

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2017

CORAM

THE HON'BLE MS. **JUSTICE R.MALA**

C.R.P.(NPD)No.797 of 2016
and C.M.P.No.4430 of 2016

1.Land Marvel Homes
Rep. by its Managing Partner
M.Veerashekar

2.M.Veerashekar
Partner
Messrs. Land Marvel Homes

3.M.Arivazhagan
Partner
Messrs.Land Marvel Homes

.. Petitioners

Vs.

R.Ramasamy

.. Respondent

Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decreetal order dated 24.11.2015 made in E.A.No.103 of 2014 in E.P.No.27 of 2012 in Arb.O.P.No.1 of 2010 on the file of the Principal District Court, Kanchipuram at Chengalpet.

For petitioners : Mr.Srenik.S.Jain

For Respondent : Mr.S.R.Rajagopal

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 24.11.2015 made in E.A.No.103 of 2014 in E.P.No.27 of 2012 in Arb.O.P.No.1 of 2010 on the file of the Principal District Court, Kanchipuram at Chengalpet.

2.The petitioners herein are the judgment debtors and the respondent is the decree holder. An arbitration Award has been passed on 30.04.2010. Then the respondent/decreed holder has filed E.P.No.27 of 2012 for attachment. The Executing Court passed the order of attachment, since counter was not filed in execution petition. Hence the judgment debtors filed E.A.No.103 of 2014 to set aside the ex parte order of attachment, after contest, the Executing Court dismissed the application. Challenging the same, the present revision is preferred by the judgment debtors.

3.Learned counsel for the petitioners would submit that the staff who was dealing with this case suddenly left the services of their firm and that the petitioners could not contact with their counsel and therefore, they are unable to file the counter in time. So they were set

exparte on 27.09.2013 in the execution petition and attachment was also ordered. Hence, they pray for allowing this revision.

4. Resisting the same, learned counsel for the respondent would submit that arbitration award has been passed by consent of both the parties and that the petitioners have to pay the amount as per the award passed in Arbitration O.P.No.1 of 2010. But the petitioners instead of paying that amount, kept quiet all along and even though they entered appearance in the execution petition, they neither filed any counter nor paid award amount. After attachment has been ordered, the petitioners have come forward with E.A.No.103 of 2014 for condonation of delay of 85 days in setting aside the exparte order. So it clearly shows that the petitioners only with a view to drag on the proceedings have preferred series of applications. Therefore, he prays for dismissal of the revision.

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

6. Arbitration award has been passed on 30.04.2010 and that the judgment debtors/petitioners herein have to pay the award amount.

The respondent/decreed holder has filed E.P.No.27 of 2012 for attachment. The petitioners even though entered appearance in the execution petition, they have not paid any award amount and not filed any counter. Further, the matter was adjourned periodically for filing counter. Therefore, the Executing Court has set the judgment debtors *exparte* and passed order of attachment. It is pertinent to note that the petitioners kept quite all along and have come forward with E.A.No.103 of 2014 with the delay of 85 days in setting aside the *exparte* order of attachment.

7.As per the dictum of the Apex Court reported in ***AIR 1998 SC 3222 (N.Balakrishnan v. M.Krishnamurthy)***, it was specifically held that if the length of delay is immaterial, sufficient cause for condonation of delay has to be explained. It is appropriate to extract para-9 to 11, which read as follows:

"9. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient it is the result of positive exercise of

discretion and normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior Court would be free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammelled by the conclusion of the lower Court.

10.The reason for such a different stance is thus:The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11.Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. "

8.The petitioners in para-5 of their affidavit stating that the staff who was dealing with the case left the services in their firm in the

month of July 2013 and has not informed of the present position of the case and the date of hearing. Therefore, they are unable to file the counter in time. In my opinion, the above reason is not sufficient to condone the delay. As already referred to above that by consent of both the parties, award has been passed. But the petitioners neither paid any amount nor filed counter. Further, attachment has also been ordered and sale paper has been filed before the Executing Court. So it clearly shows that the petitioners with a malafide intention to prevent the decree holder to enjoy the fruits of the decree, have come forward with the petition for condonation of delay. Therefore, applying the dictum laid down in Balakrishnan case, I am of the view that the delay of 85 days has not been properly explained and hence, I am not inclined to condone the delay. So I do not find any illegality or irregularity in the fair and decreetal order passed by the Executing Court and therefore, it is hereby confirmed. Consequently, the Civil Revision Petition stands dismissed.

9. In the result, this Civil Revision Petition shall stand dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

01.02.2017

Index : Yes/No

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To

The Principal District Court, Kanchipuram at Chengalpet.

R.MALA,J.

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