

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP(NPD).No.216 of 2018

and

CMP.No.1227 of 2018

Anitha Parvathavarthini

... Petitioner

Vs

1.A.Sekar

2.A.Kumaravel

3.A.Sakthivel

... Respondents

PRAYER

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order in IA.No.469 of 2016 in OS.No.160 of 2015 on the file of the Principal District Judge, Namakkal dated 16.11.2017.

For Petitioner

: Mr.V.Lakshminarayanan

For Respondents

: No Appearance for R1 to R3

ORDER

According to the revision petitioner, the revision petitioner

has filed a suit for specific performance in OS.No.160 of 2015 on the file of the Principal District Court, Namakkal against the respondents herein. In the aforesaid suit, exparte decree was passed by the court below on 17.02.2016. Thereafter, the revision petitioner has deposited entire balance consideration of a sum of Rs.72,47,000/-on 01.06.2016. In the meantime, the respondents have filed an application in IA.No.469 of 2016 to condone the delay of 233 days in filing an application to set aside the exparte decree. The court below has allowed the said application. Challenging the aforesaid order, the revision petitioner has filed the present Civil Revision Petition before this Court.

2. Notice has been served to the respondents. None appeared for the respondents.

3. The learned counsel for the revision petitioner would submit that pursuant to the decree passed by the court below, the revision petitioner has deposited a sum of Rs.72,47,000/- before the court below to the credit of OS.No.160 of 2015. Without considering the hardship caused to the revision petitioner, the court below has allowed the instant application.

4. The learned counsel for the revision petitioner has relied upon the decision of the Hon'ble Supreme Court in the case of *Brijesh Kumar and Others Vs. State of Haryana and Others* reported in **(2014) 11 SCC 351**, wherein it has been held as follows.

"10. The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However, the court while allowing such application has to draw distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone."

5. The learned counsel for the revision petitioner would submit that in the light of the aforesaid decision of the Hon'ble

Supreme Court, the order passed by the court below is liable to be set aside.

6. Heard the learned counsel for the revision petitioner and perused the materials available on record.

7. On perusal of the affidavit filed by the respondents in IA.No.469 of 2016, wherein it has been stated that the respondents/defendants doing carpenter work gone to other state due to which not able to follow the case proceedings and came to know the exparte decree and immediately after the receipt of notice in the execution petition, filed the instant application. According to the respondents, the sale agreement dated 28.03.2012 is unregistered one and the same is void as per the Section 17 of the Registration Act. The revision petitioner has filed counter statement before the court below by stating there is no satisfactory reasons stated in the application to condone the inordinate delay of 233 days in filing an application to set aside the exparte decree.

8. In the case of ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors., reported in (2013) 12 SCC 649***, the Hon'ble Supreme Court

has observed that there should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

9. Taking into consideration of the length of the delay and providing an opportunity to the respondents, the application was allowed. Therefore, in the light of the aforesaid decision of the Hon'ble Supreme Court and the decision of the Hon'ble Supreme Court in the case of *N.Balakrishnan Vs. M.Krishnamurthy* reported in **(1998) 7 SCC 123**, this Court is not inclined to interfere with the order passed by the court below. However, the revision petitioner has been caused hardship by depositing the entire sale amount before the court below. Therefore, this Court is inclined to impose heavy cost on the respondents for allowing the condone delay application to set aside the exparte order.

10. In view of the above said facts, this Court is inclined to pass the following orders.

(i) The order passed in IA.469 of 2016 is modified by directing the respondents / defendants to pay a sum of Rs.20,000/-

(Rupees Twenty Thousand only) to the revision petitioner and Rs.5,000/- (Rupees Five Thousand only) to the Tamil Nadu Mediation and Conciliation Centre, Namakkal within a period of six weeks from the date of receipt of a copy of this Order. The revision petitioner shall communicate the order to the respondents and their counsel.

(ii) If the said conditional order is complied with by the respondents, in the event of the application under Order 9 Rule 13 is allowed, the trial court is directed to dispose of the suit in OS.No.160 of 2015 within a period of six months thereafter.

11. The Civil Revision Petition is partly allowed with above directions. Consequently, the connected miscellaneous petition is closed. No costs.

06.03.2018

Speaking/Non-Speaking order

Index :Yes/No

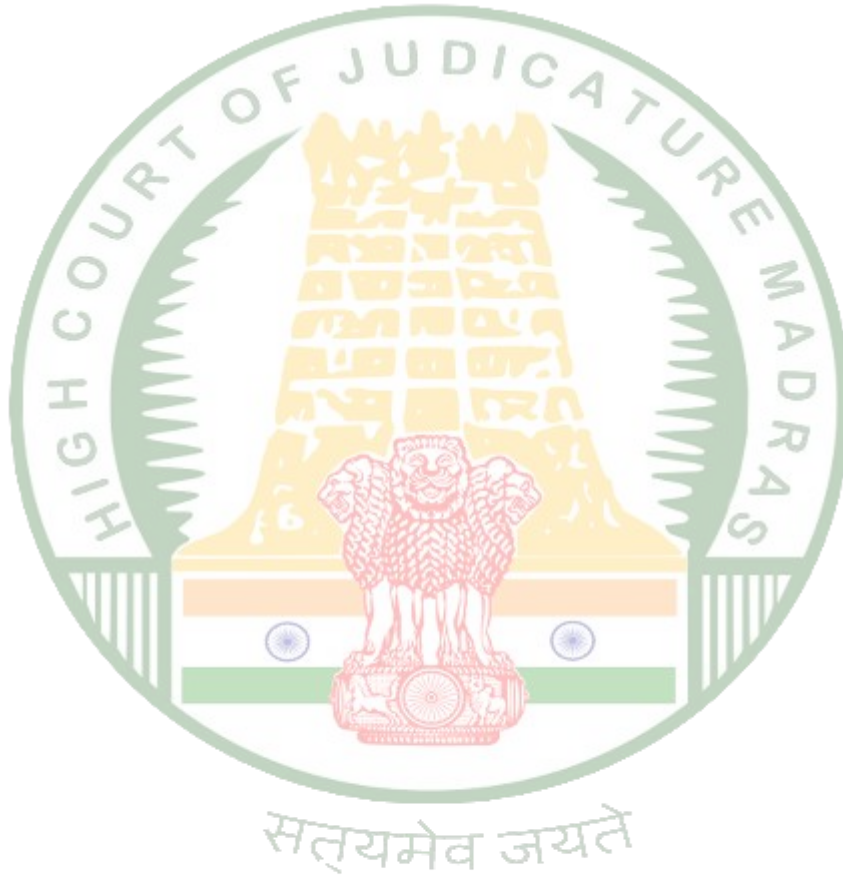
Internet:Yes/No

lok

WEB COPY

To

The Principal District Judge,
Namakkal



WEB COPY

D. KRISHNAKUMAR J.,

lok



CRP(NPD).No.216 of 2018
and CMP.No.1227 of 2018

WEB COPY

06.03.2018