

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2017

CORAM

THE HON'BLE DR.JUSTICE P.DEVADASS

C.R.P.No.2002 of 2011 &
MP.No.1 of 2011

1. Alamelu
...Petitioners/Defendant

2. Shanmugan

Vs.

Mohan

...Respondent/Plaintiff

Prayer:- This Civil revision is filed under section 115 of the Constitution of India, praying to set aside the order dated 22.07.2009 passed in I.A.No.1076 of 2006 in O.S.No.5 of 1999 on the file of the Principal Subordinate Judge, Pondicherry.

For Petitioners : Mr.J.Jayaraj
for Mr.D.Ravichandar

For Respondent : Mr.S.Subramanian

O R D E R

This revision arises out of dismissal of I.A.No.1076 of 2006 in O.S.No.5 of 1999 on the file of the learned Sub Judge, Puducherry filed under section 5 of the Limitation Act to condone the delay of 540 days.

2. The defendants are the owners of considerable extent of immovable property situate in Rediarpalayam in Puducherry. The value of the property is more. A sale agreement dated 03.07.1995 stated to have been executed for selling the said property for Rs.4,21,875/- and an advance of Rs.50,000/- has been received and the balance amount is agreed to be paid. However, they did not do so. In the circumstances, the plaintiff filed the suit for specific performance.

3. The defendants entered appearance. They are mother and son. They have filed joint written statement. Issues were framed. The suit was put on trial. The suit was dismissed for default of the plaintiff. Subsequently on an application filed by the plaintiff, the suit was restored to file. Thereafter

again the suit was put on trial. Pw1 the plaintiff was very anxious to become the owner of the property of the defendants. He entered the witness box as PW1. But the defendants remained absent. Under these circumstances an ex-parte decree was passed on 15.03.2004. Subsequently, the plaintiff filed Execution Petition for execution of sale deed. On receipt of a notice in the Execution Petition defendants were rudely shocked. By the time 540 days went by.

4. In these circumstances, the defendants have filed I.A.No.1076 of 2006 under Section 5 of the Limitation Act to condone the delay of 540 days, giving the proverbial reason-jaundice etc. and also put the blame on the lawyers as they have not informed them in time. This application was strongly opposed by the plaintiff.

5. After hearing both sides the trial Court coming to the conclusion that no sufficient cause was shown, dismissed the petition. That is how the defendants are before us.

6. The learned counsel for the petitioners contended that after the suit was listed and after the restoration, they were not given due notice and that has resulted in a sorry state of affairs. They may be given an opportunity to contest the suit on merit.

7. On the other hand, the learned counsel for the respondent/plaintiff would contend that it is a sheer cock and bull story. It is also a fairy tale. The defendants have slept over the matter and went into long slumber. In this circumstances the trial Court has rightly denied them showing any indulgence.

8. I have anxiously considered the rival submissions perused the impugned order and the materials on record.

9. This matter arose under the Limitation Act. The Act prescribes certain period of limitation to do certain acts. Different period has been fixed for various categories of cases. On the expiry of the said period if sufficient cause is shown the delay could be condoned under Section 5 of the Limitation Act. What is 'sufficient case' has not been advisedly defined in the Act. But it has been given a shape by the Court through its various decisions.

10. Earlier, the phrase 'sufficient cause' has been viewed by the Courts very strictly. They started expecting explanation for each day of delay. Now this view has become almost a relic of the past. Now a pragmatic approach is being adopted. It is

not the length of the delay that matters, it is substance that matters.

11. If there is a case and their valuable rights are involved, by giving a chance to a party, heaven will not fall on our head. But, however, at the same time, even if the delay is too short, if the petitioner is a Court bird and has no case, Court's time has been taken for his jolly ride. Courts will throw away such kind of petitions. Therefore, no straight jacket formula can be adopted. Each case has to be decided on its own merits. In other words, each matter has to be decided on case to case basis. These are distillation of current judicial thinking.

12. Now in this case there is considerable value of property situate in Reddiarpalayam in Puducherry. It is the subject matter of the suit. The sale agreement is of the year 1995. The sale consideration is a little above Rs.4 lakhs. Now no one will sell the property for a such a low amount. It is inequitable. It may not be appreciated. The defendants are owners of the property. Certain defences are raised in the written statement. On the one hand, the defendants seeks an opportunity for adjudication. On the other hand, the plaintiff pleads prejudice.

13. Let the defendants shall have an opportunity for adjudication upon certain terms and conditions.

14. In view of the foregoing it is ordered as under:-

(i). This revision is allowed.

(ii). The order and fair order passed by the learned Principal Sub Judge, Puducherry in I.A.1076 of 2006 in O.S.No.5 of 1999 are set aside.

(iii) The defendants will deposit costs of Rs.5,000/- (Rupees Five Thousand Only) within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made the I.A. stands allowed.

(v) Consequently connected miscellaneous petition is also closed.

(vi) On the suit being restored, the trial Court will issue notice of hearing to both sides.

(vii) Within two months from the said hearing date the trial Court will dispose of the suit according to law.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dpq

To

- 1.The Principal District Judge,
Puducherry.
2. The Principal Subordinate Judge,
Pondicherry.
3. The Registrar (Judicial),
High Court, Madras.
4. The Assistant Registrar (Appellate side),
High Court, Madras.

Copy to

- 1.The Director,
Tamil Nadu State Judicial Academy,
Green Ways Road,
R.A.Puram,
Chennai 600 028.

+1cc to Mr.Ravichandar, Advocate, S.R.No.16423
+1cc to Mr.Subramanian, Advocate, S.R.No.16803

C.R.P.No.2002 of 2011 &
MP.No.1 of 2011

KK(CO)
RS(12/04/2017)