

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 06.01.2017

Pronounced on 01.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)No.4632 of 2010

and

M.P.No.1 of 2010

K.Viswanathan

.. Petitioner

Vs.

A.Ramesh

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 08.10.2010 made in I.A.No.61 of 2008 in Unnumbered A.S.No.... of 2010, on the file of the District Judge, Thiruvannamalai.

For Petitioner : Mr.S.Sairam
for M/s.M.Selvam

For Respondent : Mr.P.Mani

O R D E R

The appellant is the civil revision petitioner before this Court, challenging the order in I.A.No.61 of 2008 in A.S.No.Nil of 2008 in O.S.No.388 of 2008, dated 08.10.2010 on the file of the District Judge, Tiruvannamalai.

2.The case of the petitioner is that the suit schedule property is belongs to the defendant, who is the respondent herein and the appellant is the plaintiff in the suit. The respondent/defendant has agreed to sell the property to the plaintiff and hence on 07.04.2003 executed and registered sale agreement in favour of the appellant/plaintiff agreeing to sell the suit schedule of property for a sum of Rs.1,25,000/-. Therefore, on the same day the appellant/plaintiff has paid a sum of Rs.1,00,000/- as advance and the same was received by the respondent/defendant and agreed to receive the balance amount within one year. Though the appellant/plaintiff is ready and willing to perform his part of the contract and the defendant has evaded the receipt of the balance sale consideration and execute the registered sale deed in favour of the respondent/plaintiff. Therefore, on 03.10.2003, issued a notice, but the

respondent/defendant failed to execute the sale deed. Therefore, he filed the suit in O.S.No.388 of 2003 for specific performance.

3.The respondent/defendant has filed his written statement denying the execution of the sale agreement. Due to the urgent need of money, the respondent/defendant approached the plaintiff for finance assistance and being the financier the plaintiff has given Rs.1,00,000/- and the defendant has executed a sale agreement as per instruction of the appellant/plaintiff and the appellant/plaintiff directed the respondent/defendant to pay the interest at the rate of 60% per annum, which was also agreed by the respondent/defendant. Pursuant to that till the month of September 2003, since the interest for the month of October 2003 is not paid, this plaintiff has filed the suit for specific performance. Therefore, the respondent/defendant sought for the dismissal of the suit.

4.Considering both side case, the learned Principal Subordinate Judge, Tiruvannamalai was pleased to decreed the suit on 30.03.2007 for payment of the amount of Rs.1,00,000/- with interest at 18% per annum and negatived the suit prayer for specific performance. Challenging the said decree, the appellant/plaintiff has filed an appeal

in A.S.No.NIL of 2008 with a delay of 543 days before the learned District Judge at Tiruvannamalai.

5.The appellant/plaintiff has come forward by saying that though the learned Sub-Judge, Tiruvannamalai was pleased to passed the decree on 30.03.2007, but his lower Court counsel has not filed the copy application within the time limit and he has also not informed about the outcome of the suit. Therefore, under impression that the suit is pending. Thereafter, on knowing to the other counsel that the suit was decreed in respect of the claim amount only, but the suit was dismissed for specific performance on 30.03.2007 itself and as per the advice of the counsel, he was filed an appeal before the learned District Judge, Tiruvannamalai, but there is a delay of 543 days in filing the said appeal since the appeal should filed within a period of 30 days.

6.After obtaining the case bundle from the previous counsel and entrusted the case to the present counsel hereafter 01.09.2008 only the copy application was made, the said certified copy was delivered on 02.09.2008. Thereafter, immediately the appellant/plaintiff has filed the appeal against the said order. Therefore, there is a delay of

543 days in filing the appeal, hence he prayed the learned District Judge, Tiruvannamalai to allow the condone delay application.

7.On receiving notice in the above I.A.No.61 of 2008 in A.S.No.Nil of 2008, the respondent/defendant has filed a counter statement by denying the entire allegations.

8.The respondent stated that after decreed the suit, this appellant/plaintiff has filed an Execution Petition in REP.No.50 of 2008 in O.S.No.388 of 2003, on the foot of the decree passed in the said suit even in the month of June 2008, on the file of the Sub-Court, Tiruvannamalai admitting the correctness of the decree of the said execution petition was posted on 18.08.2008 and the same was adjourned to 10.09.2008.

9.On 10.09.2008, the appellant/plaintiff has not pressed the execution petition and the same was dismissed on the same day i.e. on 10.09.2008. Therefore, by suppressing the above fact that the petitioner has leveled defamatory allegations against his trial Court counsel for the purpose of the above petition.

10.The respondent/defendant also states that the delay petition for a delay of 543 days as huge delay, there was no proper explanation by the petitioner/appellant. Therefore, he prayed the appellate Court namely the District Court, Tiruvannamalai to dismiss the application.

11.Considering both side arguments, the learned appellate Judge namely the District Judge, Tiruvannamalai was pleased to dismissed the application on the ground that though the suit filed for specific performance in O.S.No.338 of 2003 filed by the petitioner/appellant. But, the learned Sub-Judge, Tiruvannamalai, rejected the specific performance and the decree is passed to refund of Rs.1,00,000/- with interest at the rate of 18% per annum. After that, the petitioner/appellant has obtained the certified copy of the judgment and decree and filed E.P. in the month of June 2008 itself and filed REP.No.50 of 2008. But, later on 10.09.2008 the E.P. was dismissed as not pressed.

12.The learned Judge also states that in the condone delay application, the petitioner/appellant himself examined as PW1 and deposed that his advocate has not given intimation which has caused

delay and marked Ex.P1 Execution Petition. Therefore, the learned Judge says that the petitioner/appellant has well known about the judgment of the civil suit in O.S.No.388 of 2003 on 30.03.2007, but he has filed the above appeal after filing the execution petition in E.P.No.50 of 2008. The learned Judge also states that in the absence any positive and valid acceptable explanation to condone the delay of 543 days and also taking into fact that the petitioner also filed REP.No.50 of 2008, the petitioner/appellant has not come out with true set of facts and the explanation of the petitioner is not a bonafide one and the inordinate delay of 543 days remains unexplained and hence, the learned Judge, dismissed the said application. Challenging the said order, the petitioner/appellant has filed this civil revision petition before this Court.

13.I heard Mr.S.Sairam, learned counsel for M/s.M.Selvam, learned counsel appearing for the petitioner and Mr.P.Mani, learned counsel appearing for the respondent.

14.Admittedly, the suit was decreed on 30.03.2007, which was filed by the petitioner/appellant, the trial Court namely the Sub-Court, Tiruvannamalai decreed the suit in respect of the refund of the

advance amount, but rejected the prayer of specific performance.

15. Admittedly, this petitioner/appellant, who is the plaintiff in the suit having right to agitate the decree passed in O.S.No.388 of 2003 dated 30.03.2007 by way of an appeal since he has paid the advance amount of Rs.1,00,000/- to the respondent/defendant and the balance amount should be paid within the stipulated period of time. But, on the other hand, the respondent/defendant has not come forward by fulfill and willingness of the petitioner/appellant and not executed the sale deed in favour of the petitioner/appellant.

16. When the respondent/defendant says that he obtained only loan on executing of the agreement of sale in respect of the suit schedule of property. It is unfortunate case that when the respondent/defendant has obtained the hand loan from this petitioner/appellant, who is a financier, what reason the respondent/defendant to execute the sale deed instead of execute the pronote that itself shows that the very execution of sale agreement is true one and that should be considered for the appeal. Apart from this, the trial Court also passed the decree only in respect of refund of the advance amount and rejected the specific performance relief. But

the reason assigned in the decree and judgment in O.S.No.388 of 2003 must be considered by the appellate Court namely the District Court, Tiruvannamalai and an opportunity given to the petitioner/appellant in the suit.

17.As per law and interest of justice, this petitioner/appellant, who is the plaintiff have every right to file an appeal against the judgment in O.S.No.388 of 2003 dated 30.03.2007 and that should not be curtailed by any means in the interest of justice, he should be given an opportunity to proceed the appeal and prove his case in the appellate Court.

18.Though the petitioner/appellant has not given any valid reason, this Court and the Hon'ble Apex Court very categorically held in several judgments while considering the condone delay application lenient view to be taken by the Court concerned. The learned Judge has given only reason for the dismissal of the petition that he has filed the execution petition in REP.No.50 of 2008. Therefore, he has well known about the stage of the suit and he has also not given any proper explanation for each and every day delay.

19.This Court and the Hon'ble Apex Court very categorically held that the suits like specific performance for declaration and partition should be considered on merits. In this case, though the suit was dismissed in respect of the prayer for the specific performance, but this petitioner/appellant having right to question the same before the appellate Court. That should not be curtailed by any means. The delay of 543 days is not an ordinary delay, but it is stipulated delay, it is more than 1½ years and that should be compensated by the petitioner/appellant. In the interest of justice, it is just and necessary to set aside the order passed by the first Appellate Court namely the District Judge, Tiruvannamalai and accordingly, the order is liable to be set aside.

20.In the result:

(a) this civil revision petition is allowed by setting aside the order passed in I.A.No.61 of 2008 in Unnumbered A.S.No.Nil of 2010 in O.S.No.388 of 2008, on the file of the District Judge, Thiruvannamalai, and on condition that the petitioner should pay a sum of Rs.5,000/- to the respondent/defendant within a period of two weeks from the date of receipt of a copy of this order.

(b) on payment of cost within a period of two weeks and producing a receipt, the District Court, Tiruvannamalai is hereby directed to number the appeal and dispose the same within a period of three months, by giving notice to both sides and both the parties are hereby directed to give their fullest co-operation for early disposal of the appeal.

21. Therefore, this civil revision petition is allowed with cost. Consequently, connected miscellaneous petition is closed.

01.02.2017

Note: Issue order copy on 03.02.2017.

Index: Yes
Internet: Yes

vs

To

The District Judge,
Thiruvannamalai.

M.V.MURALIDARAN, J.

VS

Pre-Delivery order made in
CRP(NPD)No.4632 of 2010
and
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