

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.603 of 2011
and
M.P.No.1 of 2011**

Chowda Reddy

.. Petitioner

Vs.

1.Chowdappa

2.P.Nagaraj

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decree in I.A.No.41 of 2010 in Un-numbered A.S. of 2010, on the file of the Principal District Court, Krishnagiri, dated 22.12.2010.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.V.Nicholas (for R1)

No Appearance (for R2)

ORDER

This revision is directed against the Fair and Decreetal Order dated 22.12.2010 made by the Learned Principal District Court,

Krishnagiri in I.A.No.41 of 2010 filed along with Appeal Suit of the year 2010.

2.The petitioner herein is the 2nd defendant in the suit in O.S.No.130 of 1999 on the file of the Subordinate Court, Hosur. The above suit for Specific Performance was filed by the 1st respondent / 1st defendant / Vendor seeking Execution of a sale deed in respect of the schedule property basing upon a sale agreement dated 15.02.1999 said to have executed by the 2nd respondent / 1st defendant/vendee.

3.According to 2nd respondent/plaintiff, a Sale Agreement remained entered by him as vendee purchasing the suit property, with the 2nd respondent herein/vendor in the suit. However as the 2nd respondent failed to honor the sale agreement by receiving balance sale consideration and executing sale deed in favour of the 1st respondent and that in the mean time it was further found that the 2nd respondent namely Nagaraj has illegally executed a sale deed in favour of the revision petitioner to defraud the 2nd respondent, the 1st respondent filed the above suit seeking execution of sale deed in his favour arraying both the revision petitioner and 2nd respondent as

defendants.

4.The record reveals that though earlier the revision petitioner/defendant suffered an Ex-Parte Decree later he entered appearance and the Ex-Parte Decree came to be set aside at his instance. The said suit accordingly remained contented by the revision petitioner and a Decree on merit came to be passed as prayed for by the 1st respondent.

5.Whereas it is also found that the 1st respondent filed execution application before the Execution Court in R.E.P.No.2 of 2009 to get the Decree executed.

6.In the said factual backdrop, the petitioner herein filed an appeal suit with a delay of 510 days before the lower Appellate Court under section of the Limitation Act.

7.The reason projected by the revision petitioner towards failure to file his appeal suit in time was that his counsel in Trial Court has not turned up to file his appeal in time, despite petitioner's instruction in this regard to receive the Fair Judgment and Decree made in Original

Suit.

8. According to the revision petitioner soon after knowing the Judgment on 19.09.2008, he instructed his counsel having office at Hosur to get the copies of Decree and Judgment so as to enable him to prefer appeal and he was awaiting intimation from his counsel.

9. However after long struggle with his counsel conducted the Trial and in deep search in his office, it was found that the Judgment and Decree was received by him and misplaced in his office and he also had not turned up to intimate the revision petitioner in this regard.

10. Consequently the revision petitioner received back the bundle from his counsel before the trial Court at Hosur and he entrusted new counsel to prefer appeal on his behalf filed at Krishnagiri.

11. Per contra, the said application remain contested by the 1st respondent that the delay is not properly calculated and the story behind non institution of appeal in Time is utter false intended to drag on the proceedings to avoid delivery of possession. The Learned Trial

Judge on hearing upon rival submission dismissed revision petitioner's application by the impugned order herein.

12.I heard Mr.V.Raghavachari, learned counsel for the revision petitioner and Mr.V.Nicholas, learned counsel for the 1st respondent and perused the entire materials available on record. No representation on behalf of the 2nd respondent.

13.The learned counsel for the revision petitioner would contend that the Appellate Court below has erred in construing petitioner's section 5 Application filed under the Limitation Act in a pedantic way and in actual to do substantial justice Appeal Court ought to have liberally construed the revision petitioner's application.

14.By contending so he also relied upon the decisions of this Court made in 2007-3-LW 690 and 2009 (5) CTC 414.

15.Per contra, the Learned Counsel for the respondent submitted that delay is wanton and willful and the appeal itself is filed to delay the delivery of possession. It is also his contention that the Executing Court has executed the sale deed in his favour and all that remains is only delivery of possession. Accordingly he prayed for dismissal of the

civil revision petition.

16. There can be no doubt that to do substantial justice an application under section 5 of the Limitation Act has to be construed liberally. All that to be borne is not the length of delay but the reason behind such delay. Admittedly the suit on hand is one for specific performance and more so the first appeal serving as the Statutory Appeal on facts which is valuable right to cause appraisal or adduce the evidence on facts.

17. In this context it would be useful to look into the decision relied by the revision petitioner reported in 2009 (5) CTC 414 holding that sufficient cause under section 5 of the Limitation Act will have to be interpreted in a purposeful and meaningful way and that orderly a party does not stand to gain by lodging and appeal belatedly.

18. In the case on hand out of the delay at revision petitioner's end, he would face threat of adverse order. Therefore Appeal cannot be held filed belatedly and purposefully. The application on hand is liable to be dealt with in a pragmatic way.

19. Therefore, I am of the considered opinion that because of

revision petitioner's counsel's inaction, the revision petitioner cannot be deprived of his valuable right of appeal on technical ground. Hence, this civil revision is liable to be allowed, however, on payment of cost of Rs.2,000/- to be paid to the respondent herein by the revision petitioner.

20. In the result, this Civil Revision Petition is allowed by setting aside the Fair and Decretal Order dated 22.12.2010 made in I.A.No.41 of 2010 on the file of the Learned Principal District Court, Krishnagiri, on condition that the revision petitioner shall pay cost of Rs.2,000/- to the respondents herein within a period of two weeks from the date of receipt of a copy of this order, failure to pay cost within the time stipulated above, this Civil Revision Petition will be dismissed automatically without any further reference. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

11.01.2017

Note: Issue order copy on 21.12.2018

Index: Yes

Internet: Yes

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vs

To

The Principal District Court,
Krishnagiri.

M.V.MURALIDARAN, J.

VS



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