

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2017

CORAM

THE HON'BLE DR.JUSTICE P.DEVADASS

CRP(NPD) No.3194 of 2012

1.N.Vijaya
2.Shanthi
3.N.Anandhi
Petitioners

...

Vs.

1.Pursawalkam Santhatha Sanga Nidhi Ltd.,
No.47, Vellala Street,
Pursawalkam, Chennai – 600 008.

2.N.Srinivasan

... Respondents

Prayer: Civil Revision Petition filed under Article 115 of CPC, praying to set aside the impugned order of the trial Court in I.A.No.15780 of 2011 in O.S.No.4111 of 2002 dated 06 August 2012, to condone the delay in filing the petition for restoration of the suit in O.S.No.4111 of 2002 under Order IX Rule 9 CPC.

For Petitioners : Mr.A.K.Raghavulu
For Respondents : Mr.V.Raghupathi [R1]
No Appearance [R2]

O R D E R

This is plaintiffs' revision.

2.This matter arises out of dismissal of I.A.No.15780 of 2011 in O.S.No.4111 of 2002, which was filed to restore the suit in O.S.No.4111 of

2002 in the Court of I Assistant, City Civil Court, Chennai.

3. The suit has been laid up for redemption of mortgaged property as against the 1st defendant, Purasawalkkam Santhatha Sanga Nidhi Ltd/first respondent. Earlier, for non-filing of written statement, the defendant was set ex parte. Thereafter, after a long legal battle in CRP.No.3261 of 2007 filed by the 1st defendant, the said *ex parte* decree was set aside and the suit was restored to file with a direction to dispose it of within three months from the date of receipt of a copy of the order.

4. The suit was restored to file by the learned I Assistant Judge, City Civil Court, Chennai. And it was posted in the Special List for the hearing on 08.6.2009. On that day, the defendant was present, but the plaintiffs were not present. The suit was adjourned to 12.06.2009. Then it was adjourned to 15.06.2009. On all the these hearings there was no representation for the plaintiffs. In the circumstance, the trial Court dismissed the suit. Plaintiffs filed delay condonation petition in I.A.No.15780 of 2011 to condone the delay of 791 days caused in filing the restoration application. Noting down the past history of the case and also remarking that the plaintiffs should have been diligent in following the developments in CRP and thereafter as they did not do so, the trial Court refused to condone the delay.

5. The learned counsel for the petitioners submitted that in the absence of the plaintiffs the CRP was disposed of. They were not having the knowledge of a time limit has been fixed for the disposal of the suit. Notice of hearing was not given when the restored suit has been posted for hearing.

6. The learned counsel for the 1st defendant would repel the contentions.

7. I have anxiously considered the rival contentions and perused the materials on record.

8. It is seen that CRP.No.3261 of 2007 was disposed of in the absence of the respondents/plaintiffs. The trial Court restored the suit and put the suit on the Special List. Till restoration, since the disposal of the Civil Revision Petition, the plaintiffs or their counsel could not have noted down the developments. Had the trial Court on restoring the suit, notice either through Court, or through private notice directed to the plaintiffs or their counsel on record, the situation would be different. However, in this case this has not been done. Under such circumstances, the disposal of the suit on 15.06.2009 is really on the back of the plaintiffs.

9. It is not (mere) trial, but it should be a fair trial. In the facts and circumstances, in the interest of justice, an opportunity is required to be given to the plaintiffs. But at the same time, the submission of the learned counsel for the 1st defendant that the suit itself is a very old and it requires some concrete steps for its early disposal of the suit is understandable and acceptable.

10. In view of the foregoing, ordered as hereunder :

- i) This Civil Revision Petition is allowed.
- ii) The order and decretal order passed by the learned I Assistant Judge, City Civil Court, Chennai in I.A.No.15780 of 2011 in O.S.No.4111 of 2002 dated 06.8.2012 are set aside.
- iii) The Trial Court will restore the suit to file.
- iv) Both the parties will enter appearance either in person or through their counsel on 03.04.2017.
- v) Both the counsels who are present today shall inform their

parties of the said hearing date.

vi) The trial Court after giving reasonable opportunity to both sides, shall dispose of the suit preferably within three months from 03.04.2017.

vii) As soon as the suit is disposed of, the Trial Court will submit its completion report to the Registrar (Judicial) of this Court.

viii) However, in the circumstances there is no order as to costs.

10.03.2017

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Note :

1. Issue order copy on 15.03.2017
2. The Registrar (Judicial) is directed to send the trial Court records without delay to the trial Court

To:

- 1.The Principal Judge
City Civil Court,
Chennai.
- 2.The I Assistant Court,

City Civil Court,
Chennai.

3.The Registrar,
City Civil Court,
Chennai.

DR.P.DEVADASS,J.

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Copy to:

- 1.The Registrar (Judicial)
High Court, Madras.
- 2.The Assistant Registrar (Appellate Side)
High Court, Madras.

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