

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2017

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

CMP.No.2268 of 2017 in
CRP.NPD.No.SR6312 of 2017

P.Murugan

.. Petitioner

Vs.

K.Sugumar

.... Respondent

PRAYER:

The Civil Miscellaneous Petition is filed under Section 5 of the Limitation Act to condone the delay of 769 days in filing the Civil Revision Petition against the order dated 22.07.2014 made in I.A.No.413 of 2013 in O.S.No.308 of 2012, on the file of the District Munsif Cum Judicial Magistrate Court, Sriperumbudur.

For Petitioner : Mr.C.Prabakaran

For Respondent : Mr.M.V.Seshachari

ORDER:

The defendant in O.S.No.308 of 2012 on the file of the District Munsif Cum Judicial Magistrate, Sriperumbudur has filed this Civil Miscellaneous Petition to condone the delay of 769 days in filing the Civil Revision Petition against the order dated 22.07.2014 made in I.A.No.416 of 2013 in O.S.No.308 of 2012, on the file of the District Munsif Cum Judicial Magistrate Court, Sriperumbudur.

2. The respondent herein filed a suit in O.S.No.308 of 2012 before the District Munsif Court, Sriperumbudur. The aforesaid suit was decreed in favour of the respondent / plaintiff. The petitioner filed an application in I.A.No.416 of 2013 in O.S.No.308 of 2012 to condone the delay of 82 days in filing application to set aside the ex parte decree passed in the above suit and the same was dismissed for not producing any

medical documents to substantiate the petitioner's contention for non appearance before the Court below. The respondent filed Execution Petition in EP No.12 of 2014 in O.S.No.308 of 2012 for execution of injunction decree. The petitioner entered appearance in E.P.No.12 of 2014 through his counsel on 11.09.2014. The petitioner filed E.A.No.7 of 2015 to stay the proceedings in EP.No.12 of 2014 on the ground that the petitioner has taken steps to restore the application in I.A.No.416 of 2013. The aforesaid EA No.7 of 2015 was dismissed on 15.10.2015 holding that the application in I.A.No.416 of 2013 was dismissed. Thereafter, the petitioner was set ex parte in E.P.No.12 of 2014 on 08.12.2015 for not filing counter affidavit. The respondent filed an application in EA No.18 of 2016 for grant of police aid and the same was ordered on 28.03.2016. The petitioner had filed a suit in O.S.No.3 of 2016 before the District Munsif(Vacation Court) at Kancheepuram for the relief of permanent injunction and obtained the same on 11.05.2016. Subsequently, the interim injunction granted in favour of petitioner was not extended and the said suit has been transferred to the District Munsif Court, Sriperumbudur and the same is pending. The respondent filed EP.No.21 of 2016 for contempt as against the petitioner for wilful disobedience of the injunction decree passed by the court. Subsequently, the petitioner filed EA.No.35 of 2016 to condone the delay of 153 days in filing the application to set aside the ex parte order dated 08.12.2015 passed in EP.No.12 of 2014. At this stage, the petitioner has filed this present Civil Revision Petition before this Court along with the application to condone the delay of 769 days to prefer the aforesaid Civil Revision Petition.

3. The learned counsel for the petitioner would submit that the petitioner has filed an application in I.A.No.416 of 2013 in O.S.No.308 of 2012 to condone the delay of 82 days in filing application to set aside the ex parte decree passed in the above suit and the same was dismissed. The learned counsel for the petitioner would further submit that the above suit has been filed by the respondent herein for permanent injunction against the petitioner. Hence, the petitioner shall be allowed to contest the case on merits in the main suit as the delay in filing the application is neither wantonly nor wilfully and only to bonafide reasons stated in the affidavit. Therefore, the delay may be condoned.

4. The learned counsel for the respondent would submit that there is no bonafide on the part of the petitioner. The petitioner has not given sufficient reason for the inordinate delay of 769 days in preferring the Civil Revision Petition. Further, the learned counsel for the respondent would submit that the aforesaid facts would disclose that the petitioner is

intentionally dragging on the proceedings, to obstruct the petitioner from enjoying the fruit of the decree, filed application after application, now has filed a fresh suit in O.S.No.3 of 2016 before the District Munsif (Vacation Court), Kancheepuram. Therefore, the filing of applications by the petitioner would clearly show that there is no bonafide on the part of the petitioner other than dragging on the matter and harassing the respondent so as to prevent the respondent from enjoying the fruit of the decree. Therefore, the Civil Revision Petition is liable to be dismissed.

5. Considering the submissions made by the counsel for the parties, the above statements would reveal that the suit in O.S.No.308 of 2012 was decreed ex parte in favour of the respondent. Then, the petitioner filed an application in I.A.No.416 of 2013 to condone the delay of 82 days and the same was dismissed. Subsequently, the respondent filed EP No.12 of 2014 in O.S.No.308 of 2012 for execution of injunction decree. Then, the petitioner filed E.A.No.7 of 2015 to stay the proceedings in EP.No.12 of 2014 which was dismissed. When grant of police aid was ordered in EA No.18 of 2016, the petitioner had filed a suit in O.S.No.3 of 2016 before the District Munsif (Vacation Court) at Kancheepuram for the relief of permanent injunction and obtained the same on 11.05.2016 by suppressing the earlier injunction decree. Subsequently, the interim injunction was granted in favour of petitioner was not extended, when it was brought to notice of the District Munsif (Vacation Court), Kancheepuram about the suppression of earlier injunction decree in favour of respondent. After exhausting the aforesaid remedy before Executing court, a fresh suit in O.S.No.3 2016 has been filed by the petitioner. It is clear from the above facts that the petitioner is filing application after application to drag on the Execution Proceeding. Now, the petitioner has filed the present Civil Revision Petition along with a condone delay petition of 769 days. Therefore, there is no bonafide reasons on the part of the petitioner to condone the inordinate delay in filing the Civil Revision Petition. In the decision of the Hon'ble Supreme Court in H. DOHIL CONSTRUCTIONS COMPANY PRIVATE LIMITED Vs. NAHAR EXPORTS LIMITED AND ANOTHER, reported in (2015) 1 SCC 680, wherein it is held as follows:

" 24. The filing of an application for condoning the delay of 1727 days in the matter of refiling 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."

6. In the light of the judgment cited supra and the circumstances of the case, there is no sufficient reason stated in the affidavit to condone the inordinate delay in filing the Civil Revision Petition.

7. Hence, the Civil Miscellaneous Petition is dismissed. Consequently, connected Civil Revision Petition is closed at the SR stage itself. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The District Munsif Cum
Judicial Magistrate,
Sriperumbudur.

2.The District Munsif, Kancheepuram.

+1cc to M/s.C.Prabakaran, Advocate, S.R.No.42567/17

+1cc to M/s.M.V.Seshachari, Advocate, S.R.No.43484/17

CMP.No.2268 of 2017 in
CRP.NPD.No.SR6312 of 2017

KGK (CO)
CU (27/07/2017)