

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2017

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.1973 of 2011
and
M.P.No.1 of 2011**

Annammal ... Petitioner

Vs.

Kalidevi ... Respondent

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the Fair and Final order dated 31.03.2011 passed by the learned District Munsif, Avinashi, in I.A.No.118 of 2011 in O.S.No.70 of 2005 and prays to set aside the same.

For Petitioner : Mr.L.Mouli

For Respondent : Mr.C.S.Saravanan

ORDER

The respondent/plaintiff filed a suit in O.S.No.70 of 2005 against the petitioner/defendant for specific performance before the Learned District Munsif, Avinashi. The case of the respondent/plaintiff is that she entered into an agreement of sale with the revision petitioner on

23.06.2004, whereby and where under, the revision petitioner agreed to sell her property for a sum of Rs.85,000/- and the respondent herein paid an advance amount of Rs.78,000/- on the date of the agreement and the balance sale consideration of Rs.7,000/- should be paid within a period of 6 months from the date of sale agreement. Though the respondent/plaintiff was ready and willing to pay the balance sale consideration, the petitioner/defendant did not come forward to execute the sale deed as per the terms of the sale agreement. Hence, the respondent herein filed the above suit.

2.The revision petitioner filed written statement. But she has not appeared when the suit is posted for trial. Hence the trial Court decreed the suit ex-parte on 07.03.2007. Thereafter, according to the revision petitioner, she filed an application on 11.06.2007 to set aside the ex-parte decree with a delay of 35 days. The said application was not numbered and not returned and it was misplaced in the Court records. The efforts taken by the revision petitioner to search the above said condone delay application filed before the trial Court could not get any positive result. In the mean time the respondent herein filed execution petition in E.P.No.26 of 2008. Since the revision petitioner could not locate the condone delay application filed in the

year 2007, she filed another application in I.A.No.118 of 2011 to condone the delay of 1027 days to file the application to set aside the ex-parte decree dated 07.03.2007.

3.The respondent herein filed a detailed counter affidavit and contended that after ex-parte decree, the plaintiff filed execution petition in E.P.No.26 of 2008 and notice was duly served to the revision petitioner in the said execution petition and she also made her appearance through her counsel. But she failed to file her counter to the above said execution petition. Further she was also called absent and said ex-parte on 10.08.2009. Thereafter, the sale deed was also executed by the trial Court in favor of the respondent/plaintiff and the same was also recorded on 26.03.2010.

4.The respondent/plaintiff further contended that if really the revision petitioner had earlier filed a petition to condone the delay in seeking to set aside the ex-parte decree on 11.06.2007 before the trial Court, she would have definitely filed a counter mentioning the same in execution proceedings. If the revision petitioner has been really searching for the above mentioned petition from 11.06.2007 to 29.01.2010 she could have brought it to the notice of the trial Court

much earlier. The revision petitioner is only delaying the issue by filing the above application. The delay is very huge one and the same cannot be condoned that too after execution of sale deed by the trial Court. The revision petitioner has filed the condone delay application by knowing very well that the delivery of property will be ordered by the execution Court shortly. Hence, the respondent prayed to dismiss the condone delay application.

5.The learned trial judge after considering rival submission on either side dismissed the condone delay application in I.A.No.118 of 2011 by order and decree dated 31.03.2011. Aggrieved against the said order, the petitioner/defendant is before this Court, with the present civil revision petition.

6.I heard Mr.L.Mouli, learned counsel appearing for the petitioner and Mr.C.S.Saravanan, learned counsel appearing for the respondent and perused the entire records.

7.The learned counsel appearing for the revision petitioner submitted that the trial Court should have provided an opportunity to the petitioner to have her case being decided on merits as she suffered

an ex-parte decree in a suit for specific performance.

8.Per contra, the Learned Counsel for the respondent submitted that the trial Court, while dismissing I.A.118 of 2011, has taken into all the relevant facts and circumstances of the case and arrived at a conclusion that the petitioner has not explained each and every day's delay in her application. Further, it is contended that there is no infirmity in the conclusion arrived at by the trial Court in dismissing the above I.A and the same does not require warranting any interference at the hands of this Court.

9.Admittedly, the suit in O.S.No.70 of 2005 has been decreed ex-parte on 07.03.2007. It is the contention of the revision petitioner that since the plaintiff and her husband were given assurance to the petitioner for paying the loan with certain nominal interest. In the meantime the petitioner's husband left to Chennai for his business purpose. While so, the petitioner was also fell ill and therefore she is not in a position to meet her counsel. It is the other contention of the revision petitioner that on coming to know about the ex-parte decree, she filed application to set aside the ex-parte decree with a delay of 35 days on 11.06.2007 itself. A perusal of the affidavit filed in support of

the condone delay petition disclose that the revision petitioner mentioned about the filing of condone delay application on 11.06.2007 in C.F.R.No. . This would show that the revision petitioner earlier had taken steps to set aside the ex-parte decree; otherwise she would not have mentioned the C.F.R.No. in the affidavit. Since the revision petitioner may not be in a position to trace out the earlier application filed before the Court, she has not filled up the blank left for mentioning the C.F.R.No. Hence, in my view the reason assigned by the revision petitioner could have been accepted to some extent. At the same time it is true that followed by the ex-parte decree, the respondent herein filed Execution Petition and got the sale deed executed in her favor.

10.At this juncture, it is useful to refer the judgment of the Division Bench of this Court reported in ***Arun Alexander Lakshman v. A.P.Vedhavalli*** reported in ***2007(4) CTC 449*** wherein it has been held that while condoning the delay, the Court should strike a balance between the right ensured to the plaintiff on the expiry of the period of limitation and the inconvenience caused to the respondent/plaintiff. It is further held in the judgment referred above that for the inconvenience caused to the respondent for the delay on account of

the revision petitioner can be compensated by awarding an exemplary cost.

11. When a Court of law deals with an application to condone the delay filed under Section 5 of Limitation Act, such application will have to be generally viewed in a liberal and lenient way to do substantial justice between the parties. By projecting an application to condone the delay as per Section 5 of Limitation Act, belatedly, no party will file the same with a mala fide intention. If a party files a delay condonation application belatedly, he or she runs a serious risk.

12. However, if an application filed under Section 5 of the Limitation Act is followed by this Court, to advance the cause of substantial justice, then the maximum that can happen is that a party will be allowed to partake in the main arena of legal proceedings and the main cause can be decided on merits. Per contra, if a meritorious matter is thrown out at the threshold or at early stage the cause of the justice will be certainly defeated. In a condonation of delay application filed under Section 5 of the Limitation Act, 1963 the length and breadth of the delay is not a material/relevant factor.

13.The Hon'ble Supreme Court in a recent Judgment in Civil Appeal No.(S).3777 of 2015 it is held that there was a delay of 882 days delay in preferring an appeal suit and the said petition was dismissed by this Court by order dated 05.06.2013 in CRP(NPD)No.266 of 2011 and an appeal was filed before the Hon'ble Apex Court in Civil Appeal No.(S).3777 of 2015 in which the Hon'ble Apex Court has passed an order as follows:

“Leave granted.

This appeal arises out of an order dated 5th June, 2013, passed by the High Court of Judicature at Madras whereby CRP(NPD)No.266 of 2011 filed by the appellant has been dismissed and the order passed by the first appellate court declining condonation of 882 days in the filing of the appeal by the appellant affirmed.

We have heard learned counsel for the parties at some length. We are satisfied that in the facts and circumstances of the case, the first appellate court could and indeed ought to have condoned the delay in the filing of the appeal. Since, however, the delay is fairly inordinate, we are inclined to direct condonation subject to payment of costs.

We accordingly allow this appeal, set aside the orders passed by the High Court and that passed by the first appellate

Court with the direction that upon deposit of a sum of Rs.50,000/- (Rupees fifty thousand) towards costs before the first appellate court within six weeks from today, the delay in the filing of the appeal shall stand condoned. The first appellate court shall hear and dispose of the first appeal filed by the appellant expeditiously and as far as possible within a period of six months from the date the costs are deposited by the appellant. The amount of costs shall be paid to the respondent.

The appeal is allowed in the terms and to the extent indicated above.”

The Hon'ble Apex Court has allowed the Civil Appeal No.(S).3777 of 2015 on condition that the appellant shall pay a sum of Rs.50,000/- as cost to the respondent in the said appeal.

14.Taking note of the inconvenience caused to the respondent for the delay on account of the petitioner being absent from the case can be compensated, hence this Court feels that it is just and proper to impose some exemplary cost to the revision petitioner. In view of the above discussion and in the interest of justice, the impugned order is liable to be set aside and the delay is liable to be condoned.

15.In the result:

(a) this Civil Revision Petition is allowed, by setting aside the order and decree dated 31.03.2017 passed by learned District Munsif, Avinashi in I.A.No.118 of 2011 in O.S.No.70 of 2005, on condition that the petitioner shall pay the cost of Rs.50,000/- to the respondent within period of four weeks from the date of receipt of a copy of this order;

(b) the trial Court is directed to number the set aside application and pass orders within a period of one month by giving notice to either parties;

(c) if the cost is not paid within the stipulated time, this revision petition shall stand dismissed without any further reference to this Court and the ex-parte decree passed against the revision petitioner shall stand revived;

(d) on passing orders in the set aside petition, the trial Court is directed to dispose the suit within a period of two months thereafter;

(e) till the passing of the judgment in main suit, the sale deed dated 26.03.2010 is kept in abeyance.

16. Therefore, this Civil Revision Petition is allowed.
Consequently, connected miscellaneous petition is closed.

22.02.2017

Note: Issue order copy on 08.09.2017

vs

Index: Yes
Internet: Yes

To

The District Munsif,
Avinashi.

M.V.MURALIDARAN,J.

VS

**CRP(NPD)No.1973 of 2011
and
M.P.No.1 of 2011**

22.02.2017

C.M.P.No.5385 of 2019
and
C.R.P.No.1973 of 2011

M.V.MURALIDARAN,J.

The petitioner has filed the above C.M.P to clarify the order dated 22.02.2017 passed by this Court in C.R.P.(NPD)No.1973 of 2011.

2. This Court by an order dated 22.02.2017 allowed the C.R.P.(NPD)No.1973 of 2011 on a condition that the petitioner shall pay a sum of Rs.50,000/-(fifty Thousand only) to the respondent within a period of 4 weeks and further directed the learned District Munsif, Avinashi to dispose the matter within a period of one month. Regarding the payment the condition has been complied with by the petitioner, as she has paid the amount on 04.10.2017, to the respondent by way of Demand Draft dated bearing Registration No.380207, but due to bifurcation of Coimbatore District, now the learned District Munsif, Avinashi was not a competent authority to dispose the matter. Therefore, the petitioner has approached this Court by way of filing this Civil Miscellaneous petition.

3. Today, when this Civil Miscellaneous petition is taken up for hearing, the learned counsel for the petitioner submitted that, now the learned District Munsif, Avanashi is not having Jurisdiction to dispose the case due to bifurcation the Annur Taluk in which the suit property is situated comes under the Jurisdiction of Coimbatore District.

3. Considering the submission made by the learned counsel for the appellant, this Court is inclined to pass the following order:

(a) As the said suit property does not come under the Jurisdiction of the learned District Munsif, Avanashi, this matter is being transferred to Coimbatore District Judge, to verify and forward this matter to the concerned District Munisif Court, where the Annur Taluk comes under.

(b) after transferring the matter the concerned District Munisif is directed to dispose the matter within a period of 2 months thereafter.

(c) Accordingly this C.M.P. is allowed.

3.All other observations made in C.M.A.No.5385 of 2019, shall remain intact.

01.03.2019

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Index: Yes/No
Internet: Yes/No

M.V.MURALIDARAN,J.

smn

C.M.P.No.5385 of 2019
and
C.R.P.No.1973 of 2011

01.03.2019