

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2018

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

CRP.(NPD).No.3411 of 2018

Rajamani(Died)

1.Vijaya Rajamani

2.Senthilkumar

3.Sureshkumar

4.Arunkumar

..Petitioners

Versus

1.S.V.Satheeshchandran

2.S.V.Srinivasan

3.S.N.Srinivasan

4.N.Sridhar

5.K.Senthilkumar

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decreetal order dated 10.10.2018 made in E.A.No.62 of 2018 in E.P.No.Un-Numbered of 2017 in O.S.No.71 of 2006 on the file of Subordinate Court, Dharapuram.

For Petitioners : Mr.C.Prabakaran

ORDER

The present Civil Revision Petition is filed, challenging the fair and Decreetal order dated 10.10.2018 made in E.A.No.62/2018 in E.P.No. Un-Numbered of 2017 in O.S.No.71/2006 on the file of the Sub-ordinate Court,

2.The Revision Petitioners were the plaintiffs in O.S.No.71 of 2006, more specifically, the Revision petitioners are the legal representatives of the original plaintiff, who died during the year 2009. The suit was decreed in favour of the plaintiff on 30.10.2006. However, during the lifetime of the original plaintiff, no Execution Petition was filed. The original plaintiff died due to some chronic illness on 22.05.2009.

3.Admittedly, no action was taken by the Decree holder and also by the legal representatives of the decree holder.

4.The learned counsel appearing on behalf of the Revision petitioners that the Revision petitioners / legal representatives of the original plaintiff had no knowledge about the decree at all during the relevant point of time. Thus, they could not be able to initiate appropriate action for the execution of the decree granted in favour of the original plaintiff. The learned counsel urged this Court by stating that the original plaintiff invested his hard earned money and a decree was passed in his favour. Thus, the delay should not defeat the interest of the plaintiff as well as the legal representatives, who all are the Revision petitioners before this Court. The Revision Petitioners are of the opinion that they have not wantonly committed an act of delay and they had no knowledge about the decree obtained by their father and therefore, there is a delay of 3970 days(about 10 years) in filing an application to deposit the balance sale

consideration as per the decree passed in O.S.No.71 of 2006. The Revision petitioners are all along willing and ready to pay the balance sale consideration as per the decree passed in O.S.No.71 of 2006. Thus, an opportunity to be provided by this Court to the Revision petitioners to execute the decree passed by the Sub-ordinate Court, Dharapuram.

5.This Court has carefully gone through the reasons stated by the Revision petitioners for condoning such a huge delay of 3970 days in filing an application to deposit the balance amount as per the original decree. The affidavit filed in this regard in E.A.No.62 of 2018, which is enclosed in page No.29 of the typed set of papers, filed along with the Civil Revision Petition, states that the ex-parte decree in the Civil Suit was passed on 30.10.2006. Thereafter, the original plaintiff, who is none other than the father of the Revision petitioner passed away in the year 2009. The Trial Court had granted two months time for depositing the balance sale consideration. In view of the fact that the Revision petitioners had no knowledge about the ex-parte decree obtained by their father, they could not able to deposit the balance sale consideration as per the decree passed by the Trial Court. In respect of the enormous delay of 3970 days in depositing the balance sale consideration of Rs.1,00,000/-(Rupees One Lakh only) into the Court, the Revision Petitioners have stated that they traced out the ex-parte decree only during the cleaning of the house. Therefore, there is a delay of about 10 years in filing the petition, seeking permission to deposit the balance sale consideration of Rs.1,00,000/-

(Rupees One Lakh only) into the Court. Except this, no reason has been furnished in the affidavit filed in support of the petition filed in E.A.No.62/2018.

6.This Court is of an opinion that merely furnishing reason for condoning such a huge delay of 3970 days is certainly insufficient. The reasons must be candid and convincing, enabling the Court to have a pragmatic approach to grant permission to the parties to execute the decree, which was granted in the year 2006. The reasons cannot be an empty formality. The reasons must be genuine, and must be convincing. The routine reasons assigned for the purpose of filing petitions, can never be entertained by the Courts. The reasons furnished before the Court, must be appealing and, the Court must feel that such reason must be excused in the interest of justice. Otherwise, the very sanctity of the law of limitation will be defeated. Undoubtedly, a reasonable delay can be excused by imposing a reasonable cost. However, such a huge delay of 10 years can never be excused or condoned in a routine manner by the Courts, so as to unsettle the situation occurred on account of passing of a decree in the year 2006.

7.Admittedly, the balance sale consideration was directed to be deposited before the Court by the plaintiff within a period of two months. However, the petition seeking permission to deposit the balance sale consideration of Rs.1,00,000/-(Rupees One Lakh only) is filed in the year 2017, after a lapse of more than 10 years.

8.Thus, this Court is of an opinion that in the absence of any candid and convincing reasons, the delay of 3970 days, cannot be condoned and the reasons assigned by the learned Sub-ordinate Judge, Dharapuram are certainly in accord with the provisions of law and there is no infirmity as such.

9.The learned counsel for the petitioner made a submission that the delay of 1753 days was condoned by this Court in ***C.R.P.(NPD).No.1434 of 2014 dated 22.04.2014 in the case of Ajay Kumar Gulecha Vs. J.Vijayakumar, reported in 2015 (1) CTC 811.*** This Court is of an opinion that even then, the delay condoned in that case is 1753 days and in the present case, 3970 days, which is certainly uncomparable.

10.Even, while considering the petition to condone the delay, the Court has to consider the facts and circumstances independently. The condonation granted by the Courts by exercising the power of discretion cannot be followed mechanically by the Courts in respect of other cases. The factual circumstances and the reasoning furnished must be considered. Thus, the judgment cannot be relied upon as the present facts and circumstances in the Revision petition on hand are distinct and different.

11.The legal principles in the matter of condoning such a huge delay is now settled by the Hon'ble Supreme Court of India in the case of ***Atcom Technologies Ltd. v. Y.A. Chunawala & Co., reported in (2018) 6 SCC***

639 and the Hon'ble Supreme Court of India held as follows:-

"20. This provision has come up for interpretation before this Court in number of cases. No doubt, the words "shall not be later than ninety days" do not take away the power of the court to accept written statement beyond that time and it is also held that the nature of the provision is procedural and it is not a part of substantive law. At the same time, this Court has also mandated that time can be extended only in exceptionally hard cases. We would like to reproduce the following discussion from *Salem Advocate Bar Assn. (2) v. Union of India* [*Salem Advocate Bar Assn. (2) v. Union of India*, (2005) 6 SCC 344] : (SCC p. 364, para 21)

"21. ... There is no restriction in Order 8 Rule 10 that after expiry of ninety days, further time cannot be granted. The court has wide power to "make such order in relation to the suit as it thinks fit". Clearly, therefore, the provision of Order 8 Rule 1 providing for the upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time-limit of 90 days. The discretion of the court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order 8 Rule 1."

21. In such a situation, onus upon the defendant is of a higher degree to plead and satisfactorily demonstrate a valid reason for not filing the written statement within thirty days. When that is a requirement, could it be a ground to condone delay of more than 5 years even when it is calculated from the year 2009, only because of the reason that writ of summons was not served till 2009?"

12. In view of the facts and circumstances, this Court is not inclined to

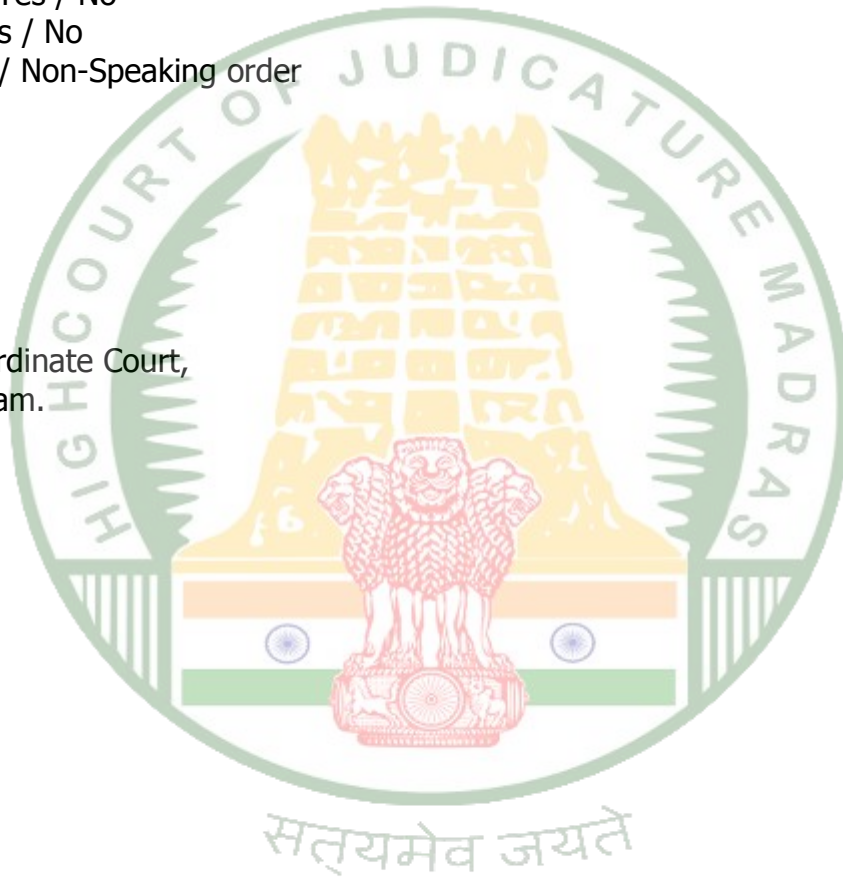
consider the present Civil Revision Petition as the same is devoid of merits and stands dismissed. No costs.

09.11.2018

Internet: Yes / No
Index: Yes / No
Speaking / Non-Speaking order

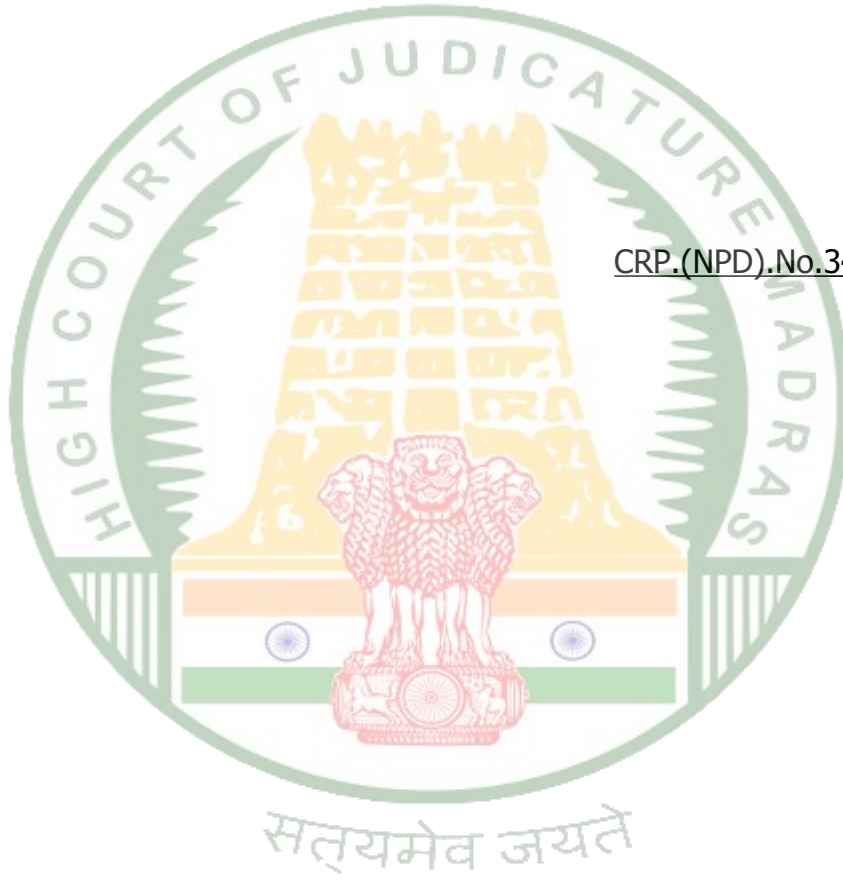
kak

To
The Subordinate Court,
Dharapuram.



WEB COPY

S.M.SUBRAMANIAM, J.



CRP.(NPD).No.3411 of 2018

WEB COPY

09.11.2018