IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CRP(NPD)No.2752 of 2012
and
M.P.No.1 of 2012

1.M.Yasotha Kumar
2.M.Arulkrishnan
3.Jayalakshmi .. Petitioners

Vs

1.M.Palanisamy
2.C.Rajendran .. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C., against the order passed in I.A.No.15 of 2009 in O.S.No.236 of 2004 dated 18.06.2012 on the file of the First Additional District Judge, Erode.

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For Petitioners : Mr.K.S.Sankhar Murali

For Respondents : Mr.M.Guruprasad

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ORDER

The Revision Petitioners by way of this Civil Revision Petition seeks to set aside the order passed by the learned First Additional District Judge, Erode in I.A.No.15 of 2009 in O.S.No.236 of 2004 dated 18.06.2012.

2.The petitioners are the 3rd, 4th and 13th defendants in the above suit in O.S.No.236 of 2004 filed by the respondents herein for specific performance.

3.According to the respondents/plaintiff there was a sale agreement executed between the respondent as purchaser and the petitioner's father as vendor in respect of suit property. However as the revision petitioner's father failed to execute the sale deed by receiving balance sale consideration, the above suit came to be filed.

4.The records disclose that the revision petitioners are found set ex-parte by the Trial Court for non appearance and an Ex-parte decree came to be passed on 27.06.2006 and subsequently the respondents have filed an application to set aside the ex-parte decree. However, as there was a delay of 324 days in filing the application and petitioner's

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application remained supported by an affidavit under Section 5 of the Limitation Act.

5.It is the case of the revision petitioner that said I.A. was transferred and renumbered in the year 2007 but the same went missing and was not traceable. Hence, they filed the instant application in I.A.No.15 of 2009, with delay of 861 days to set aside the ex-parte decree. The learned Trial Judge holding that the reasons assigned in the affidavit is unacceptable and untrue has dismissed the revision petitioner's application. The said order of dismissal is under challenge herein.

6.I heard Mr.K.S.Sankhar Murali, learned counsel for the petitioners and Mr.M.Guruprasad, learned counsel for the respondents and perused the entire materials available on record.

सत्यमेव जयते

7.On perusal of records, it is not in dispute that the first and second petitioners were minor while suit was instituted and as their father had not taken steps to represent the revision petitioner, the Trial Court has appointed the guardian.

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8.It is further found that the 2nd defendant is the father of the first and second revision petitioners and the husband of third revision petitioner and though he filed written statement but not adduced any evidence.

9.It is the case of the revision petitioners that they got knowledge of the ex-parte decree only on receipt of notice in the Execution Petition filed by the respondents.

10.Unlike of the suits, the suit on hand is for specific performance and a contested decree will render a substantial Justice. Considering the submissions and material available on record, I am of considered opinion that one more opportunity can be given to the revision petitioners to defend the suit.

11.It is brought to notice of this Court that a Sale deed was executed by the Execution Court. In the said factual context it would be useful to refer to the decision of this Court made in C.R.P(MD)No.2083 of 2010 and M.P.No.2 of 2010 in the matter of Chellakannu Ammal –Vs- Latha holding as following that:

"Insofar as the second contention is concerned, it is

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admitted even by the respondent that the petitioner first filed an application to set aside the ex-parte decree without an application to condone the delay. That application was wrongly numbered by the Court below and kept pending for nearly a year and thereafter allowed to be withdrawn on account of the technical objection. Therefore, the delay is not really 676 days, but for less than that. If the petitioner had been given proper legal advice, she could have filed the application to condone the delay without even withdrawing the first application to set aside the ex-parte decree. Thus the agony of the petitioner has been compounded by a wrong legal advice, for which the petitioner need not be penalized.

Moreover, the suit is one for specific performance of an agreement of sale. The agreement admittedly covered two items of properties out of which admittedly the petitioner has already executed a sale deed in respect of one item. In respect of the other item, the petitioner has taken contentious issues in the written statement. Therefore, I do not think that the rights of the petitioner should be defeated by refusing to condone the delay.

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At the same time, it is pointed out by the Learned Counsel for the respondent that a sum of Rs.43,600/- has been spent towards stamp duty and registration charges. The same should be paid by the petitioner, so that the respondent is not penalized for a fault on the part of the petitioner. Therefore, in the result the Civil Revision petition is allowed, the impugned order is set aside and the application to condone the delay is allowed subject to the condition that the petitioner pays a sum of Rs.43,600/- towards the cost of execution and registration of the sale deed, to the respondent and also pays cost of Rs.1000/- to the counsel for respondent. Both costs will be paid on or before 22.11.2010. Upon payment, the application for condonation of delay will stand automatically allowed. Else it will stand dismissed. If the application is allowed upon payment of cost, the Court below shall take up the other application and pass appropriate orders."

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12.Therefore, in the light of above decision involving similar set of facts, there shall be a direction to the revision petitioners to pay the Stamp duty and registration charges paid by the respondents before

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the Trial Court.

13.In the result:

(a) this civil revision petition is allowed, by setting aside the order passed in I.A.No.15 of 2009 in O.S.No.236 of 2004, dated 18.06.2012, on the file of the learned First Additional District Judge, Erode, on condition that the petitioners should pay a sum of Rs.50,000/- to the respondents/plaintiffs within a period of four weeks from the date of receipt of a copy of this order;

(b) on production of the payment receipt, the trial Court is directed to number the set aside application and to pass orders, by giving notice to both parties within a period of 15 days, without giving any adjournment to either parties;

(c) on passing orders in the restoration petition, the trial Court is directed to take up the suit on day to day basis, without giving any adjournment to either parties and dispose of the suit within a period of 45 days from the date of disposal of the restoration petition. Both the parties are hereby directed to give their fullest co-operation for early disposal of the suit. Consequently, connected

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miscellaneous petition is closed.

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vs
Note:Issue order copy on 04.02.2019
Index:Yes
Internet:Yes

To

The First Additional District Judge, Erode.

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M.V.MURALIDARAN,J.

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vs

Pre-delivery order made in
CRP(NPD)No.2752 of 2012
and
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