



BEFORE THE MADURAI BENCH OF MADRAS HIGH Court

Reserved on : 26.07.2018
Delivered on : 14.08.2018

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THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (NPD) No.1771 of 2016 and
C.R.P. (MD) (PD) No.1153 of 2017 and
CMP (MD) No.8548 of 2016

Padmanabhan .. Petitioner/Respondent/Plaintiff
in both the CRPs
(Rep. by his Power agent V.Ramakrishnan)

vs.

1.I.M.Karthikeyan
2.I.M.Girija
3.I.M.Senthilrani
4.I.M.Rajalakshmi
5.I.M.Jeevarani

.. Respondents/Petitioners/
Defendants 16,18,19,21 & 22
in both the CRPs

(Cause title accepted vide Court order dated
01.09.16 made in CMP (MD) No.8239/16 in
CRP (MD) No.SR32191/16)

Prayer in CRP (MD) No.1771 of 2016: Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the order and decreetal order dated 29.04.2016 made in I.A.No.217 of 2015 in O.S.No.120 of 2006 on the file of the IV Additional District Court, Madurai.

Prayer in CRP (MD) No.1153 of 2017: Civil Revision Petition filed under Article 227 of Constitution of India, against the order and decreetal order dated 14.06.2016 made in I.A.No.441 of 2016 in O.S.No.120 of 2006 on the file of the IV Additional District Court, Madurai.

(In both the CRPs)

For Petitioner : Mr.V.Sitharanjan Das
For Respondents : Mr.K.Sudalaiyandi

COMMON ORDER

The plaintiff is before this Court challenging the order passed in the application filed by the respondents herein/defendants 16,18,19,21 and 22 under Section 5 of the



Limitation Act for condoning the delay of 1258 days in filing the application to set aside the ex-parte decree dated 22.12.2009 passed against the respondents in the suit for specific performance of the agreement dated 29.12.2004 entered into between the petitioner and the respondents.

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2.The case of the petitioner herein is that he filed a suit in O.S.NO.120 of 2006 on the file of the learned IV Additional District Court, Madurai through his power agent V.Ramakrishnan against the respondents herein for the relief of specific performance to execute the sale deed for the suit schedule properties based upon the sale agreement entered into between the petitioner herein and the respondents herein dated 29.12.2004. The petitioner contented that the 1st item of suit property originally belongs to one S.P.Chinnasamy and his family members who are the defendants 1 to 15 in the above said suit. They have jointly executed a registered general power of attorney in respect of the 1st item of the suit property on 18.06.2003 in favour of the 16th defendant of the suit namely the 1st respondent in this civil revision petition. The petitioner further contented that the suit 2nd item of property is absolutely belongs to the defendants 15 to 22 in the above said suit who are the respondents in the civil revision petition. The 1st respondent who is the power agent of defendants 1 to 15 along with the respondents herein have entered into an unregistered sale agreement with the revision petitioner on 29.12.2004 in respect of the suit schedule 1 and 2 item of properties on payment of Rs.5,000/- as advance amount and on the date of agreement itself, the respondents handed over the possession of the suit schedule properties in favour of the petitioner.

3.The petitioner further contented that he executed a registered general power of attorney dated 08.10.2004 in favour of the above said V.Ramakrishnan who originally filed the suit as a power agent of this revision petitioner in respect of all his properties. Since this revision petitioner was working at United States of America and he is not in a position to visit India to manage the properties and he executed the power deed in favour of V.Ramakrishnan. After the sale agreement the petitioner's power agent V.Ramakrishnan converted the entire suit properties into several house plots and sold some of the plots to the purchasers and he has constructed residential houses. Further it is contented that the revision petitioner paid more than 75% of the sale consideration to the respondents. Even though he is ready and willing to perform the contract, these respondents have not come forward to fulfill the same on their part. Hence the revision petitioner filed the above suit for specific performance to execute the sale deed.

<https://hcservices.ecourts.gov.in/hcservices/>

4.The petitioner's power agent V.Ramakrishnan originally



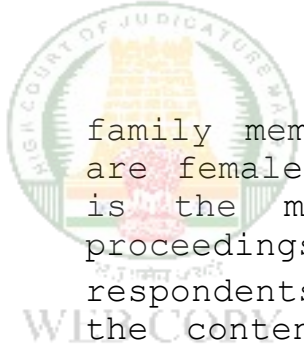
filed the suit on 25.09.2006 before the I Additional District Court, Madurai against the respondents. After receiving summons the respondents entered their appearance in the suit through a counsel on 17.11.2006 and an ex-parte decree was passed on 22.12.2009 against the respondents for non-contesting of the suit. Thereafter, the revision petitioner filed the execution petition in E.P.No.4 of 2012 to execute the sale deed through the Court in pursuance of the above said ex-parte decree. After a long period only the respondents filed the I.A.No.217 of 2015 to condone the delay of 1258 days in filing the application to set aside the ex-parte decree dated 22.12.2009. The revision petitioner vehemently contested the said application filed by the respondents by stating that there is no any sufficient reason shown by the respondents to condone the inordinate delay of 1258 days, but the trial Court mistakenly condoned the said delay on imposing Rs.5,000/- towards cost to the respondents through the order dated 29.04.2016 and he prayed to set aside the order of the Court below.

5.I heard Mr.V.Sitharanjan Das, learned counsel for the petitioner and Mr.K.Sudalaiyandi, learned counsel for the respondents and also gone through the entire records.

6.The learned counsel appearing for the petitioner would submits that there is no any sufficient cause shown by the respondents to condone the above said delay against the ex-parte decree. The reasons stated by the respondents that the counsel who appeared for them before the trial Court did not informed the stage of the case to the respondents and did not properly conduct the case. Even though the ex-parte decree came to the knowledge of the respondents on 22.03.2010 they have failed to file the above said application as immediately. These reasons are not sufficient to condone the huge delay of 1258 days to set aside the ex-parte decree. But the Court below has committed a grave error and allowed the application on payment of cost of Rs.5,000/-. In support of his contention, the learned counsel for petitioner referred the following case laws.

1. 2007 (3) Law Weekly 1034 (G.Jayaraman vs Deverajan)
2. 2013 (4) Law Weekly 515 (V.Radhakrishnan Vs P.Radhakrishnan)
3. 2009 (1) Law Weekly 574 (Union Bank Of India Vs K.R.Jewellers and 2 others)
4. 2016 (2) TNLR 106 (G.Janaki Vs C.Arasukumar)
5. 2018 (3) MLJ 610 (V.Ramalingam Vs B.Baghiyam and another)
6. 2018 (2) TNCJ 54 (Maharajan Vs S.Rajagobal and another)

<https://hcservices.ecourts.gov.in/hcservices/> other hand the learned counsel appearing for the respondents would submits that all the respondents herein are same family members. Due to the sudden and continuous death of their



family members and except the 1st respondent, other respondents are female and uneducated and not aware of the Court proceedings is the main reason that they have not followed the suit proceedings before the Court below. It is to say that the respondents 2 to 4 are the sisters of the 1st respondent. It is the contention of the respondents that the suit for specific performance was filed by the power agent of the revision petitioner on 25.09.2006. After receiving the summons, the respondents and their deceased father I.Mahalingam who was the 17th defendant and their deceased sister Malarvizhi who was arrayed as 20th defendant in the suit have executed a vakalat in favour of a counsel on 17.11.2006 in order to contest the suit on behalf of them. After that on 22.03.2007, the respondent's sister Malarvizhi suddenly and unexpectedly passed away by leaving the respondents. Thereafter on 10.01.2008 there was an ex-parte order has been passed against the respondents for non-filing of written statement. Subsequently that on 22.12.2009 the Court below was pleased to pass the ex-parte decree. In the mean while the counsel who conduct the case before the trial Court did not informed the stage of the case to the respondents and even did not informed the transfer of the case from the file of the I Additional District Court, Madurai to IV Additional District Court, Madurai.

8.It is the further contention of the learned counsel for the respondents that on 22.03.2010, the deceased father of the respondents I.Mahalingam who was the 17th defendant in the suit came to know about the ex-parte decree through a notice from the counsel for the petitioner and immediately the above said respondent's deceased father filed the application to set aside the ex-parte decree on 23.03.2010 and prior to number the above said application he also died in the road accident on 28.08.2010. Due to the above said continuous death of their family members, the respondents were not in a position to retrieve themselves and after gathering other family members together and after discussion, this application has been filed by the respondents to condone the delay of 1258 days to set aside the ex-parte decree. The delay was not caused to any willful negligence on the part of the respondents and considering the above said family circumstances, the Court below has rightly allowed the application filed by the respondents and condoned the delay in setting aside the ex-parte decree for the interest of justice and in order to give an opportunity of fair trial to decide the issue involved the suit on merits. In support of their case, the learned counsel appearing for the respondents relied on the Judgment reported in **2015 (1) CTC 811 (Ajaykumar Gulecha Vs J.Vijayakumar and another)** and the order passed by this Court dated 15.07.2015 in CRP(NPD) (MD) No.1263 of 2014 (M.Sakthivel and 2 others Vs Sankareshwari).



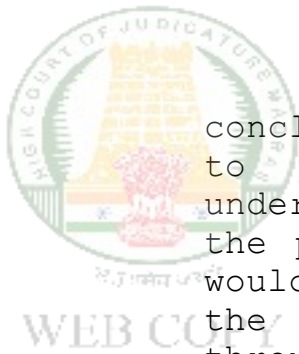
9. By considering the legal submissions made on either side, this Court has carefully considered the Judgments relied on by the learned counsel for the petitioner as stated supra. In all the above said case laws referred by the learned counsel for the petitioner, this Hon'ble High Court was pleased to refuse the prayer of condone the delay on the well settled law that delay should be liberally considered if there is sufficient cause and when it is properly explained and when the Court finds that there is no negligence or in action or want of bonafide are the part of application. The present civil revision petition is concerned, it is arising from a specific performance suit. But the above Judgments cited by the learned counsel for the petitioner are arising from the suit for declaration, injunction and etc., hence I have no hesitation to hold that the above said citations are not applicable to decide the legal issue involved in the present civil revision petition.

10. On the other hand, this Court has carefully considered the unreported judgment of this Hon'ble Court made in C.R.P. (NPD) (MD) No. 1263 of 2014 dated 15.07.2015, wherein it is held as follows:

"17. The suit in question was filed by the respondent for specific performance. The learned Trial Judge was expected to consider as to whether the plaintiff is entitled to a decree by exercising the discretion. It is not as if the plaintiff is entitled to a decree the moment the Court declares the defendants ex-parte. Even after declaring the defendants ex-parte, the Court must frame issues and decide as to whether there is a valid agreement, the plaintiff has been ready and willing to perform his part of the contract and that the plaintiff is entitled to a discretionary remedy of specific performance. Unfortunately, the Trial Court failed to consider the discretionary nature of the relief claimed by the respondent.

18. Remedy of specific performance is an equitable remedy. In order to obtain such discretionary relief, plaintiff has to come to the Court with clean hands. Entire facts of the case have to be pleaded. There should be no attempt on the part of the plaintiff to conceal the facts.

19. Since the remedy of specific performance is a discretionary remedy and equitable in nature, plaintiff has to produce materials with respect to his/her readiness and willingness at all point of time. The conduct of the plaintiff assumes significance in a case
 https://hcservices.ecourts.gov.in/hcservices/ Court was expected to weigh the materials produced by the plaintiff to come to a definite



conclusion pertaining to the readiness and willingness to perform the contractual obligation voluntarily undertaken by the plaintiff. Any action on the part of the plaintiff to take undue advantage of the situation would give negative results and he/she would be denied the equitable remedy. The conduct of the plaintiff throughout should be taken note of to decide the issue regarding exercise of discretionary jurisdiction. In short, in a matter relating to sale of property, Court is not bound to grant specific performance for a mere asking".

11. In the above said unreported Judgment, this Hon'ble Court has referred the various case laws reported in 2000 (7) SCC 548, 2009 (3) SCC 141, 1987 SUPP.SCC 340, 2008 (12) SCC 145 to reiterate the Hon'ble Supreme Court's views on discretionary remedy which is extracted hereunder:

"20. In **Gobind Ram V. Gian Chand**, (2000) 7 SCC 548, the discretionary relief of specific performance was indicated by the Hon'ble Supreme Court thus:-

"7. It is the settled position of law that grant of a decree for specific performance of contract is not automatic and is one of the discretions of the Court and the Court has to consider whether it will be fair, just and equitable. The Court is guided by principle of justice, equity and good conscience. As state in **P.V. Joseph's Son Mathew** the Court should meticulously consider all facts and circumstances of the case and motive behind the litigation should also be considered."

21. The Hon'ble Supreme Court in **G. Jayashree V. Bhagwandas S. Patel**, (2009) 3 SCC 141, indicated the concept of discretionary jurisdiction thus:-

"32. The civil Courts, in the matter of enforcement of an agreement to sell, exercise a discretionary jurisdiction. Discretionary jurisdiction albeit must be exercised judiciously and not arbitrarily or capriciously. A plaintiff is expected to approach the Court with clean hands. His conduct plays an important role in the matter of exercise of discretionary jurisdiction by a Court of law.

22. In **Parakunnan Veetill Joseph's Son Mathew V. Nedumbara Kuruville's Son** (1987) Supp. SCC 340, the Hon'ble Supreme Court considered the scope and ambit of Section 20 of the Specific Relief Act and observed thus:

"Section 20 of the Specific Relief Act 1963 preserves judicial discretion to Courts as to decreeing specific performance. The Court should meticulously



consider all facts and circumstances of the case. The Court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter into the judicial verdict. The Court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff."

23. The Hon'ble Supreme Court in **Bal Krishna V. Bhagwan Das**, (2008) 12 SCC 145, indicated that if specific performance would give unfair advantage to the plaintiff, no decree should be given.

"13. Section 16 of the Specific Relief Act, 1963 (hereinafter referred to as "the Act") corresponds with Section 24 of the old Act of 1877 which lays down that the person seeking specific performance of the contract, must file a suit wherein he must allege and prove that he has performed or has been ready and willing to perform the essential terms of the contract, which are to be performed by him. The specific performance of the contract cannot be enforced in favour of the person who fails to aver and prove his readiness and willingness to perform essential terms of the contract. Explanation (ii) to clause (c) of Section 16 further makes it clear that the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction. The compliance with the requirement of Section 16(c) is mandatory and in the absence of proof of the same that the plaintiff has been ready and willing to perform his part of the contract suit cannot succeed. The first requirement is that he must aver in plaint and thereafter prove those averments made in the plaint. The plaintiff's readiness and willingness must be in accordance with the terms of the agreement. The readiness and willingness of the plaintiff to perform the essential part of the contract would be required to be demonstrated by him from the institution of the suit till it is culminated into decree of the Court.

14. It is also settled by various decisions of this Court that by virtue of Section 20 of the Act, the relief for specific performance lies in the discretion of the Court and the Court is not bound to grant such relief merely because it is lawful to do so. The exercise of the discretion to order specific performance would require the Court to satisfy itself that the circumstances are such that it is equitable to grant decree for specific performance of the contract. While exercising the discretion, the Court would take into consideration the circumstances of the case, the conduct of parties, and



their respective interests under the contract. No specific performance of a contract, though it is not vitiated by fraud or misrepresentation, can be granted if it would give an unfair advantage to the plaintiff and where the performance of the contract would involve some hardship on the defendant, which he did not foresee. In other words, the Court's discretion to grant specific performance is not exercised if the contract is not equal and fair, although the contract is not void".

12. In the above said order this Court has referred the case laws of the Hon'ble Apex Court reported in 1998 (7) SCC 123, 2001 (6) SCC 176, 2002 (3) SCC 195, 2015 (6) Scale 551, 2015 (3) SCC 569 which are speaking about the issue of sufficient cause for condoning delay as follows:

"25. The Hon'ble Supreme Court in **N. Balakrishnan V. M. Krishnamurthy** (1998 (7) SCC 123), observed that the superior Court would be free to consider the cause shown for the delay afresh and to come to its own finding.

"9. It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncontainable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding, much less in regional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuse to condone the delay. In such cases, the superior Court would be free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammelled by the conclusion of the lower Court".

26. The Hon'ble Supreme Court in **M. K. Prasad V. P. Arumugam** (2001 (6) SCC 176), while considering the question regarding delay in applying for setting aside the ex-parte decree, observed that the Court ought to keep in mind the judgment impugned in the matter, the property involved and the stake of the parties, while deciding an application to set aside the ex-parte decree.



27. The Hon'ble Supreme Court in **Ram Nath Sao V. Gobardhan Sao (2002(3) SCC 195)**, explained the expression "**Sufficient cause**" within the meaning of Section 5 of the Limitation Act, 1963. The Supreme Court very clearly observed that explanation for the delay should not be rejected when stakes are high and /or arguable points of facts and law are involved in the case. The Supreme Court said:

"12. Thus it becomes plain that the expression "sufficient cause" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependent upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the Courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal an exception more so when no negligence or inaction or want of bone fide can be imputed to the defaulting party. On the other hand, while considering the matter the Courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine like manner. However, by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the list terminates either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, Courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way".

28. In **GMG Eng. Industries Vs. ISSA Green Power Solution (2015 (6) Scale 551)**, the Hon'ble Supreme Court observed that the term "**sufficient cause**" must receive liberal construction.

"8. It is well settled that the expression "**sufficient cause**" is to receive liberal construction so as to advance substantial justice. When there is no



negligence, inaction or want of bonafide is imputable to the Appellants, the delay has to be condoned. The discretion is to be exercised like any other judicial discretion with vigilance and circumspection. The discretion is not to be exercised in any arbitrary, vague or fanciful manner. The true test is to see whether the applicant has acted with due diligence."

29. In **Executive Officer, Antiyur Town Panchayat Vs. G.Arumugam, (2015(3) SCC 569)**, the Hon'ble Supreme Court considered a similar case involving delay.

30. In G.Arumugam's case, the suit land was classified as Natham Poromboke and possession and records of title are in the name of appellant Town Panchayat. The Trial Court dismissed the suit filed by the respondent for declaration of title and possession. The first Appellate Court allowed the appeal and suit was decreed. The Executive Officer, Antiyur Town Panchayat, Erode District, Tamil Nadu, who took charge when the execution petition was filed, initiated action to file second appeal. He filed an application to condone the delay of 1373 days in filing the second appeal. The High Court dismissed the application and refused to condone the delay".

13.It is further noted in above said order passed in C.R.P. (NPD) (MD)No.1263 of 2014 dated 15.07.2015 this Court condoned the delay of 1009 days in filing the application to set aside the ex-parte decree and in view of the decisions rendered by the Hon'ble Apex Court reported in 2003 (1) SCC 197 (*Lakshmiram Bhuyan V. Hari Prasad Bhuyan*), AIR 2003 SC 2058 (*Ramesh Chand Ardawatiya V. Anil Pajwani*), 2015 (5) SCC 588 (*Mayadevi V. Lalta Prasad*). The legal and the factual aspects already analyzed by this Court in the above said order are squarely applicable to the present case in hand. Therefore, this Court finds that the meritorious matter cannot be thrown out at the threshold i.e in the ex-parte decree itself. The respondents should have given an opportunity to defend the case and the said exercise done by the Court below need not be interfered in the considered opinion of this Court.

14.Now, this Court has to consider the hardship caused to the petitioner herein because of the inordinate delay and the same should be compensated adequately. The trial Court has awarded cost of Rs.5,000/- and the same is inadequate for the delay of 1258 days in my opinion. Hence, the respondents herein are hereby directed to pay a sum of Rs.25,000/- towards cost to be paid to the revision petitioner in addition to the cost already ordered by the trial Court which would meet the ends of justice.



15. In view of the forgoing reason, I am of the considered opinion that there is no merits in the above Civil Revision Petitions and the same is deserves dismissal, accordingly dismissed.

16. In the result:

(a) the Civil Revision Petition in CRP(MD)No.1771 of 2016 is dismissed and the order and decree made in I.A.No.217 of 2016 in O.S.No.120 of 2006 is hereby confirmed. The respondents herein are directed to pay cost of Rs.25,000/- in addition to the cost of Rs.5,000/- already ordered by the trial Court to the petitioner/plaintiff within a period of two weeks from the date of receipt of this order. Consequently, connected miscellaneous petition is closed.

(b) In so far as C.R.P.(MD)No.1153 of 2017 is concerned, it filed by the petitioner/plaintiff challenging the consequential order of the trial Court in setting aside the ex-parte decree made in I.A.No.441 of 2016 dated 14.06.2016. In view of the detailed order passed in C.R.P.No.1771 of 2016, no separate order is necessary in this Civil Revision Petition. In view of the same, this Civil Revision Petition is also dismissed. No costs.

17. Considering the fact that the suit is of the year 2006, the Learned Trial Judge is directed to dispose of the suit in O.S.No.120 of 2006 within a period of 3 months. The Learned Trial Judge is directed to dispose of the suit in O.S.No.120 of 2006 within a period of three months from the date of receipt of a copy of this order on day-to-day basis without giving any unnecessary adjournments to either parties. Both parties are strictly directed to give their fullest co-operation for the speedy disposal of the suit.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar(CS-II)

To

The IV Additional District Judge, Madurai.

+ 1 CC TO Mr.V.SITHARANJANDAS, ADVOCATE IN SR No. 78623

+ 1 CC TO Mr.K.SUDALAIYANDI, ADVOCATE IN SR No. 78967

VSV

TE/RP/SAR-2 : 24/08/2018 : 11P/4C

order made in
C.R.P. (MD) (NPD) No.1771 of 2016 and
C.R.P. (MD) (PD) No.1153 of 2017 and
CMP (MD) No.8548 of 2016
14.08.2018