



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.09.2018

CORAM :

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.R.P. (MD) (PD) No. 2421 of 2017

and

C.M.P. (MD) No. 11492 of 2017

Mayakkal

...Petitioner / Petitioner / Appellant

/Vs./

1. Ganesan

...Respondent/Respondent/Respondent

2. R. Sivakumar

...Respondent / 2nd Respondent /
2nd Respondent

Prayer: Civil Revision Petition - filed under Section 115 of the Civil Procedure Code, to call for the records of Order dated 04.09.2017 passed in I.A.No.21 of 2016 in A.S.No.43 of 2011 on the file of the District Judge, Madurai, and set aside the same by condoning the delay of 258 days delay in filing application to restore the appeal by allowing the present civil revision petition.

For Petitioner : Mr.K.Muraleedharan
For R-1 : Mr.P.Paranthaman

ORDER

The revision petitioner herein is the first defendant in O.S.No.99 of 2004 on the file of the Second Additional Subordinate Judge, Madurai. The said suit is one for specific performance. The suit was decreed on 01.08.2011. Questioning the same, the revision petitioner filed A.S.No.43 of 2011 before the learned District Judge, Madurai. The appeal came to be dismissed for default. Subsequently, it was restored and it was dismissed for default for the second time. To restore the same, an application was taken out. There was a delay in filing the same. To condone the delay, I.A.No.21 of 2016 was filed. The Court below, by order dated 04.09.2017 dismissed the said IA. Questioning the same, the civil revision petition has been filed.

2. The learned counsel for the first respondent questioned the maintainability of this CRP. He pointed out that the revision petitioner has already sold the property in question in favour of one Sivakumar during the pendency of these proceedings. The said Sivakumar has not chosen to question the decree made in the suit. Therefore, the revision petitioner has no locus standi to even maintain these proceedings. He also seriously faulted the conduct of the revision petitioner. The revision petitioner had allowed the appeal to be dismissed for default and it was earlier



restored. This is the second time when the appeal has been dismissed for default. He also submitted that the plaintiff / first respondent has filed execution proceedings and that a sale deed has been executed and at that stage, the revision petitioner woke up and took out these applications.

WEB COPY

3. The submissions of the learned counsel for the first respondent are no doubt attractive. The attention of this Court, was however drawn to the suit agreement dated 24.08.1998. The suit for enforcing this agreement dated 24.08.1998 was however filed only on 23.01.2004.

4. This Court went through the cause of action paragraphs set out in the plaint. The cause of action for the suit according to the plaintiff arose on 24.08.1998, when the suit agreement was said to have been entered into and on 15.03.2002 when the revision petitioner was said to have been received a further sum of Rs.50,000/-. The revision petitioner appears to be a illiterate person. She has only affixed her thumb impression in the sale agreement. The sale agreement is executed on a single page and very closely typed.

5. At this stage, the learned counsel appearing for the first respondent would contend that scope of the Civil Revision Petition rather limited. This Court has to only see whether the revision petitioner has made out sufficient cause for condoning the delay occasioned in filing the restoration application. This Court ought not go into the merits of the matter.

6. I am unable to agree with the said submission.

7. It is a suit for specific performance and in the very nature of this, equity will have to paly a role. It is for the reason that this Court concurs with the submission of the learned counsel appearing for the revision petitioner that the revision petitioner is entitled to question the correctness of the decree passed by the trial Court. At the same time, the conduct of the revision petitioner also cannot be lost sight of. Illiteracy cannot be a defence against every allegation. The revision petitioner obviously had affixed her thumb impression on some documents. The revision petitioner has chosen to contest the said proceedings and also filed a first appeal. Therefore, she has to be necessarily put on terms.

8. The learned counsel appearing for the revision petitioner undertakes to pay a sum of Rs.10,000/- [Rupees Ten Thousand only] to the plaintiff. If this cost amount is paid within a period of four weeks from today, the Court below is directed to number the appeal, direct the trial Court to restore the first appeal to file. The first appeal in A.S.No.43 of 2011 itself shall be disposed of within a period of eight weeks



thereafter. If the cost amount is not paid within period of four weeks, the civil revision petition will stand automatically dismissed.

9. The learned counsel appearing for the revision petitioner further undertakes that he will not file any application seeking extension of time.

10. Recording this undertakings and subject to the directions given above, the impugned order passed in I.A.No.21 of 2016 in A.S.No.43 of 2011 on the file of the District Judge, Madurai, is set aside. Accordingly, the civil revision petition is allowed.

11. The learned counsel appearing for the first respondent drew attention of this Court to the fact that the subsequent purchaser Sivakumar was made as the second defendant in the suit and that he is very much on the record. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

The Principal District Judge, Madurai.

+1cc to Mr.K.Muraleedharan, Advocate Sr.No.83036

+1cc to Mr.P.Paranthaman, Advocate Sr.No.83218

sm

VB/SKN/SAR4/31.10.2018/3P/4C

Order made in
C.R.P. (MD) (PD) No.2421 of 2017
07.09.2018