

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.08.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)Nos.790 and 943 of 2013 and
M.P.Nos.1 and 1 of 2013 and
Caveat No.795 of 2013**

P.Poongothai

.. Petitioner in both the CRPs

Vs.

K.Sagunthala

.. Respondent in both the CRPs

Prayer in CRP(NPD)No.790 of 2013: Civil Revision Petition filed under Article 227 of the Constitution of India, against the petition and orders dated 20.06.2012 passed by the learned III Additional District Judge (Fast Track Court No.1), Coimbatore, in I.A.No.360 of 2012 in O.S.No.47 of 2003.

Prayer in CRP(NPD)No.943 of 2013: Civil Revision Petition filed under Article 227 of the Constitution of India, against the petition and orders rejecting the Petitioner's Application in Unnumbered I.A.SR.No.3284 of 2012 in O.S.No.47 of 2003, passed on 28.01.2015

(Docket order) by the learned III Additional District Judge (Fast Track Court No.I) at Coimbatore.

For Petitioner : Mr.M.Balasubramanian
(In both the CRPs)

For Respondent : Mr.B.S.Sundaramoorthy
(In both the CRPs)

COMMON ORDER

Both the Civil Revision Petitions herein are being filed by the same petitioner and the issue involved in the Civil Revision Petitions are one and the same and therefore common order is passed in both the Civil Revision Petitions.

2.The case of the revision petitioner in both the revisions is that the respondent herein has filed a suit for specific performance and permanent Injunction in O.S.No.47 of 2003, against the revision petitioner on the basis of a sale agreement dated 22.05.1996. The said suit came to be decreed partly by the Trial Court by decreeing the relief of specific performance and declining the relief of Permanent Injunction. In the meantime aggrieved over the negatived portion of decree i.e rejection to grant Permanent Injunction, the respondent

herein filed appeal before this Court in A.S.No.706 Of 2005 and the same was allowed by granting permanent Injunction in favour of the respondent herein by Judgment and Decree dated 11.07.2011. The above appeal came to be allowed expartedly by this Hon'ble Court, since the counsel engaged at that particular point of time by the revision petitioner failed to appear and conduct the appeal.

3. Thereupon the revision petitioner filed an application before this Court to set aside the Ex-parte Decree passed against him in Appeal Suit in A.S.No.706 Of 2005 and the same is pending. Being so, the revision petitioner received a notice in the Execution proceedings in E.P.No.17 of 2012 filed by the respondent, whereby it was found that after a lapse of 9 years, the respondent deposited the balance sale consideration before the trial Court and the trial Court was about to proceed with execution of sale deed, in consonance with the decree. Admittedly the Decree is of the year 2003, wherein directing the respondent/plaintiff to deposit the balance sale consideration within a period of one month from the date of decree. Whereas without depositing the sale consideration in time i.e., within the stipulated period of one month, the respondent was allowed to deposit the balance amount in the year 2012 i.e., on 21.06.2012. Further such deposit was made by the respondent, in the light of the order

made by the trial Court in I.A.No.360 of 2012 by allowing, the respondent's application under Section 148 of CPC for Enlargement of Time to deposit the balance sale consideration. Thereupon the revision petitioner filed two Interlocutory Applications in E.P.No.17 of 2012, one under Section 28(1) of the Specific Relief Act to rescind the entire contract and restore the possession of suit property with the revision petitioner and the other under Order 21 Rule 26 of CPC to terminate the Execution Proceedings.

4.However, the applications filed by the revision petitioner under Section 28(1) of the Specific Relief Act and Order 21 Rule 26 of CPC were not taken on file and the same was rejected by the trial Court by holding that those applications are not maintainable at the execution stage. The trial Court erred in allowing the respondent's application under Section 148 of CPC for Enlargement of Time to deposit the balance sale consideration and thereby granting further time to the respondent for depositing balance sale consideration. The said order made in I.A.No.360 of 2012 is under challenge in C.R.P.No.790 of 2013. The trial Court's order of rejecting, the revision petitioner's applications filed under Section 28(1) of the Specific Relief Act, "as not maintainable at the execution stage" is under challenge in C.R.P.No.943 of 2013.

5.I heard Mr.M.Balasubramanian, learned counsel appearing for the petitioner and Mr.B.S.Sundaramoorthy, learned counsel appearing for the respondent in both the Civil Revision Petitions and perused the records.

6.The learned counsel for the petitioner would submit that during the pendency of the revision petitioner's application for setting aside the Ex-parte order made in A.S.No.706 Of 2005, the Executing Court ought not to have allowed the respondent's application in I.A.No.360 of 2012 of CPC for Enlargement of Time, to deposit the balance sale consideration. Originally the decree is of the year 2003 and the respondent ought to have deposited the balance sale consideration within a period of one month as stipulated by trial Court, from 05.11.2003 the date of Decree. The actual delay in depositing the balance sale consideration is about 9 years, whereas it was wrongly mentioned by the respondent herein as 314 days and the same was accepted by the trial Court. The trial Court ought not to have taken into account the date of disposal of the First Appeal, but ought to have calculated the period from the date of Decree made in the O.S.No.47 of 2003.

7.Per contra, the learned counsel for the respondent submitted that only on proper appreciation of the fact that an application under Section 28(1) of the Specific Relief Act, is not at all not maintainable at the Execution Stage, the Executing Court has rightly rejected the revision petitioner's application made under Section 28(1) of the Specific Relief Act. Further there is no error committed by the respondent or the Execution Court, since the appeal came to be decided by this Court in A.S.No.706 Of 2005 vide Judgment and Decree dated 11.07.2011, only in pursuant to the conclusion of the appeal suit in the year 2011, the respondent has filed the application under Section 148 of CPC for Enlargement of Time to deposit the balance sale consideration. It is the discretionary power of the Court either to allow or disallow an application for Enlargement of Time. The trial Court has exercised its discretionary power and allowed the application filed under Section 148 of C.P.C. Hence, there is no illegality or irregularity over the order of the trial Court.

8.Now, this Court has to consider whether the discretion exercised by the trial Court in allowing the application filed by the respondent herein under Section 148 of C.P.C. is warranted interference?

9. In this case, admittedly the trial Court has passed the Decree on 05.11.2003, whereby granting one month time to deposit the balance sale consideration of Rs.1,61,000/- within a period of one month from the date of decree. However, it is seen that the plaintiff/respondent herein failed to deposit so, the amount in time within the stipulated period of one month. Thereafter, in the year 2012 the respondent in order to deposit the balance sale consideration has filed I.A.No.360 of 2012 to condone the delay of 314 days in depositing the balance sale consideration and to issue challan to deposit the said amount. The said I.A.No.360 of 2012 for Enlargement of Time came to be filed on 19.06.2012 and the delay therein in filing the application was stated as 314 days. The record reveals that the respondent's application was allowed on the next day i.e on 20.06.2012 and there was no notice issued to the revision petitioner. The application was allowed at the first instance of hearing by the learned trial Judge. In the meantime, the revision petitioner filed an application in unnumbered I.A.Sr.No.3284 of 2012 under Section 28 (1) of Specific Relief Act, 1963 on 04.12.2012 seeking to rescind the entire contract dated 22.05.1996 executed between the revision petitioner and the respondents.

10. At this juncture, this Court feels that the trial Court has committed a serious error in mechanically allowing the respondent's application for Enlargement of time, the trial Judge ought to have decided upon such application after issuing due notice to the revision petitioner. It is further seen that there is no sufficient cause put forth by the respondent to substantiate the delay caused in filing the application under Section 148 of CPC. No doubt, Section 148 of CPC empowers the Court with discretionary power to enlarge the time, for making such conditional deposit beyond the stipulated time in the decree. However, such discretionary power should be exercised only in the deserving cases.

11. In the case on hand as rightly contended by the learned counsel for the petitioner, the application under Section 148 of CPC is being filed after about 9 years from the date of Decree. Therefore, this Court finds that the trial Court has exercised its discretionary power in an undeserving case, wherein the inordinate delay of 9 years is suppressed and an application is made as if there is a delay of 314 days.

12. Hence, in the considered opinion of this Court, the discretion exercised by the trial Court is not proper and this Court find there is

infirmity in the order passed by the trial Court. The order allowing I.A.No.360 of 2012 dated in O.S.No.47 of 2003 dated 20.06.2012 is hereby set aside.

13.In so far as the trial Court's order of rejecting, the revision petitioner's applications filed under Section 28(1) of the Specific Relief Act, it is seen that such order is being passed even without taking it on file, besides being a one line order, "as not maintainable in Execution Stage". It is needless to say that it is the duty of the Courts to adjudicate the issues before it, by passing a reasoned order in the light of material records available before it and the facts involved in the case. But in the case on hand, the learned trial Judge failed to do so. Since the plaintiff failed to deposit the amount in time, the defendant/respondent herein has rightly invoked the provision as contemplated under 28(1) of the Specific Relief Act, 1963 and filed application in the suit to rescind the contract entered into between the revision petitioner and the respondent herein. However, the learned judge without even numbering the application dismissed the same as not maintainable at the stage of E.P. In view of the dismissal of application filed under section 148 C.P.C to enlarge the time to deposit the balance sale consideration, the Civil Revision Petition in C.R.P.No.943 of 2013 is necessarily be allowed.

14.For the foregoing reasons, the order of the learned III Additional District Judge (Fast Track Court No.1), Coimbatore made in I.A.No.360 of 2012 in O.S.No.47 of 2003 dated 20.06.2012 and the Docket Order of the learned III Additional District Judge (Fast Track Court No.1), Coimbatore made in Unnumbered I.A. in I.A.Sr.No.3284 of 2012 in O.S.No.47 of 2003 dated 28.01.2013 suffers from infirmity and the same is liable to be set aside and accordingly set aside.

15.In the result:

(a) both the Civil Revision Petitions are allowed by setting aside the order passed in I.A.No.360 of 2012 in O.S.No.47 of 2003, dated 20.06.2012 and the decretal order in I.A.SR.No.3284 of 2012 in O.S.No.47 of 2003 dated 28.01.2013, on the file of the learned IIIrd Additional District Judge (Fast Track Court No.I), Coimbatore;

(b) the matter in I.A.SR.No.3284 of 2012 is remand back to the trial Court and the learned trial Judge is directed to number the I.A.SR.No.3284 of 2012 and to dispose the same within a period of eight weeks from the date of receipt of a copy of this order, by giving notice to

both the parties;

16. Accordingly, both the Civil Revision Petitions are allowed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

03.08.2017

Speaking order
Index:Yes

vs

To

The III Additional District Judge
(Fast Track Court No.1),
Coimbatore.

M.V.MURALIDARAN, J.

VS

Pre-Delivery order made in

**CRP(NPD)Nos.790 and 943 of 2013 and
M.P.Nos.1 and 1 of 2013 and
Caveat No.795 of 2013**

03.08.2017