

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP (NPD) No.480 of 2018

Palanisami ... Petitioner/5th Defendant

Vs.

1.Thavamalligai ... 1st Respondent/Plaintiff

Thaiyanayaki (Deceased) ... 1st Defendant

Maniammal (Deceased) ... 2nd Defendant

2.Arumpayal

3.Anandaraj

4.Kumar

5.Arunachalam

6.Balasubramanian ... Respondents 2 to 6/
Defendants 3, 4, 6 to 8

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order in I.A.No.3 of 2017 in O.S.No.15 of 2007 dated 01.11.2017 on the file of the District and Sessions Court/Mahila Court, Cuddalore.

For Petitioner : Mr.P.S.Amalraj

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ORDER

This Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order passed in I.A.No.3 of 2017 in O.S.No.15 of 2007 dated 01.11.2017 on the file of the District and Sessions Court/Mahila Court, Cuddalore.

2.The 1st respondent/plaintiff has filed the above suit in O.S.No.15 of 2017 on the file of the District and Sessions Court/Mahila Court, Cuddalore, for partition in respect of the property of one Ramasamy, who is the brother died intestate. After the death of Ramasamy the property devolved on his wife Arumbayal and she was in possession and enjoyment of the property left out by Ramasamy as his legal heir. The said Arumbayal offered to sell a portion of the item No.1 of the property and the petitioner/fifth respondent has agreed to purchase the said property. The said Arumbayal executed a registered sale deed dated 29.09.2006 in favour of the petitioner/fifth respondent. Therefore, the petitioner/fifth respondent has been in

possession and enjoyment of the property from the date of purchase. Patta has also been changed in the name of petitioner/fifth respondent based upon his possession. While so, the first respondent herein filed the aforesaid suit and summons was served on the petitioner/fifth respondent. Immediately, he informed the above said summons received in the suit to the vendor namely Arumbayal and she undertakes that she will look after the case on behalf of the petitioner/fifth respondent and also obtained signature in the vakalat and the petitioner/fifth respondent is under the impression that she was looking after the case, but the petitioner/fifth respondent was surprised and shocked, when the Advocate Commissioner visited his property, without any intimation, stating that the Court has ordered to divide the property in favour of the first respondent/plaintiff.

3. Thereafter, the petitioner/fifth respondent came to know that he was set exparte on 22.03.2007 and exparte decree was passed on 30.11.2010. After came to know about the exparte decree, the petitioner/fifth respondent has filed an application in I.A.No.2 of 2017 in O.S.No.15 of 2007 to set aside the exparte decree and there is a delay of 2221 days in filing the application to set aside the exparte decree.

4.The petitioner/fifth respondent filed counter in the aforesaid application by denying the averment of the petitioner. The aforesaid suit was disposed of on merits and further it is stated that there is no sufficient ground stated in the affidavit for the inordinate delay of 2120 days.

5.Heard, submission of counsel for the petitioner. Perused materials on record.

6.The learned counsel appearing for the petitioner/fifth respondent would submit that only when the Advocate Commissioner inspected the property, the petitioner/fifth respondent came to know about the exparte decree. Therefore, the delay is neither willful nor wanton. It is further submitted that without considering the case of the petitioner/fifth respondent, the Court below has erroneously dismissed the application.

7.It is an admitted fact that there is a delay of 2120 days in filing the application to set aside the exparte decree. According to the

petitioner/fifth respondent, summons has been handedover to the vendor and she has not contested the case. In the light of the decision of the Honourable Supreme Court of India in the case of ***Esha Bhattacharjee v. Raghunathpur Nafar Academy***, reported in **(2013) 12 SCC 649**, at paragraph Nos.23 and 24, the Hon'ble Supreme Court of India has held as follows:

"23. We may also usefully refer to the recent decision of this Court in Esha Bhattacharjee [Esha Bhattacharjee v.Raghunathpur Nafar Academy, reported in (2013) 12 SCC 649], where several principles were culled out to be kept in Principles (iv), (v), (viii), (ix) and (x) of para 21 can be usefully referred to, which read as under: (SCCpp.658-59)

"21.4(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a

significant and relevant fact.

21.8 (viii) *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

21.9 (ix) *The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weight the scale of balance of justice in respect of both parties and the said principle cannot be given a total go-by in the name of liberal approach.*

21.10 (x) *If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a*

litigation.

8. In the case of ***H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and Another***, reported in ***(2015) 1 SCC 680***, the Supreme Court has held as follows:

"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."

9. In the light of the above discussion and decision of the Hon'ble Supreme Court of India, there is no sufficient reasons stated in the affidavit for condoning the inordinate delay, in filing an application to set aside the ex parte decree. Therefore, this Court is not inclined to interfere with the order of the Court below and there is no error or illegality in the impugned order passed by the Court below.

10. In fine, the order in I.A.No.3 of 2017 in O.S.No.15 of 2007 dated 01.11.2017 passed by the District and Sessions Court, Cuddalore is confirmed and consequently, the Civil Revision Petition is dismissed. No costs.

13.02.2018

Speaking/Non-Speaking order

Index : Yes/No

Internet: Yes/No

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To

The District and Sessions Judge/Mahila Court,
Cuddalore.

D. KRISHNAKUMAR J.,

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