

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)Nos.3928 and 3929 of 2013
and
CMP.No.14345 of 2016**

1.Gowri ammal

2.C.P.Senthil Kumar .. Petitioners in both CRPs

Vs.

1.V.Ramalingam alias V. Thilagam

2.J.Shanthi

3.D.Maheswari

4.J.Bhuvana

(Minor represented by her mother
and guardian Mrs.Shanthi)

5.J.Devaraj

6.J.Govindan

7.J.Damodharan ..Respondents in both CRPs

(Respondent No.2 is given up
for the present in CRP.No.3928 of 2013)

(Respondents 2 to 7 are given up
in CRP.No.3929 of 2013)

Common Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the order and decretal order dated 08.04.2013 passed in I.A.Nos.31 and 32 of 2013 respectively in O.S.No.12610 of 2010, on the file of the XIX Additional City Civil Court, Chennai.

(In both the CRPs)

For Petitioners : Mr.R.Neelakandan

For Respondents : Mr.C.Shankar (for R1)
R2 to R7 (Given up)

COMMON ORDER

The case of the revision petitioners is that they have filed civil suit in C.S.No.845 of 2006 before this Court as against the respondents herein/ defendants. The suit is for specific performance and came to be filed on the strength of sale agreement dated 21.01.2005 executed by the respondents in respect of the suit schedule property. In the said suit the 1st respondent herein and other respondents being the defendants in the suit entered appearance through their respective counsels. Further more almost a majority of the respondents/ defendants are resident of same house. Being so the above civil suit in C.S.No.845 of 2006 was transferred from this Court to the City Civil Court of Chennai (XIV Additional City Civil Court, Chennai) and the suit came to be renumbered as O.S.No.12610 of 2010. Thereafter the defendants / respondents herein wantonly and willfully besides deliberately, having due knowledge that about the transfer as well as the renumbering and

further proceedings of O.S.No.12610 of 2010, has remained ex-parte. Since the 1st respondent herein purposefully not attended the proceedings in O.S.No.12610 of 2010, he was called absent and hence was set ex-parte. Therefore the suit came to be decreed in favor of the revision petitioners/ plaintiff. Therefore the revision petitioner filed E.P.No.3081 of 2011 and the same is presently pending before IX Assistant City Civil Court at Chennai. Wherefore notice was served on the respondents herein in the above said E.P.No.3081 of 2011. At this point of time though the respondent has purposefully remained ex-party, as if he was unaware of the above said transfer of C.S.No.845 of 2006 from this Court to the City Civil Court of Chennai (XIV Additional City Civil Court, Chennai), came up with an Interlocutory Applications in I.A.No.31 and I.A.No.32 of 2013 with the former to condone the delay of 673 days in filing the set aside application and the latter through the set aside the ex-parte decree dated 21.02.2011 passed in O.S.No.12610 of 2010. There was a total delay of above 673 days in filing the above said set aside application.

2.The sole reason stated for the reason of non appearance of the respondent herein is that he was totally unaware of the transfer

of the suit and its further proceedings. It was further contented that the 1st respondent /defendant was not in a position to appear to trial Court, since there was no notice issued in O.S.No.12610 of 2010 from City Civil Court of Chennai (XIV Additional City Civil Court, Chennai), whereas the respondent got knowledge of the ex-parte decree only on receipt of notice in the execution proceeding in E.P.No.3081/2011 on the file of the IX Assistant City Civil Court at Chennai. Other than that there was no reason stated.

3.The said reason put forth by the respondents herein is unsustainable and untrue and hence the same is liable to be rejected. The respondents/ defendants despite remind ex-parte wantonly, cannot file such application blaming the Court.

4.However, the Learned trial Judge has allowed the above said applications in I.A.No.31 of 2013 and I.A.NO.32 of 2013 filed by the respondents herein by order common order dated 08.04.2013 by directing the respondents to pay a cost of Rs.3,000/- towards each Interlocutory Application. The Learned Judge ought not have condoned the delay of such a long period of 678 days without any valid reason put forth by the respondent herein, except that he has

barely blamed the Court that notice is not been served in O.S.No.12610 of 2010. Aggrieved over the common order passed in I.A.No. 31 of 2013 and I.A.No.32 of 2013 allowing the delay condonation petition and setting aside the ex-parte decree, the present C.R.Ps are filed.

5.I heard Mr.R.Neelakandan, learned counsel appearing for the petitioners and Mr.C.Shankar, learned counsel appearing for the 1st respondent in both the Civil Revision Petitions.

6.The respondents 2 to 7 were given up by the petitioners and the 1st respondent has not filed counter.

7.On perusal of the affidavit filed by the respondent / defendant in the I.A.No.31 and I.A.No.32 of 2013, it is found that the reason attributed by the respondent herein for non appearance in the above said suit is because his counsel repeatedly informed that the case is not being listed before this Court. Further his counsel informed that once this case is listed, the 1st respondent shall be informed.

8.Being so on receipt of a notice from the counsel for the

revision petitioners in E.P.No.30891 of 2011 in O.S.No.12610 of 2010, the 1st respondent as well as his counsel were surprised and shocked having found that the civil suit in C.S.No.845 of 2006 from this Court was transferred to the City Civil Court of Chennai (XIV Additional City Civil Court, Chennai) and the same also came to be decreed ex-parte as against the 1st respondent for his non appearance on 21.02.2011.

9.Except the sole reason stating only on receipt of the E.P. notice on 20.11.2012, no other reasons or explanations put forth by the 1st respondent herein for his non appearance. It is to be noted that the 1st respondent herein has duly entered appearance in the above said suit in the year of 2006 itself and it is further averred that the 1st respondent was very consciously approaching his counsel to know about the status of the suit before this Court. However, to be total contrary the reason attributed is that the 1st respondent and his counsel were totally unaware about the transfer of the civil suit in the year 2010. Furthermore it is found that the 1st respondent was set ex-parte in the year 2011 further it was contented that since a fresh notice was not served from the trial Court viz the Assistant City Civil Court, the 1st respondent was unaware of the transfer.

10. It is settled principle that the law of limitation is based on sound public policy and therefore, in the absence of bonafide reason the application for condonation of delay should be strictly construed and assume significance. Further in the case of hand the application for condoning delay was 678 days is without disclosing any satisfactory reason and hence the 1st respondent does not deserve any indulgence by this Court in the matter of condonation of delay. This Court has repeatedly held that in cases of inordinate and unexplained delay, a go-by approach cannot be adopted. Further if the law of limitation is given more/ extensive liberal approach, then there will not be any end for a litigation. Further without valid reason a delay condonation petition cannot be allowed, simply on the ground that the defaulter is ready to pay some cost or the Court imposes a cost. It is indispensable that to condone the delay in filing a petition, there must be valid reasons for the delay caused. Unless otherwise each and every day of delay is explained with bonafide cause, the delay condonation petition cannot be mechanically allowed. The same is reiterated by this Court repeatedly from time to time.

11. In view of the above said legal proposition and the factual

background and the reason attributed by the 1st respondent for his non appearance, this Court feels that the reason stated by the 1st respondent is not suffice to satisfy this Court, besides are not bonafide reasons.

12.In the result, both the civil revision petitions are allowed, by setting aside the order passed in I.A.Nos.31 and 32 of 2013 in O.S.No.12610 of 2010, dated 08.04.2013, on the file of the XIX Additional City Civil Court, Chennai. No costs. Consequently, connected miscellaneous petition is closed.

15.02.2017

Note:Issue order copy on 13.04.2017

Internet:Yes

Index:Yes

vs

To

The XIX Additional City Civil Court,
Chennai.

M.V.MURALIDARAN, J.

VS

**Pre-Delivery order made in
CRP(NPD)Nos.3928 and 3929 of 2013
and
CMP.No.14345 of 2016**

15.02.2017