

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.R.P. (NPD) No.365 of 2018

1. D. Dhakchayani
2. D. Chandrasekaran
3. D. Venkatakrishnan
4. D. Ravichandran
5. D. Ramakrishnan
6. D. Krishnasamy

.. Petitioners

Vs.

1. Ramanujam
2. J.K. Kothari

.. Respondents

सत्यमेव जयते

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 06.09.2017 passed in I.A. No. 2/2016 in un-numbered A.S. On the file of the learned Sub Judge, Puducherry and pass further orders.

For Petitioners : Mr. Manoj Sreevalsan

ORDER

This revision is filed to set aside the order dated 06.09.2017 passed in I.A. No. 2/2016 in un-numbered A.S. On the file of the learned Sub Judge, Puducherry.

2. The petitioners have filed an application to condone the delay of 5819 days in filing the appeal. According to the petitioners, their father Deivanayagam Reddiar, had filed the suit in O.S. No. 86 of 1997. The aforesaid Deivanayagam Reddiar died on 01.06.2005, at Chennai, leaving behind the petitioners, as his legal heirs. The petitioners' father Deivanayagam Reddiar left Puducherry and settled at Ambattur. During one of his visits to Puducherry, the petitioner's father came to know that his elder brother Bangaru Reddiar had sold the immovable property in its entirety is illegal. Hence, he filed the suit against the subsequent purchasers, the respondents herein, stating that the earlier sale made on 14.01.1946 was illegal and so the subsequent purchases made by respondents, is not valid in law, to the extent of his half share. The learned counsel for the petitioners would submit that

while cleaning the cupboard, the petitioners came across the case papers and after getting the certified copy of the judgment have preferred the appeal. In view of the same, the delay of 5891 days, is caused. According to the petitioners, without considering the bonafide reasons stated by the petitioners, the court below has dismissed the application to condone the delay, holding that the petitioners have not explained each and every day delay.

3. The learned counsel for the petitioners would submit that the court below has to decide the appeal suit on merits, considering the technical grounds. Hence, the order passed by the court below is liable to be set aside.

4. Considered the facts and submissions made by the learned counsel for the petitioners and perused the material available on record.

5. In the light of the decision of the Hon'ble Supreme Court in the case of ***H. Dohil Constructions Company Private Limited vs.***

Nahar Exports Limited and another reported in (2015) 1 SCC 680,
wherein it is held that unless the reasons are properly adduced, the delay cannot be condoned. The relevant paragraph is extracted below:

“ 24. The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the respondents not deserving any indulgence by the court in the matter of condonation of delay. The respondents had filed the suit for specific performance and when the trial court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered.”

In the case on hand, the petitioners have not furnished any documentary evidences before the court, showing sufficient cause for condoning the

inordinate delay. Hence, this Court is not inclined to interfere with the order, since there is no error or illegality in the order passed by the court below.

6. Therefore, the Civil Revision Petition is dismissed. No costs.

06.02.2018

Index : Yes/ No

avr

To

The Sub Court
Puducherry.



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D. KRISHNAKUMAR J.,

avr



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