



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.06.2017

PRONOUNCED ON: 05.07.2017

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP.NPD.(MD) Nos.669 & 670 of 2014

and

MP(MD)Nos.1 of 2014 in

CRP.NPD.(MD) Nos.669 & 670 of 2014

M/s.Sakthi Steels
Regd Partnership Firm
Rep by it Managing Partner,
R.Radhakrishnan
10/41,Renganayagipuram,
Karur Taluk.

... Petitioner in
both cases

Vs

Vellianai Viswakalai Industrial
Co-operative Society Ltd., (IND No.229),
Rep by its Special Officer,
Unit of the Tamil nadu Khadi and Village
Industries Board,
Vellianai, Karur Taluk,
Karur District

... Respondent in
both cases

Prayer in CRP (MD) No.669:- Civil Revision Petition has been filed under section 115 of Civil Procedure Code, against the order and decree dated 09.12.2013 made in I.A.No.241 of 2010 in A.S.S.R.No.13046 of 2010, on the file of Principal District Court, Karur.

Prayer in CRP (MD) No.670:- Civil Revision Petition has been filed under section 115 of Civil Procedure Code, against the order and decree dated 09.12.2013 made in I.A.No.242 of 2010 in A.S.S.R.No.13049 of 2010 on the file of Principal District Court, Karur.

For Petitioner
in both CRPs : Mr.V.Sitharanjandas

For Respondent
in both CRPs : Mr.Arumugam for Mr. M.Bindran

**COMMON ORDER**

In a suit in O.S.No.289 of 1998 filed by the plaintiff for recovery of money against the goods sold and delivered, the trial Court allowed the suit prayer in respect of principal amount of Rs.3,41,241/- (Rupees Three lakhs forty one thousand two hundred and forty one only) with costs but, disallowed the claim of 24% interest.

2. Aggrieved by the disallowed portion, the plaintiff/deGREE holder has preferred an appeal in A.S.No.42 of 2008 on the file of the District Court, Karur and the same was partly allowed. The defendant/respondent preferred a second appeal in S.A.No.1153/2011 against the judgment and decree passed in A.S.No.42/2008 but, the said Second Appeal was dismissed on 25.01.2012.

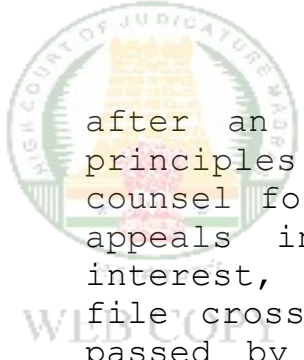
3. Meanwhile, the defendant/respondent has preferred an appeal against the decree passed by the trial Court in respect of the principal amount with a delay of 967 days. The first appellate Court has allowed the condone delay petition with costs. Aggrieved by the said order, the plaintiff/deGREE holder has referred a Civil Revision Petition in C.R.P.NPD (MD)No.669 of 2014.

4. In an identical suit filed by the plaintiff in O.S.No.288 of 1998, for recovery of money, the trial Court decreed the claim for principal amount of Rs.1,04,060/- with costs and disallowed interest. Appeal preferred by the plaintiff as against the disallowed portion in A.S.No.41 of 2008 was allowed on 02.06.2008. The Second Appeal preferred by the defendant/respondent in S.A.No.1152/2011 was dismissed on 25.01.2012 by this Court.

5. Meanwhile, the defendant/respondent has preferred an appeal against the decree passed by the trial Court in respect of the principal amount with a delay of 967 days. The first appellate Court has allowed the condone delay petition with costs. Aggrieved by the said order, the plaintiff/deGREE holder has referred a Civil Revision Petition in C.R.P.NPD (MD)No.670 of 2014.

6. Since, the parties and the facts are common, this Court is proposed to pass the common order in these matters. Heard the learned counsel for the revision petitioner and the learned counsel for the respondent.

7. The prime contention of the learned counsel for the revision petitioner herein is that, in both the suits, when the decrees passed against the interest portion had reached finality by the trial Court, the plaintiff preferred in Second Appeal Nos.1152 and 1153 of 2011, challenging the decrees passed in respect of principal amount



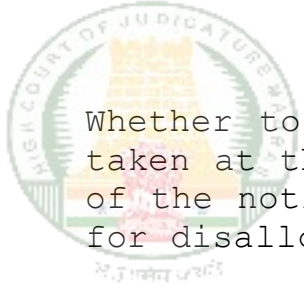
after an inordinate delay of 967 days is against the settled principles of law. It is further pointed out by the learned counsel for the revision petitioner that when the plaintiff filed appeals in A.S.Nos.41 & 42 of 2008 against the disallowing interest, the defendant/respondent herein had an opportunity to file cross appeals or an independent appeals against the decree passed by the trial Court in respect of principal amount. The defendant/respondent has filed the Appeals with a delay of 967 days, without sufficient cause after disposal of A.S.Nos.41 & 42 of 2008. By condoning the inordinate delay, irreparable and undue hardship has caused to the plaintiff/revision petitioner who is unable to realise the value of the goods supplied to the respondents as early as 31.03.1997.

8.A perusal of the impugned orders passed by the First Appellate Court would reveal that it has failed to appreciate the principles laid down by the Hon'ble Apex Court in **Esha Bhattacharya - Vs - Managing Committee of Raghunathpur Nagar Academy and others reported in 2013 (5) LW 20**. Further, the First Appellate Court has not considered the findings of this Court, while dismissing the connected Second Appeals in S.A.Nos.1152 of 2011 and 1152 of 2011 on 25.01.2012.

9.The First Appellate Court while considering the inter department correspondence between the defendant and the higher officials has miserably failed to note the fact that when the defendant was effectively contesting the First Appeals in A.S.Nos.41 and 42 of 2008 and on losing it preferred second appeals, why steps have not been taken either to file independent appeals or cross appeals against the decree passed by the trial Court. The conduct, behavior and attitude of the defendant/respondent clearly indicates their gross negligence in defending the case.

10.This Court, while dealing with the Second Appeals preferred by the defendant/respondent, against the decrees passed in respect of 'interest' claimed, the fact of First Appeals pending against the decrees passed in respect of principal was placed before the Court. Relying Exs.A.3 and A.4 where there is specific clause for 24% interest in case of delay in payment beyond 7 days from the date of delivery of goods, the second appeals were dismissed by this Court at the admission stage itself.

11.No doubt, the defendant/respondent is a co-operative society and an entity, representing a collective cause which deserve some acceptable latitude, but, in this case, negligence in exercising their right of appeals or cross appeals within a reasonable time, with promptitude is well found. The lackadaisical propensity and the tendency to perceive delay as a non serious matter is a clear attitude of engaging itself in intra-departmental communications for nearly 3 years to take a decision is palpable.



Whether to prefer appeals or not, the decision ought to have been taken at the time of defending A.S.Nos.41 & 42 of 2008, on receipt of the notice in the appeals preferred by the plaintiff/petitioner for disallowing the claim of interest.

12.While weighing the scale of justice in respect of a party who has supplied goods and waiting for the sale consideration for nearly 20 years and the party who has enjoyed the fruits of the goods supplied, aggrieved against the interest portion on the value of the goods supplied and agitating that upto second appeals now, want to file appeals against the decree passed in respect of principal, after lapse of three years, it favours the revision petitioner. The attitude and inaction of the defendant/respondent who has slept over the right of appeal for considerable period, accruing a legitimate expectation to the decree holder, weighs against the defendant/respondent.

13.In the result, the orders passed by the First Appellate Court in I.A.Nos.241 and 242/2010 dated 09.12.2013 are set aside. The Civil Revision Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar

To

The Principal District Court,
Karur.

+2ccs to Mr.V.Sitharanjandas, Advocate in SR.No.63601,63600
+2 ccs to Mr.M.Bindran , Advocate in SR.No. 63806

jbm

AE/KP/SAR3/03.08.2017/4P/6C

Order in
CRP (NPD) (MD) Nos.669 & 670 of 2014
05.07.2017