

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2017

CORAM

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
and
THE HON'BLE MR. JUSTICE M.SUNDAR

O.S.A.No.133 of 2017

N.Rajaram

.. Appellant

vs

1.T.R.Rathineswaran
2.H.Vimala
3.R.Rajam

.. Respondents

Appeal filed under Order XXXVI, Rule 9 of Original Side Rules read with Clause 15 of Letters Patent against the order dated 17.02.2017 made in Application No.202 of 2017 in C.S.No.1196 of 2009 on the file of this Court.

For Appellant .. Mr.G.Thangavel

JUDGMENT

(Judgment of the Court was delivered by M.Sundar, J.)

This Intra-Court appeal is directed against an order dated 17.02.2017 made by a learned Single Judge in Application No.202 of 2017 in C.S.No.1196 of 2009.

2. The above said application being A.No.202 of 2017 was taken out by all the three defendants in the main suit arraying the lone plaintiff as respondent.

3. A.No.202 of 2017 was filed with a prayer to condone a delay of 2495 days in filing the written statement of defendants 1 to 3. Along with A.No.202 of 2017 seeking condonation of delay, to show their bonafides, the defendants had also filed their written statement.

4. The primary and pivotal ground on which the above said application seeking condonation of delay was predicated was that the defendants were engaged in battling litigations arising out of the same set of facts in the other Fora, the details of which have been set out in the affidavit filed in support of the delay

condonation application as also in the order of the learned Single Judge that has been called in question herein/before us.

5. Considering the nature of the application and the order we propose to pass, we are not dwelling into the aforesaid details or merits of the matter in great detail.

6. For the limited purpose of this order, it would suffice to say that the main suit is one for "specific performance" of an agreement to sell dated 05.04.2007. The appellant before us is the lone plaintiff.

7. The three respondents before us are - defendants 1 to 3 in the main suit.

8. From hereon, the parties are referred to by their respective ranks in the main suit for the sake of convenience and clarity.

9. The application for condonation of delay, as stated supra, elsewhere in this order, was predicated on the primary and pivotal contention that the defendants were occupied in contesting other litigations arising out of the same bundle of facts but in other Fora. It is also to be noted that the defendants had entered appearance in the main suit, but the delay was only in filing their written statement.

10. Before the learned Single Judge, the plaintiff, while resisting the application for condonation of delay, had cited a judgment of the Apex Court in K.Dohil Constructions Company Private Limited v. Nahar Exports Limited and another, reported in 2015 (1) SCC 680. The learned Single Judge has distinguished the same on facts by holding that in Dhohil case cited supra, it was condonation of delay in filing appeal, whereas in the instant case, it is one for condonation of delay in filing written statement in the main suit which is active. Another judgment being V.Radhakrishnan v. P.Radhakrishnan and others, reported in 2013 (3) MWN (Civil) 356 was also pressed into service by the plaintiff in resisting the application for condonation of delay. The learned Single Judge has distinguished the same also on facts by saying that Radhakrishnan's case cited supra, is one wherein delay of 2121 days in filing an application for restoration of the suit and to set aside an exparte decree had not been condoned. The learned Single Judge has gone to hold that this is also distinguishable on facts as the case on hand is a case of condonation of delay of 2495 days in filing written statement in the main suit which is still active, wherein the defendants had entered appearance.

11. Mr.G.Thangavel, learned counsel appearing for the plaintiff would contend that the reasons given by the defendants for condonation of delay are not convincing.

12. However, on a query as to the kind of prejudice that the plaintiff will be put to, if the order of the learned Single Judge is sustained, the learned counsel for the plaintiff fairly submitted that there may be no serious prejudice in that sense of the matter.

13. We also find that the view taken by the learned Single Judge qua the above said two decisions as well as the other aspects of the matter, do not call for any interference.

14. We also need to necessarily remind ourselves that the learned Single Judge has exercised his discretion in favour of condonation of delay and we are examining the said order under Clause 15 of the Letters Patent. Considering the well settled principles in this regard, we are of the view that this is not a fit case for interference.

15. Before parting with the matter, based on the request made by the learned counsel for the plaintiff (who is appellant before us), we hold that it is open to the learned counsel for the plaintiff to make a request before the learned Single Judge for expeditious trial and it would be the discretion of the learned Single Judge to accede to the request.

16. Owing to all that have been alluded to supra, we do not find any ground to interfere with the order of the learned Single Judge. The appeal fails and the same is dismissed.

17. As we have not issued notice to the respondents, we are not considering the aspect of costs in this Original Side Appeal.

Sd/--

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

The Sub Assistant Registrar,
Original Side, High Court, Madras.

+1cc to Mr.G.Thangavel, Advocate in sr.no.43871

O.S.A.No.133 of 2017

KJI (CO)
NR 10/07/2017