

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2017

CORAM:

THE HONOURABLE Ms.JUSTICE V.M.VELUMANI

CRP (PD)Nos.4041 of 2011
and M.P.No.1 of 2011

R.Chandra

.. Petitioner

Vs.

1.Rajamani
2.K.Kumar
3.C.Sekar

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Indian Constitution against the fair and decretal order dated 14.06.2011 in I.A.No.2/2011 in A.S.No.29/2011 on the file of the Sub Court, Harur.

For Petitioner : Mr.V.R.Annagandi
For Respondents : Ms. J.Jain Pramila [for R1&R2]
No appearance [for R3]

ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order dated 14.06.2011 passed in I.A.No.2 of 2011 in A.S.No.29 of 2011 on the file of the Sub Court, Harur.

2. The petitioner is the plaintiff and defendants are the respondents in the suit in O.S.No.196 of 2004 on the file of the Sub Court, Dharmapuri.

The suit was filed by the petitioner against the respondents for specific performance of sale deed dated 16.12.2002. After contest, the suit was decreed on 07.09.2007. The respondents 1 and 2 preferred an appeal along with the application in I.A.No.2 of 2011, to condone the delay of 1197 days in filing the appeal.

3. According to the respondents, his advocate, who was then appointed as Assistant Public Prosecutor, did not inform the respondents 1 and 2 about the judgment and decree passed in the suit, and in view of the same, the respondents could not file the appeal in time, and there occurred a delay of 1197 days in filing the appeal. The delay in filing the appeal is neither willful nor wanton.

4. The petitioner filed counter and opposed the said application in I.A.No.2 of 2011, on the ground that the reason given by the respondents is not a valid reason to condone the enormous delay of 1197 days.

5. The learned Judge, considering all the materials available on records and the fact that the petitioner has not denied that the counsel who had appeared for the respondents 1 and 2 was then appointed as Assistant Public Prosecutor, and the fact that the petitioner has not filed any petition to execute the decree of specific performance, has allowed

the application in I.A.No.2 of 2011, on condition that the respondents 1 and 2 shall pay a sum of Rs.1,000/- to the counsel for the petitioner.

6. Against the said order dated 14.06.2011 passed in I.A.No.2 of 2011, the petitioner has filed the present civil revision petition.

7. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents 1 and 2 and perused the materials available on record.

8. The respondents 1 and 2 filed an appeal with an application in I.A.No.2 of 2011 in A.S.No.29 of 2011 on the file of Sub Court, Harur, to condone the delay of 1197 days in filing the appeal. It is contended in the application that the delay had occurred due to the fact that their counsel was appointed as Assistant Public Prosecutor and he did not inform about the judgement and decree that was delivered by the trial Court in the suit, which prevented the respondents 1 and 2 to file the appeal in time. It is seen that the petitioner has not denied the averment that the counsel for the respondents 1 and 2 was appointed as Assistant Public Prosecutor. Further, the petitioner has not filed any execution petition to execute the

decree passed by the learned Judge. Considering all these facts, the learned Judge has allowed the application on condition that the respondents 1 and 2 would pay a sum of Rs.1,000/- to the counsel for the petitioner.

9. 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.

10. In the result, the civil revision petition is dismissed. No costs. The respondents 1 and 2 have filed the appeal in the year 2001 and in the present revision filed by the petitioner, this Court by an order dated 16.11.2011 has granted stay to the order passed by the learned trial Judge. However, taking into consideration that the appeal is filed in the year 2011 and the present revision which was filed to set aside the fair and decretal order dated 14.06.2011 passed in I.A.No.2 of 2011 in A.S.No.29 of 2011 on the file of the Sub Court, Harur, cannot be interfered with, and was consequently dismissed, the learned

Sub Judge, Harur, is directed to pass appropriate orders in the appeal suit in A.S.No.29 of 2011, on merits and in accordance with law and dispose of the same as expeditiously as possible and in any event, not later than six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

04.07.2017

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Speaking order/Non-speaking order

Internet : Yes / No

Index : Yes/No

To:

The Subordinate Judge
Harur.



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V.M.VELUMANI, J.

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