientibus Jura Subveniunt* (Law assists those who are vigilant and not

those who sleep over their rights) aptly applies to the case on hand. The Respondents simply by throwing the blame on the previous counsel whose identity was not disclosed claimed that irrespective of the enormous delay of 1727 days in refiling the same should be condoned as a matter of course as there was only 9 days delay involved in filing the appeal.

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...
...

24. the failure of the Respondents in not showing due diligence in filing of the appeals and the enormous time taken in the refiling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bonafides 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 refiling, the non-furnishing of satisfactory reasons for not refiling of papers in time and the failure to pay the Court fee at the time of the filing of appeal papers on 06.09.2007, 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 bonafides in its approach.

25. We, therefore, find total lack of bona fides in its approach and the impugned order (Nahar Exports Ltd. Vs. Hardeep Kaur, Civil Misc.Nos.11354-55 of 2012 in RFA.No.268 of 2012, order dated 16.12.20013 (Del),) of the High Court in having condoned the delay in filing as well as refiling, of 9 days and 1727 days respectively, in a casual manner without giving any reason, much less acceptable reasons, cannot therefore be sustained. The appeals are allowed and the impugned order is set aside. Direction to admit the appeals of the respondents in RFAs.Nos.268-88 of 2012 and 319 of 2012 is also set aside and shall stand dismissed. No costs."

10. The Revision petitioner has not furnished particulars in the affidavit for the inordinate delay in filing the application to set aside the ex-parte order and in the light of the above said decision of the Supreme Court cited supra, this Court is not inclined to interfere with the order passed by the Court below in E.A. No.14 of 2017 in E.P.No.91 of 1999 in O.S. No.193 of 1996. Accordingly, the C.R.P.(NPD) No.1757 of 2017 stands dismissed.

11. With regard to the C.R.P.(NPD) No.2673 of 2017, on a perusal of the provisions of Section 47 of the Civil Procedure Code, it is clear that the Executing Court has to consider all the questions arising between the parties to the suit in which the decree was passed. However, on a perusal of the order, the disputed questions raised by the petitioners have not been determined by the Court below. Therefore, the order of the Court below, dated 8.6.2017 made in un-numbered E.A. in R.No.2432 of 2017 in EP.No.91 of 2017 in O.S.No.193 of 1996 is liable to be set aside.

12. In view of the above facts and circumstances of the case, this Court is inclined to pass the following order:

(i) The impugned order passed in un-numbered E.A. in R.No.2432 of 2017 in EP.No.91 of 2017 in O.S.No.193 of 1996 dated 8.6.2017 on the file of the District Munsif Court, Tirupur is to set aside and the matter is

remanded to the Executing Court to number the application filed under Section 47 of the Civil Procedure Code and determine the question raised by the petitioners on merits and in accordance with law, after providing opportunities to the parties concerned.

(ii) Both the parties given an undertaking before this Court that they will co-operate with the Court below to dispose of the aforesaid application.

(iii) The Court below is directed to consider the said application on merits and in accordance with law, as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this order.

(iv) The learned counsel appearing for the respondents has undertaken before this Court that the respondents will not expedite the Execution Petition till the aforesaid application is disposed of by the executing Court.

13. In respect of C.R.P.(NPD) No. 1941 of 2017, the learned counsel appearing for the petitioners would submit that as the C.R.P.(NPD) No.2673 of 2017 is allowed, the order of the Court below in E.A.No.8 of 2017 in E.P.No.91 of 1997 in O.S.No.193 of 1996 may be set aside, granting liberty to the respondents to proceed with the necessary application at a later stage.

14. In view of the submissions made by the learned counsel appearing for the petitioners and in view of allowing C.R.P.(NPD) No.2673 of 2017, the order passed by the Court below in E.A.No.8 of 2017 in E.P.No.91 of 1997 is set aside and accordingly, C.R.P.(NPD) No.1941 of 2017 is allowed with liberty to the petitioners to file fresh application, if necessary, within a period of four weeks from the date of receipt of copy of this order. There shall be no order as to costs.

09.10.2017

[Issue order copy on 16.11.2017]

Index: Yes/No

Internet: Yes/No

Speaking /Non-speaking order

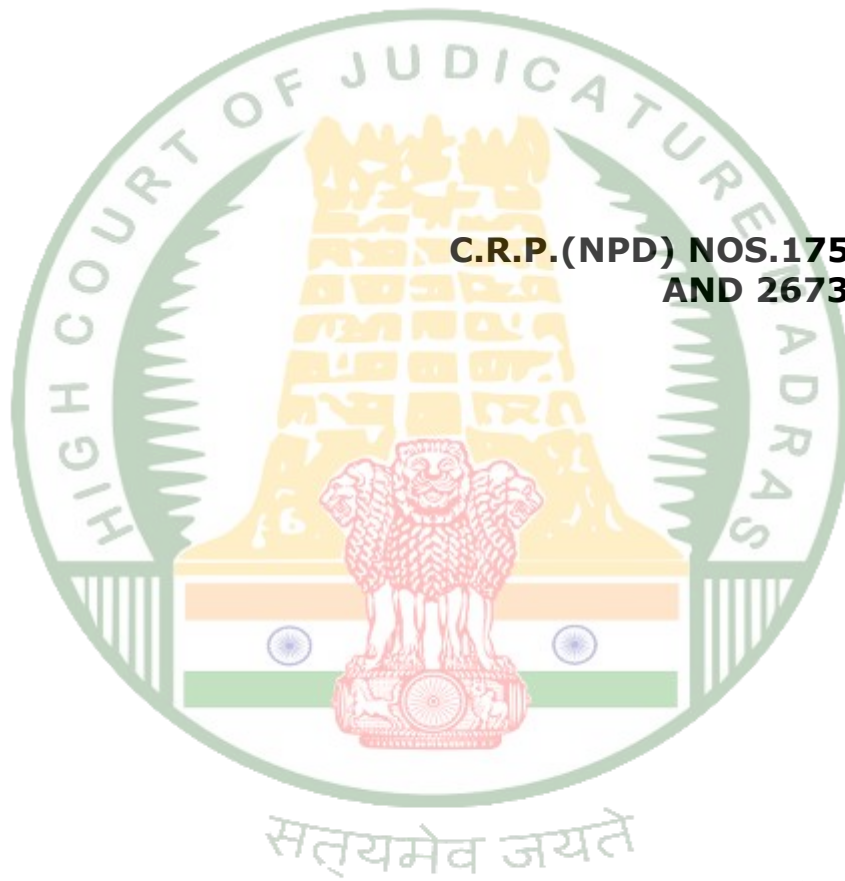
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The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital of Ashoka in front of it. The lion capital is set against a background of the Indian national flag's saffron, white, and green horizontal stripes. The words "HIGH COURT OF JUDICATURE MADRAS" are inscribed in a green border around the central image. Below the seal, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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D.KRISHNAKUMAR.J,

lbm



**C.R.P.(NPD) NOS.1757, 1941
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