

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P.(NPD).No.826 of 2014

and

M.P.No.1 of 2014

Kishta Pillai
S/o.Perumal Pillai

.. Petitioner/Petitioner/Petitioner/
1st Defendant

-Vs.-

1.Dass
S/o.Ramasamy Pillai

2.Kanniammal
W/o.Late Elumalai Pillai

3.Saraswathi
W/o.Ranganathan

4.Devi @ Lakshmi
W/o.Sekar

5.Minor.Rukmani
D/o.Late Elumalai Pillai

6.Minor Mala
D/o.Late Elumalai Pillai

Respondents 5 & 6 are represented by
their guardian 1st respondent

.. Respondents/Respondents/
Respondents/Plaintiffs

Prayer:

Civil Revision Petition is filed under Article 227 of the Constitution of India against the return memo passed by the learned Principal District Munsif, Vandavasi, Thiruvannamalai District in Un-numbered I.A. of 2013 in I.A.No.70 of 2012 in O.S.No.325 of 2008, dated 29.11.2013.

For Petitioner : Mr.A.R.Suresh

For Respondents : Mr.V.Meenakshi Sundaram, for R1

No Appearance for R2 to R5

ORDER

Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the first respondent.

2.The petitioner has come up with the present Civil Revision Petition challenging the impugned order dated 29.11.2013, wherein the application filed under Section 148 r/w 151 CPC is returned as not maintainable.

3.The learned counsel for the revision petitioner would submit that the respondents herein as plaintiffs had filed the suit in O.S.No.325 of 2008 on the file of the learned Principal District Munsif, Vandavasi. The said suit was decreed exparte. To set aside the said exparte decree, the revision petitioner

who is the first defendant in the suit has filed an application in I.A.No.70 of 2012 to condone the delay of 358 days in filing the said application. The said application came to be allowed on 12.08.2013 on payment of costs of Rs.500/- to the respondents/plaintiffs on or before 18.08.2013. However, the said conditional order has not been complied with and hence, the application in I.A.No.70 of 2012 was dismissed. As against the same, the revision petitioner/first defendant filed an application under Section 148 r/w 151 CPC for extending the time to comply with the conditional order dated 12.08.2013. However, the Trial Court refused to entertain the said application stating that it is not maintainable. Challenging the same, the learned counsel for the revision petitioner would rely upon the decision of this Court reported in **2006 (2) MLJ 729 = CDJ 2006 MHC 1278, Gowri Ammal V. Murugan & Others**, wherein it was held that the Court is empowered to entertain the petition under Section 148 CPC to extend the time for complying with the conditional order. Thus, the learned counsel prayed for allowing the Civil Revision Petition.

4.Resisting the same, the learned counsel appearing for the first respondent would submit that the revision petitioner/first defendant has come forward with this petition only with a view to drag on the proceedings, thereby preventing the respondents/plaintiffs to enjoy the fruits of the decree. Further, only after two months from the dismissal of the application in I.A.No.70 of

2012, the unnumbered I.A was filed seeking for extension of time which is unsustainable. The Trial court after considering the said aspect in proper perspective has rightly decided not to entertain the application preferred by the revision petitioner. Hence, the learned counsel for the first respondent prayed for dismissal of the Civil Revision Petition.

5.Considered the rival submissions made by both sides and perused the typed set of papers.

6.The respondents herein as plaintiffs had filed the suit in O.S.No.325 of 2008 for specific performance of the sale agreement dated 19.03.1996. Even after receipt of the notice in the suit, since the revision petitioner/first defendant did not file the written statement, an exparte decree was passed on 07.01.2011. To set aside the said exparte decree, the revision petitioner filed an application in I.A.No.70 of 2012 to condone the delay of 358 days in filing the said application. After hearing both sides, the Trial Court passed an conditional order directing the first defendant to pay a sum of Rs.500/- on or before 18.08.2013, failing which the petition will be dismissed on 19.08.2013. Since the conditional order was not complied with, the application in I.A.No.70 of 2012 was dismissed. Thereafter, the revision petitioner filed the unnumbered I.A. on 06.11.2013 for extending the time to comply with the

conditional order. However, the Trial Court refused to entertain the said application as not maintainable.

7. At this juncture, it would be appropriate to consider the decision relied on by the learned counsel appearing for the revision petitioner reported in **2006 (2) MLJ 729 = CDJ 2006 MHC 1278, Gowri Ammal V. Murugan & Others**. In the said decision, a conditional order has been passed directing the petitioner therein to pay a sum of Rs.500/- to the respondents on or before 18.03.2003, for condoning the delay. However, on 05.08.2003, the petitioner filed an application in I.A.No.435 of 2003 under Sections 148 and 151 CPC to extend the time for payment of costs. Though the Trial Court had dismissed the said application, on the appeal preferred before this Court, the Division Bench of this Court had allowed the application and remanded the matter to the Trial Court. However, in the instant case, the facts are entirely different. The application preferred by the revision petitioner/first defendant was allowed on payment of costs of Rs.500/- to the respondents/plaintiffs on or before 18.08.2013 and the matter was posted for compliance on 19.08.2013. Since, the revision petitioner did not pay the amount within the stipulated time, the petition for condonation of delay came to be dismissed. Thereafter, the revision petitioner filed the unnumbered I.A. on 06.11.2013 for extending the time to comply with the conditional order, after expiry of 2 ½ months which would

show the malafide intention of the revision petitioner to drag on the proceedings. Hence, the decision relied on by the learned counsel for the revision petitioner will not come to the rescue of the petitioner.

8.Considering all the above facts and circumstances, I am of the view that there is no illegality or infirmity in the order passed by the Trial court and hence, the Civil Revision Petition is dismissed as devoid of merits. Consequently, connected miscellaneous petition is closed. No costs.

09.01.2017

pgp

Index:Yes/No

R.MALA, J.

pgp

C.R.P.(NPD).No.826 of 2014

Dated : 09.01.2017

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