



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**
C.R.P. (PD) (MD) Nos.111 and 112 of 2013

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C.R.P. (PD) (MD) No.111 of 2013:-

Madan :Petitioner / Petitioner/ Petitioner

vs.

1.Marudusamy @ Manimaran

2.Minor. Praveenkumar

3.Minor. Deepan

(Respondent 2 and 3 minor

represented by 1st respondent) :Respondents / Respondents /
Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 16.08.2012 passed in I.A.No.117 of 2012 in O.S.No.102 of 2008 on the file of the Additional District and Sessions Court, Dindigul.

For Petitioner : Mr.V.Ramajegadeesan

For Respondents : Mr.M.Lakshmi Shankar

C.R.P. (NPD) (MD) No.112 of 2013:-

Madan :Appellant / Petitioner/ Petitioner

vs.

1.Marudusamy @ Manimaran

2.Minor. Praveenkumar

3.Minor. Deepan

(Respondent 2 and 3 minor

represented by 1st respondent) :Respondents 1 to 3 /
Respondents 1 to 3 /
Respondents 1 to 3

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 16.08.2012 passed in I.A.No.118 of 2012 in O.S.No.102 of 2008 on the file of the Additional District and Sessions Court, Dindigul.

For Petitioner : Mr.V.Ramajegadeesan

For Respondents : Mr.M.Lakshmi Shankar

**ORDER**

The plaintiff in the suit in O.S.No.102 of 2008, on the file of the learned Additional District and Sessions Court, Dindigul, is the revision petitioner in these petitions.

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2. The petitioner has filed a suit in O.S.No.102 of 2008 before the Additional District and Sessions Court, Dindigul, for specific performance of an agreement of sale, alleged to have been entered into between the petitioner and the respondents in these Civil Revision Petitions. The suit is also for an alternative relief of refund of the money, which was advanced by the petitioner to the respondents. It is stated that the petitioner has entered into an agreement of sale and the respondents have received a sum of Rs.5,00,000/- on various dates, as advance.

3. The respondents in their written statement have specifically agreed the receipt of a sum of Rs.5,00,000/- as advance. However, the defence appears to be against granting any relief for specific performance. When the matter was posted for trial on 31.01.2011, the petitioner was called absent and the suit was dismissed for default. However, after delay of 382 days, the petitioner filed petitions in I.A.Nos.117 and 118 of 2012, to condone the delay of 382 days in filing a petition to restore the suit, which was dismissed for default. The trial Court dismissed the petition to condone the delay on the ground that explanations for the delay offered by the petitioner are not acceptable. The reasons stated in the affidavit filed in support of the petition before the lower Court was that the Advocate's clerk could not follow up the matter properly and that some of the bundles including the petitioner's case were misplaced by the Advocate's Clerk. Since the explanation stated to be one on account of the negligence of Advocate's Clerk, the trial Court found that the petitioner has not explained the delay of nearly two years. Holding that the petitioner has failed to explain everyday delay and the petitioner is also responsible for the delay, the Trial Court dismissed the petition to condone the delay and consequently, the petition filed in I.A.No.118 of 2012, to set aside the order dismissing the suit for non-prosecution was also dismissed. Considering the facts and circumstances, particularly the case of the plaintiff that the receipt of money as advance is not disputed, this Court is of the view that the petitioner/plaintiff may get a decree for refund of money on the admission of defendants.

4. Be that as it may, this is a case, where proper explanation has been offered by the petitioner for the delay of 382 days. It was only on the ground that the petitioner was also responsible for the delay and that the petitioner had not explained the delay, the lower Court has dismissed the petition. It is well settled that the delay, however, can be condoned, if there is proper



explanation to the satisfaction of the Court. This Court has held in several cases that the Court should always be lenient in favour of the petitioner, so that the adjudication will be on merits. In this case, except the observation of the lower Court that the reasons stated by the petitioner by putting the blame on Advocate's clerk are not acceptable, there is no proper consideration of the explanation by the petitioner for the delay. Since the case of the petitioner as plaintiff to get refund of money is bright on the basis of admission, this Court is not able to see any motive or intention behind the delay in approaching the Court. Having regard to the fact and circumstances of the case, this Court has no hesitation to hold that the delay has been properly explained to the satisfaction of the Court and the discretion ought to have been exercised in this case to condone the delay.

5.The learned counsel for the respondents, of course, has expressed some apprehension that any observation may prejudice his client's right to focus on the conduct and attitude of the petitioner in conducting the suit so as to consider the same while deciding the entitlement of the petitioner to get equitable relief of specific performance. Hence, this Court makes it clear that the findings or observations of this Court on the merits of the case of the petitioner and the acceptance of his explanation for condoning the delay are only for the purpose of deciding the revision and it is open to the respondents to rely upon the conduct and attitude of the petitioner, at the time of trial of the suit. Hence, these Civil Revision Petitions are allowed and the order in I.A.Nos.117 and 118 of 2012 in O.S.No.102 of 2008 on the file of Additional District and Sessions Court, Dindigul dated 16.08.2012 passed by the Additional District and Sessions Court, Dindigul are set aside. The applications filed in I.A.No.117 and 118 of 2012 in O.S.No.102 of 2008 on the file of Additional District and Sessions Court stand allowed. No costs.

Sd/-

Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar

To

The Additional District and Sessions Court, Dindigul.

+2cc to Mr.M.Muthugeethayan, Advocate Sr.No.59853,59854

+1cc to Mr.M.Lakshmi Shankar, Advocate Sr.No.60041

GSP/CMR

VB/KKR/SAR3/27/04/2018/3P/5C

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