

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.06.2019

PRONOUNCED ON : 05.07.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(NPD).No.1382 of 2015

1.Sundarammal

2.Karuppasamy

3.A.Mohanraj

4.Amsaaveni

.. Petitioners

vs.

1.N.Adinarayanan

2.V.Gopal

.. Respondents

PRAYER: Civil Revision petition filed under Article 227 of the Constitution of India to set aside the order passed in I.A.No.1043 of 2012 in O.S.CFR.No.28233 of 2012 on the file of the Principal Sub Court, Coimbatore dated 06.01.2015.

For Petitioners : Mr.M.kalyana Sundaram,
Senior Counsel for
M/s.R.Vasudevan

For Respondents : M/s.M.Devaraj for R1

ORDER

The petitioners are aggrieved by the fair and decretal order dated 6.1.2015 passed in I.A.No. 1053 of 2012 O.S.104/2015 by the Sub- Court Coimbatore.

2. By the impugned order the court below has condoned the delay of 3949 days in representing the plaint pursuant to which the suit was numbered as O.S.104/2015.

3. The petitioners are the 1st 4 defendants who are the owners of the suit shall property along with the 5th defendant (2nd respondent herein).

4. The above suit was filed on 21.9.2001 on the strength of a sale agreements dated 25.6.1998 agreeing to transfer the ownership to 1st respondent (plaintiff). As per the agreement the sale was to be completed within a period of 3 months from the date of the agreement.

5. The above plaint was presented by paying mere a sum of Rs.5/- as court fee. It was returned for compliance of defects. It was not represented and the reason stated in the affidavit filed to condone the delay in representing the plaint was that the bundles were mixed up with the other bundles in the counsels office and on the concerned clerk attached to be plaintiff's counsel suffering from schizophrenia.

6. According to the 1st respondent the suit papers were located, when the 1st respondent's counsel shifted the office to another location when he found the suit paper bundled along with other disposed bundles. It was thereafter I.A. No. 1053 of 2012 was filed to condone the delay in representing the plaint.

7. In support of the above plea, the 1st respondent examined the clerk concerned who was allegedly suffering from schizophrenia and the physician who gave treatment to the said clerk as PW2 and PW3 respectively. The 1st respondent himself deposed evidence as PW1. The court below has allowed the application by condoning the delay in representing the plaint on payment of the cost of Rs.5000/-.

8. The petitioners have filed the present Civil Revision Petition and have challenged the same the ground that suit itself was not bone fide inasmuch as only Rs.5/- was paid as court fee at the time of presentation of the plaint.

9. Heard Mr.M.Kalyanasundaram, learned Senior counsel for the petitioner and M/s.M.Devaraj, learned counsel for R1.

10. In this connection, the learned counsel for the petitioner has relied on the following case laws:-

i) ***Brijesh Kumar and Ors. v State of Haryana and Ors.***

(2014) 11 SCC 351

ii) ***Maniben Devraj Shah v. Municipal Corporation of Br.Mumbai*** (2012) 5 SCC 157

11. Learned Counsel for the 1st Respondent circulated the decision in ***Sardar Amarjit Singh Kalra(dead) by LRS. and Ors v. Pramod Gupta (smt) (Dead) by LRS. and Ors.*** (2003) 3 SCC 272, which was rendered in the context of Land Acquisition Act, 1894, to state that procedures are hand-maidens of justice and not mistresses of law.

12. The reason given in the affidavit filed in support of the above application to condone delay in representation of the plaint though backed with the deposition of the 1st respondent concerned, the clerk associated with the counsel for the 1st respondent and the physician who had allegedly treated the said clerk, it is clear that apart from the delay in representing the plaint, there is a delay in payment of court fee also which has not been explained. I find no discussion on this aspect in the impugned order.

13. Though Section 149 of CPC confers discretionary power on the Court to accept payment of deficit court fee even beyond the period of limitation prescribed for the filing of a suit, if the plaint is otherwise filed within the period of limitation, this discretion should be exercised properly by the Court.

14. In this connection, attention is drawn to Para 44 of **A.Nawab John and Ors v. V.N Subramaniam** (2012) 7 SCC 738, which reads as under:

44. It is well settled that the judicial discretion is required to be exercised in accordance with the settled principles of law. It must not be exercised in a manner to confer an unfair advantage on one of the parties to the litigation. In a case where the plaint is filed within the period of limitation prescribed by law but with deficit court fee and the plaintiff

seeks to make good the deficit of the court fee beyond the period of limitation, the court, though has discretion under Section 149 CPC, must scrutinize the explanation offered for the delayed payment of the deficit court fee carefully because exercise of such discretion would certainly have some bearing on the rights and obligations of the defendants or persons claiming through the defendants. (The case on hand is a classic example of such a situation.) It necessarily follows from the above that Section 149 CPC does not confer an absolute right in favour of a plaintiff to pay the court fee as and when it pleases the plaintiff. It only enables a plaintiff to seek the indulgence of the court to permit the payment of court fee at a point of time later than the presentation of the plaint. The exercise of the discretion by the court is conditional upon the satisfaction of the court that the plaintiff offered a legally acceptable explanation for not paying the court fee within the period of limitation.

15. Learned counsel further submitted that the suit was filed for a specific performance and therefore even otherwise the court ought to have seen that there was no seriousness in filing the suit by merely paying a deficit Court Fee of Rs.5/- as against Court Fee of Rs.24, 628.75.

16. I have considered the arguments of the learned Senior counsel for the petitioners and the learned counsel for the 1st respondent. During the

hearing of the learned Senior counsel for the petitioners submitted that the impugned order quays petitioners may alone be set aside and confirmed against the 2nd respondent/5th defendant.

17. The fact that the plaint had been filed with the court fee of Rs.5/- itself shows that there was no bone fide while filing the suit at the fag end of the limitation. If the plaint was presented along with appropriate court fee, perhaps the evidence and oral depositions could have been considered for condoning the delay.

18. In this case apart from the fact that the suit for specific performance was filed just before the expiry of the 3 years., it was filed with insufficient court fee and after the plaint was returned to compliances, no attempt was made to represent the plaint entitled.

19. Further, in a suit for specific relief of execution of sale deed, the plaintiff would normally also pray for alternate relief for the refund of the amount paid as advance. In the present case, the 1st respondent/plaintiff has not prayed for such relief making it clear that the 1st respondent had resorted to a speculative litigation by paying a deficit court fee of Rs.5 only. It appears

that the plaint was represented with a view to take advantage of the rise in the real estate value of the property.

20. Therefore, there is no valid reason or excuse for not representing the plaint and no sufficient cause for condoning the delay even though the 1st respondent has let in oral evidence.

21. Further, even if time was not the essence of the contract, plaintiffs must perform their part of contract within a reasonable time which is determined by taking into account all the surrounding circumstances.

22. In ***Sardar Amarjit Singh Kalra(dead) by LRS. and Ors v. Pramod Gupta (smt) (Dead) by LRS. and Ors.*** (2003) 3 SCC 272 cited by the learned counsel for the 1st respondent it was emphasized that the procedural laws must be liberally construed to serve as handmaids to advance the ends of justice. Technical objections which tend to be hurdles for effective justice should be discouraged except where the mandate of law inevitably necessitates it.

23. It emphasized on the principle of *ubi jus ibi remedium* (where there is a right, there is a remedy). However, this dictum cannot be extended to the facts of the case. While the Courts must always aim to preserve and protect the right of the parties and extend help to enforce them rather than deny relief and render the relief otiose, this principle cannot be extended to an absurd level to ignore the conduct of the 1st respondent who was not only not diligent in not paying the appropriate Court Fee at the time of the presentation of the plaint but had also forgotten about the plaint for over ten years and has blamed his counsel's clerk who had turned schizophrenic as per the evidence produced by him. There has been no follow up.

24. The conduct of the 1st respondent shows moment that he was either too casual or bidding his time and waiting for an opportunity by blaming the clerk of his counsel. The 1st respondent has not given any valid reasons for not following up with the counsel after filing the suit with a Court Fee of Rs,5/- only and for the delay of 3949 days in representing the plaint without court fee.

25. Further, the scales of Justice has to be uniform. It cannot discriminate between the parties. It would be unfair to set aside the

impugned order quay petitioners alone and not against the 2nd respondent for the fault of the 1st respondent merely because the 2nd respondent has not chosen to set aside the impugned order. The delay if condoned or rejected is to apply to every party in the proceeding.

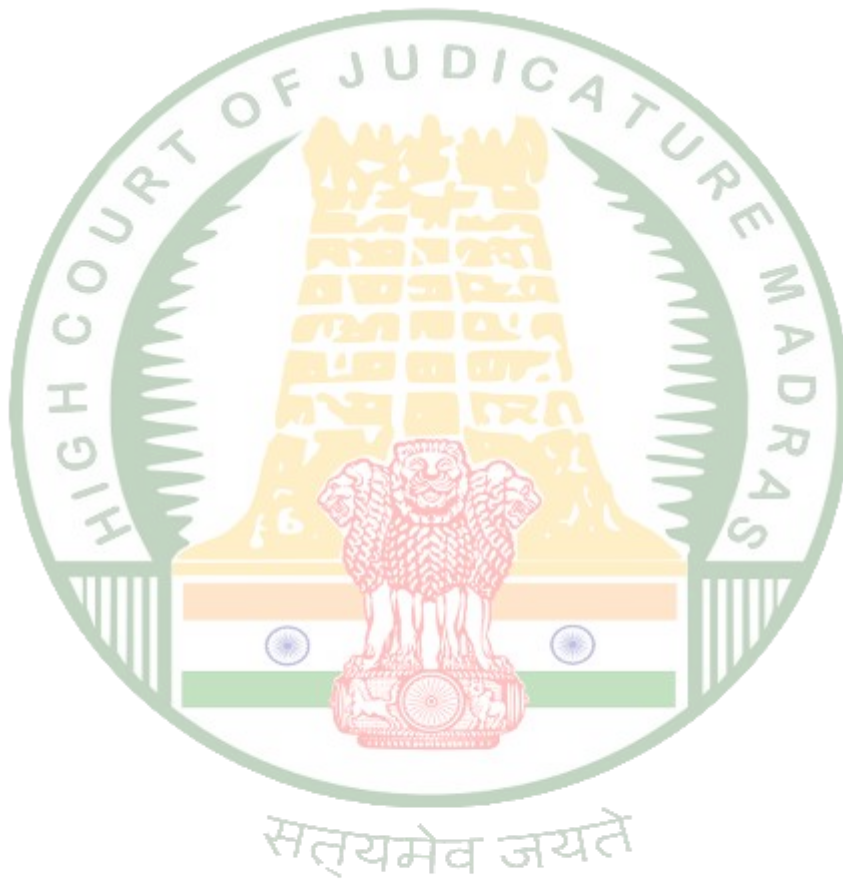
26. Attempt of the 1st respondent to resurrect a stale litigation should have been quelled by the Court at very inception of the suit. The suit for specific performance was with a court fee of Rs.5 only. Therefore, it was not a bonafide presentation of the plaintiff. Thus, the impugned order is liable to be set aside.

27. Consequently, I am inclined to interfere with the impugned order by setting it aside. In view of the above observations, the Civil Revision Petition stands allowed. No costs. Consequently, connected miscellaneous petition is also closed.

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Internet :Yes/No
Speaking Order : Yes/No
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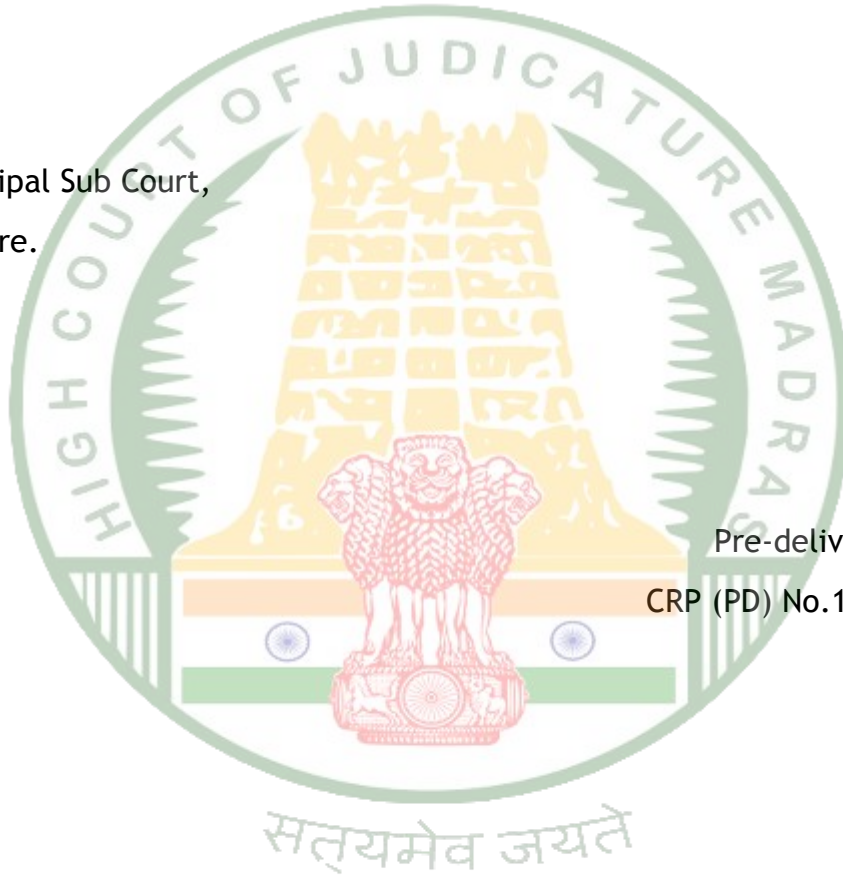
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C.SARAVANAN,J.

kkd

To

The Principal Sub Court,
Coimbatore.



Pre-delivery order in
CRP (PD) No.1382 of 2015

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