

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.R.P (NPD) No.528 of 2016

and

C.M.P. No.2695 of 2016

1.Kamalammal
2.G.Adikesavalu
3.Suriya kala
4.S.Venkatesan

.. Petitioners

Vs

S.Ramesh

.. Respondent

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order and decree of the lower Court in I.A. No.25 of 2015 in O.S.No.25 of 2008 dated 11.09.2015 passed by the II Additional District and Sessions Judge, Ranipet, Vellore.

For Petitioners : Mr. N.Rajavadivelu

For Respondent : Mr.T.P.Prabhakaran

ORDER

This Civil Revision Petition arises against the order and decree of the lower Court in I.A. No.25 of 2015 in O.S.No.25 of 2008 dated 11.09.2015 passed by the II Additional District and Sessions Judge, Ranipet, Vellore.

2. The respondent has filed a suit in O.S. No. 25 of 2008 for specific performance against the petitioners. Since the petitioners failed to appear on 01.04.2014, an ex-parte decree was passed by the court below. Against the same, the petitioners filed an application in I.A. No. 25 of 2015 to set aside the ex-parte decree. The court below dismissed the said application holding that the prosecution witnesses were not cross examined for more than 20 hearings. The learned counsel for the petitioners would submit that the present application has been filed to condone the delay of 250 days in filing the application to set aside the ex-parte decree. If the said application is allowed, no prejudice would be caused to the respondent and hence the order of the court below is liable to be set aside.

3. The learned counsel for the respondent would submit that after framing of issues the matter was posted for trial. PW-1 proof affidavit was filed on 08.08.2013 and the case was posted for cross examination of PW-1 for more than 23 hearings. Hence, evidence of PW-1 was closed on 04.03.2014 and PW-2 proof affidavit was filed. Again PW-2 was not cross examined for several hearings and hence the ex-parte decree was passed on 01.04.2014. The learned counsel for the respondent further submitted that previously the petitioners filed I.A.No.35 of 2011 to set aside the ex-parte decree with a delay of 301 days and again the present application has been filed to condone the delay of 250 days. In the earlier occasion the condone delay application was allowed. In spite of several opportunities given, the petitioners have not chosen to agitate the matter in the suit and only with an intention to drag on the suit proceedings, the petitioners have filed the present application. Therefore, the court below has rightly dismissed the present application filed by the petitioners and hence the revision petition is liable to be dismissed.

4. Heard the submission of the learned counsel for both the parties and perused the material on record.

5. From the aforesaid facts, it is clear that though the petitioners were granted opportunities for cross examination of prosecution witnesses on several occasions, they have not chosen to cross examine the plaintiff side witnesses. On the earlier occasion, the application filed in I.A. No. 35 of 2011 to condone the delay was allowed. Subsequently, several opportunities have been granted to the petitioners. As contended by the respondent, it is only a dilatory tactics of the petitioners to delay the proceedings. On an earlier occasion also the petitioners have allowed to pass ex-parte order. From the aforesaid background of the case, this Court is not inclined to consider the applications filed by the petitioners to condone the delay and to set aside the ex-parte decree.

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6. The Hon'ble Supreme Court in the case of ***Esha Bhattacharjee v. Raghunathpur Nafar Academy***, reported in (2013) 12 SCC 649, at paragraph Nos. 23 & 24, it is 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: (SCC pp. 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.

*In the case of **H. Dohil Constructions Company Private Limited vs. Nahar Exports Limited** and another reported in (2015) 1 SCC 680, the Hon'ble Supreme Court has held that :-*

24. When we apply those principles to the case on hand, it has to be stated that the failure of the Respondents in not showing due diligence in filing of the appeals and the enormous time taken in the refiling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bonafides as displayed on the part of the Respondents. Further, when the Respondents have not come forward with proper details as regards the date when the papers were returned for refiling, the non-furnishing of

satisfactory reasons for not refiling of papers in time and the failure to pay the Court fee at the time of the filing of appeal papers on 06.09.2007, the reasons which prevented the Respondents from not paying the Court fee along with the appeal papers and the failure to furnish the details as to who was their counsel who was previously entrusted with the filing of the appeals cumulatively considered, disclose that there was total lack of bonafides in its approach. It also requires to be stated that in the case on hand, not refiling the appeal papers within the time prescribed and by allowing the delay to the extent of nearly 1727 days, definitely calls for a stringent scrutiny and cannot be accepted as having been explained without proper reasons. As has been laid down by this Court, Courts are required to weigh the scale of balance of justice in respect of both parties and the same principle cannot be given a go-by under the guise of liberal approach even if it pertains to refiling. 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 light of the aforesaid decision, this Court is not inclined to interfere with the order passed by the court below.

7. In fine, the Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No order as to costs.

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Speaking / Non Speaking order

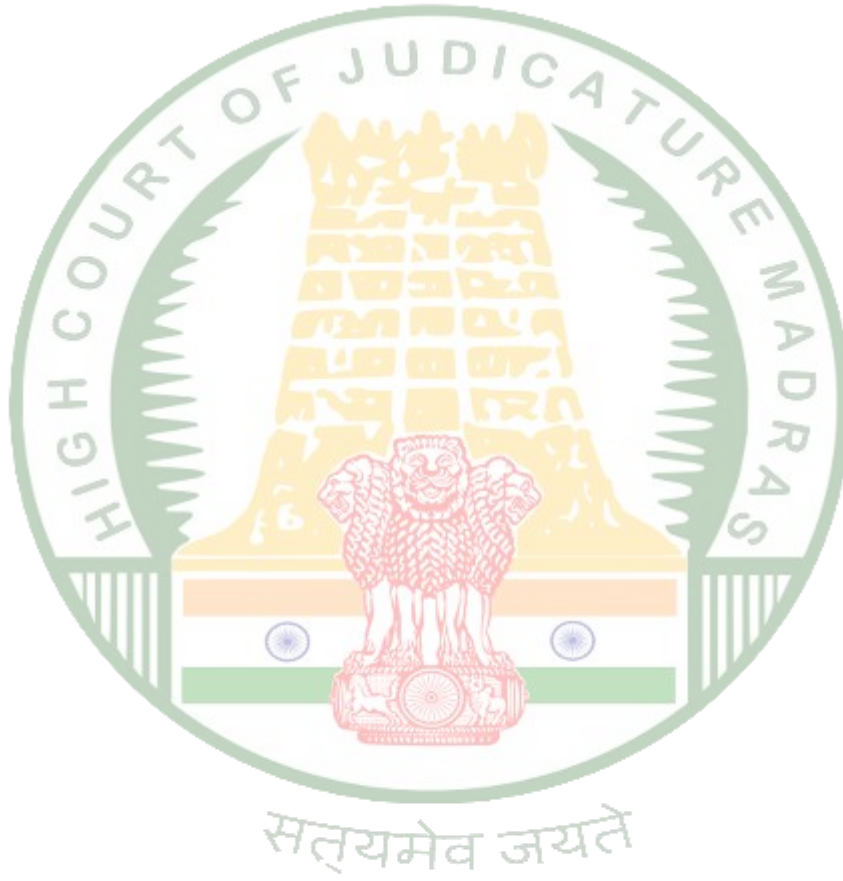
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[Issue order copy on 02.05.2018]

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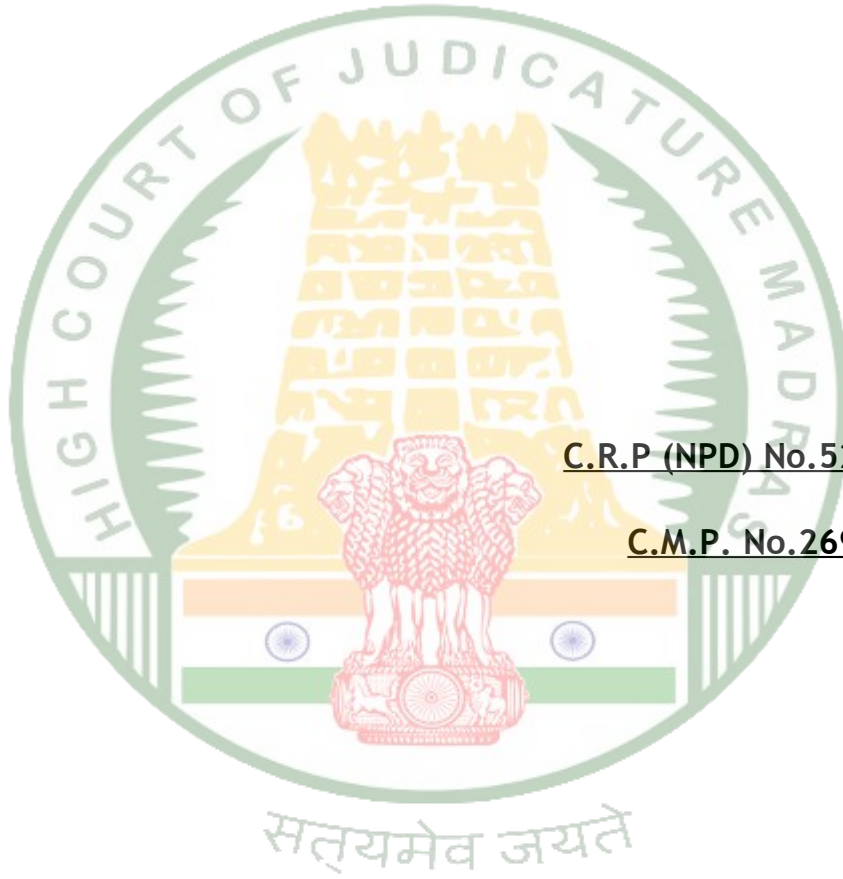
The II Additional District Judge,
Ranipet



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