

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06-03-2017

CORAM:

THE HONOURABLE DR. JUSTICE P.DEVADASS

Civil Revision Petition No.1318 of 2013

And

M.P.No.1 of 2013

S.Nirmaladevi .. Petitioner/Plaintiff

vs.

T.R.Rangasamy .. Respondent/Defendant

This Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and final order passed in I.A.No.871 of 2011 in O.S.No.650 of 2007 on the file of the learned I Additional Sub-Judge, Coimbatore dated 21.11.2012.

For Petitioner : Mr.S.Arjun for
Mr.S.Gunalan

For Respondent : Mr.M.Isutiaq Ahmed

O R D E R

This revision arises out of allowing I.A.No.871 of 2011 in O.S.No.650 of 2007 filed under Section 5 of Limitation Act on the file of the learned I Additional Sub-Judge, Coimbatore.

2. The respondent/defendant owns Nanja lands measuring about 1 acre 9 cents comprised in Survey No.554/1A, situate in Mettupalayam in Coimbatore District.

3. Plaintiff, based on a Sale Agreement dated 12.3.2004 executed by the defendant filed the suit in O.S.No.650 of 2007 for specific performance with respect to the said property as against the defendant. On the first hearing date, namely, on 13.12.2007, the defendant was set ex parte. Thereafter, ex parte decree was passed. Plaintiff has become the decree holder. She filed E.P.No.129 of 2010 for compulsory execution of Sale Deed. The defendant opposed the execution contending that no suit summon was served upon him and he came to know about the ex parte decree only after receiving notice from the Execution Court.

4. In the Trial Court, the defendant filed I.A.No.871 of 2011 under Section 5 of Limitation Act to condone the delay of 1,202 days caused in filing the petition to set aside the said ex parte decree.

5. The said petition was hotly contested by the plaintiff. After hearing both sides, the Trial Court rejected the contention of the defendant that he has not been served with suit summon. However, on noticing that the defendant has a case which is required adjudication and considering the same as a sufficient cause, the Trial Court passed a conditional order allowing the application on payment of costs of Rs.2,500/- to the plaintiff. Accordingly, the defendant has paid the costs on 28.11.2012. Consequently, the delay was condoned and the ex parte decree was set aside. And the defendant also filed his written statement. Issues are yet to be framed.

6. The learned counsel for the revision petitioner/plaintiff would contend that this is a rotten case. Defendant is a Rip Van Winkle raising from his long Slumber. In the facts and circumstances, defendant deserves no indulgence. There is no plausible reason given in his affidavit. The Court below has not properly exercised its judicial discretion.

7. On the other hand, the learned counsel for the defendant would contend that the plaintiff wants to have a cakewalk. She wish to become owner of defendant's valuable property for a ludicrous sale consideration. Actually, when the defendant was in financial crisis, he has been caught by the plaintiff/creditor. As he was in pressing debts, he has yield to her pressure and as a security for the loan, plaintiff got a Sale Agreement from the defendant. Actually, it was not intended as a Sale Agreement.

8. The learned counsel for the respondent further contended that the Sale Agreement is an inequitable Agreement. Defendant has a good case to succeed. In the circumstances, the Trial Court has rightly exercised its discretion and the defendant is not running away from contesting the suit.

9. The learned counsel for the respondent would cite Ajay Kumar Gulecha vs. J.Vijayakumar and Another [2015 (1) CTC 811] and submit that on analogous factual matrix, this Court upheld the exercise of judicial discretion in favour of the defendant. The said decision is in pari materia to the facts of the present case. There is no occasion here to interfere with the impugned order passed by the Trial Court.

10. I have anxiously considered the rival submissions, perused the impugned order, materials on record and I have also gleaned through the decision cited.

11. No doubt, the delay of 1,202 days is huge, but in the matter of condoning the delay, there is shift in the approach of the Court. It may be a shifting jurisprudence. The attitude of the Judges differ in tune with the change in time. It must have change. If it is not, it will bar the growth of law. That is how there is march of law.

12. Earlier, the attitude of the Courts in delay condonation petitions is to view it with tinged glasses. Now it has become obsolete. Now the attitude of the Court is that really there is a case for adjudication, the Court consider it a sufficient cause or reason to give an opportunity and condone the delay. Otherwise, they throw away such petitions. Thus, now the test is not the length of delay, but it is substance of the matter. However, using this benevolent attitude of the Court, a Court bird or a seasoned litigant shall not be allowed to enter the Court to practice some legal acrobatic at the cost of the public time and public money. In such view of the matter, even in these kind of petitions, the Court can gauge the bona fides of the petitioner. These are all distilled from the current trend of the case-laws on the point.

13. Now, in this case, a valuable property of considerable extent is involved. Plaintiff pleads a Sale Agreement and wants execution of Sale Deed. However, defendant pleads that when he was in financial doldrum, just by way of security, he has given the Sale Agreement. Along with the delay condonation petition, the defendant also filed his written statement. He intends to have adjudication of the matter. Under similar circumstances, in Ajay Kumar Gulecha (supra), a learned Judge of this Court took a liberal view. After all, what was given to the defendant is an opportunity for adjudication. Plaintiff will not like giving him such an opportunity. Naturally, the plaintiff placed in such a situation will like to have success without adjudication, in other words cakewalk. But it is not in the interest of justice. Now the conditional order has been obeyed by the defendant. The defendant also demonstrated that he is not resting on his laurels in the delay condonation petition and he wishes adjudication. However, the grievance of the plaintiff is that the trial of the suit should not be allowed to procrastinate further is understandable.

14. In view of the foregoing, ordered as under:

- (i) This Civil Revision Petition fails and it is dismissed;
- (ii) The I Additional Sub-Judge, Coimbatore shall

dispose of the suit in O.S.No.650 of 2007 expeditiously, preferably within three months from the date of receipt of a copy of this order.

(iii) There shall be no order as to costs;

(iv) Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. I Additional Sub-Judge, Coimbatore.

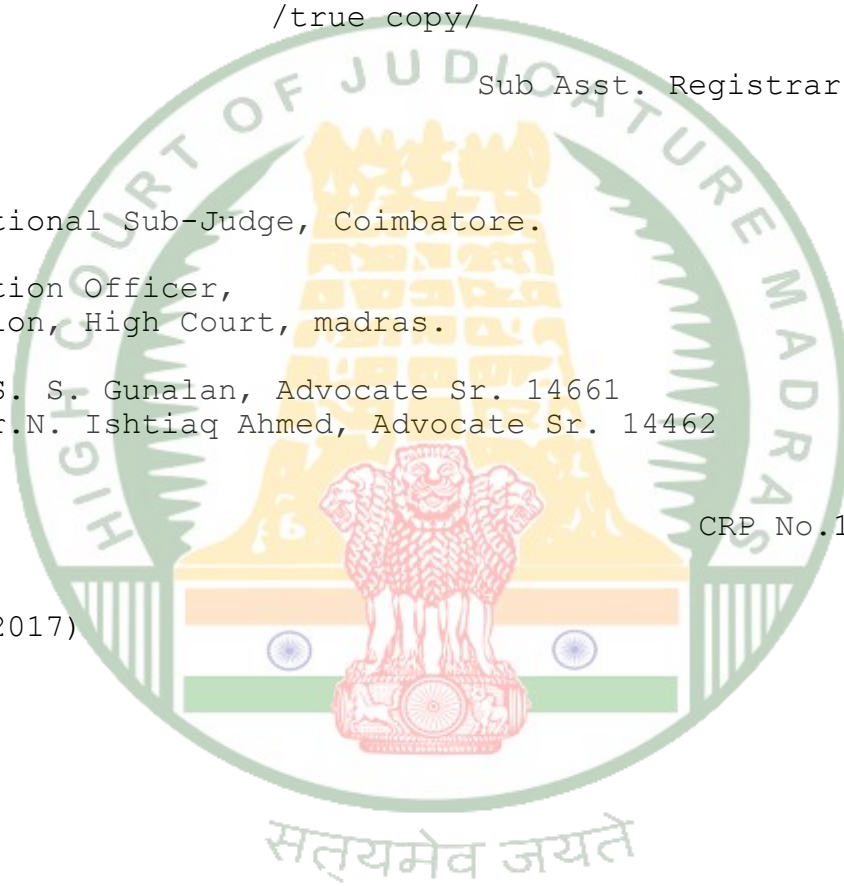
2.The Section Officer,
VR Section, High Court, madras.

+1c to M/S. S. Gunalan, Advocate Sr. 14661

+1cc to Mr.N. Ishtiaq Ahmed, Advocate Sr. 14462

CRP No.1318 of 2013

SKV(CO)
VR(28/03/2017)



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