

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.1073 to 1075 of 2009

Thangavelu

.. Petitioner

Vs.

1. Nagarathinam alias Rathinam
2. T.K.Chitradevi alias Jaya
3. T.K.Umamaheswari
4. V.Jaganathan

.. Respondents

PRAYER in all CRPs: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the judgment and decree of the learned Appellate Authority and II Additional Subordinate Judge of Coimbatore in C.M.A.Nos.11, 12 & 13 of 2008 respectively dated 29.08.2008, confirming the fair and decretal order of the learned District Munsif of Mettupalayam in I.A.Nos.30, 31 & 32 of 2007 respectively in O.S.No.1360 of 1995 on the file of the Sub Court, Coimbatore dated 23.10.2007.

For Petitioner : Mr.J.Hariharan

For R4 : Mr.G.Karthikeyan

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COMMON ORDER

The Civil Revision Petitions have been filed against the judgment and decree of the learned Appellate Authority and II Additional Subordinate Judge of Coimbatore in C.M.A.Nos.11, 12 & 13 of 2008 respectively dated 29.08.2008, confirming the fair and decretal order of the learned District Munsif of Mettupalayam in I.A.Nos.30, 31 & 32 of 2007 respectively in O.S.No.1360 of 1995 on the file of the Sub Court, Coimbatore dated 23.10.2007.

2. The issue involved in all the three CRPs are one and the same and therefore, they are disposed of by this common order.

3. The petitioner is plaintiff, respondents are defendants in O.S.No.1360 of 1995. The petitioner filed O.S.No.1360 of 1995 on the file of the Sub-Court, Coimbatore for specific performance of the oral agreement of sale dated 19.03.1997. When the suit was posted for filing written statement, the respondents/defendants did not file written statement. They were set exparte and exparte decree was passed on the same day. The respondents filed I.A.No.32 of 2003, to condone the delay of 186 days in filing the petition to set aside

the exparte decree dated 19.03.1997. The respondents also filed I.A.Nos.30 & 31 of 2007 to condone the delay of 180 days in representing the I.A.No.32 of 2007 and another I.A.No.31 of 2007 to condone the delay of 914 days in representation of the application. In I.A.No.32 of 2007 party has filed affidavit stating that case bundle got mixed up with other bundle and therefore written statement was not filed in time and after coming to know all the exparte decree immediately, application was filed to set aside the exparte decree. In other two applications, Advocate for the respondents filed affidavit stating that due to shifting of their office, the returned application was misplaced and there was delay in representation and they could not represent the same in time.

4. The petitioner filed counter affidavit and opposed all the three applications.

5. The learned Judge considering all the materials on record and judgments relied on by the learned counsel for the respondents, by three separate orders, dated 23.10.2007, allowed all the applications.

6. Against the order dated 23.10.2007, petitioner filed C.M.A.Nos.11, 12 and 13 of 2008 on the file of II Additional Sub-Court, Coimbatore. The learned Appellate Judge independently considered the materials on record, judgments relied on by the counsel for respondents, dismissed all the three appeals.

7. Against the common order dated 29.08.2008 made in C.M.A.Nos.11 to 13 of 2008 on the file of the II Additional Sub Judge, Coimbatore, the petitioner filed the present three civil revision petitions.

8. The grievance of the petitioner is that in I.A.Nos.30 and 31 of 2007, Advocate filed affidavit stating that delay in representation occurred due to shifting of the office and bundle got mixed up with other bundles, whereas in I.A.No.32 of 2007, the fourth respondent has filed the application to set aside the exparte decree.

9. Both the trial Judge and Appellate Judge without properly appreciating these facts and applying their minds, allowed all the applications on the misconception that Advocate has filed affidavit in all the three applications. This shows that both the Courts have not

exercised their power properly and committed irregularity. Both the Courts failed to see that the respondents have not given valid reasons for condoning the delay in filing the petition to set aside the exparte decree and representation.

10. Per contra, the learned counsel appearing for the respondents submitted that the respondents have given valid reasons for not filing the application to set aside the exparte decree. The learned counsel also submitted that respondents are willing to pay a further sum of Rs.10,000/- as cost.

11. Heard both the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials on record.

12. As far as the CRP Nos.1073 and 1074 of 2009 are concerned, the delay occurred in the office of the Advocate. The Advocate has given valid reason for condoning the delay in representation. It is also held by this Court that affidavit filed by the Advocate can be accepted and that a party should not suffer due to negligence on the Advocate.

13. In view of the same, the two CRP.Nos. 1073 and 1074 of 2009 are dismissed. As far as CRP.No.1075 of 2009 is concerned, the contention of the learned counsel for the petitioner that affidavit has been filed by the fourth respondent. While the learned Judge allowed the application on the ground that Advocate has filed application and committed an irregularity in allowing the application.

14. The learned counsel appearing for the respondents submitted that the suit is for specific performance for the oral agreement of sale and respondents are willing to pay a sum of Rs.10,000/- as compensation. Both the trial Court and Appellate Court considered the application and even though the Trial Court passed separate orders, the learned Appellate Judge passed common order in all the three applications.

15. The learned Judge passed separate orders and accepted the case of the respondents on the ground that Advocate has filed affidavit in all the three applications. This mistake cannot amount to irregularity. In the affidavit filed by the party in I.A.No.1075 of 2009, it is seen that respondents have given reason for condoning the delay. It is well settled law that application for condoning the

delay must be considered liberally and length of delay is not a criteria. The Courts must see whether the parties were given acceptable and valid reason and the intention of the parties is bonafide and not malafide. The parties should not be shut down at the threshold itself and they must be given an opportunity to put forth their case on merits. In view of the well settled principle, there is no irregularity or illegality in the order passed by the learned trial Judge warranting interference by this Court.

16. Taking into consideration the contention of the learned counsel for the respondents, the CRP.No.1075 of 2009 is dismissed and the respondents are directed to pay a sum of Rs.10,000/- to Mr.J.Hariharan, learned counsel for the respondent by way of Demand Draft within a period of one week from the date of receipt of a copy of this order. Post the matter for reporting compliance on 19.07.2017.

17. Taking into consideration, that the suit is of the year 1995, the learned Judge is directed to dispose the suit as expeditiously as possible in any event within four months from the date of receipt of a copy of this order.

V.M.VELUMANI, J.

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18. In the result, this Civil Revision Petitions are dismissed.

No costs. Post the matter for reporting compliance on 19.07.2017.

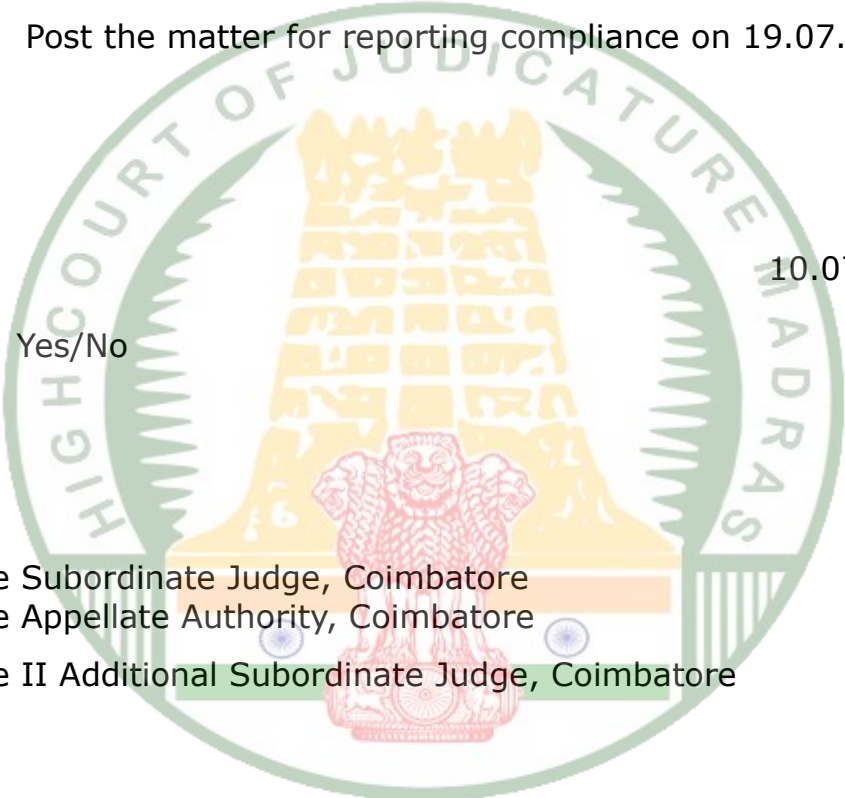
10.07.2017

Index : Yes/No

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To

1. The Subordinate Judge, Coimbatore
2. The Appellate Authority, Coimbatore
3. The II Additional Subordinate Judge, Coimbatore



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