

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2019

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP.PD.No.2756 of 2018

- 1.Suresh Kumar Goyal
2. Anitha Goyal
3. Sheel Goyal
4. Vikas Goyal

... Petitioners/Plaintiffs

Vs.

1. Pahlaj Vanvaria (Died)
2. Rajesh
3. Ashwin
4. V.N.A.S.Chandran
5. Sangeetha Vijayakumar Menda
6. Mansi Wadhwa

... Respondents/Defendants

(RR5 and R6 brought as Legal representatives of the deceased R1 viz Pahlaj Vanvaria vide Court order dated 15.04.2019 made in C.M.P.No.9409 of 2019 in C.R.P.No.2756 of 2018 (NSKJ))

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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 06.02.2018 in I.A.No.209 of 2016 in O.S.No.229 of 2012 on the file of XVII Additional City Civil Court, Chennai for dismissing the application for condoning the delay of 589 days in filing the restoration application.

For Petitioners : Mr.R.Krishnaprasad For
Caveator
for M/s. Sarvabhauman
Associates for CA

For Respondents : Mr.V.Kalyanaraman
for R1 to R3, R5 and R6.

ORDER

Aggrieved over the order passed by the trial Court for dismissing the application filed to condone the delay of 589 days to restore the suit, which was dismissed for default on 02.12.2014.

2. The suit has been originally filed seeking specific performance of a Memorandum of Understanding in respect of the obligation of the respondents 1 to 3 as set out in the Memorandum of Understanding together with the obligations enjoined upon them under a Leave and License Agreement dated 30.08.2006 entered into between the petitioner and the 2nd and 3rd respondents on the file of the Hon'ble High Court of Madras as C.S.No.376 of 2009. The petitioners states that the 1st petitioner herein has also filed a suit in C.S.No.235 of 2009 against the fourth respondent herein for specific performance. Thereafter, C.S.No.376 of 2009 was transferred to the City Civil Court on the ground of pecuniary

jurisdiction and renumbered as O.S.No.229 of 2012 for disposal. At that stage, it was dismissed for default on 02.12.2014 to restore the above suit.

3. Pursuant to transfer of C.S.No.376 of 2009, it being renumbered as O.S.No.229 of 2012, the petitioners' counsel filed a transfer application before this Court to re-transfer the same and to be jointly tried along with C.S.No.235 of 2009.

4. One Mrs.Saravachelvi, Advocate attached to the office of the petitioner counsel was in-charge of case before the City Civil Court and providing updates with regard to the case. The petitioner further states that he was informed by her that a Memo was filed on 18.04.2012, informing transfer application and seeking time to number and bring the same for hearing. However, the said Advocate did not appear for certain period due to health issues. Since the petitioner was traveling frequently on account of expanding his business to other cities, he sincerely believed that he will be contacted by his counsel regarding the status of the transfer application and re-transfer of the present suit. He was however told that the matters would be taken up for trial and he would be informed. The petitioner came to know that the suit was dismissed

for default on 02.12.2014 and immediately filed an application with delay of 589 days to restore the suit.

5. The above application was opposed by the respondent on the ground that sufficient reason has not been shown in the petition. The allegation that the counsel one Mrs.Saravachelvi did not appear to work and resumed the work is required to be proved. Hence, prayed for dismissal of the application.

6. The fourth defendant also opposed the above application. The trial Court found that each and every day delay has not been clearly explained and found that this case was originally transferred from High Court on 18.04.2012, at that time, there were a memo filed by the revision petitioner that too transfer application is filed. Based on the above memo, the case was adjourned on several occasions and thereafter, it was dismissed for default on 02.10.2014. Hence, the trial Court has found that there is no sufficient reasons for dismissing the application for condoning the delay of 589 days.

7.The learned counsel appearing for the revision petitioner would contend that the suit has been dismissed for default only on the mistake of the counsel not by the party. Admittedly, the suit was

originally filed before this Court in C.S.No.235 of 2009 was pending before this Court, whereas, the suit has been transferred to the City Civil Court in the year 2012 and there were also steps have taken to transfer the suit again to the High Court.

8. The counsel was looking after the suit before the City Civil Court did not inform about the dismissal of the suit which was dismissed on 02.12.2014. It is his further contention that memo of understanding is a continuance cause of action and for every breach, a fresh cause of action arise and respondents 1 to 3 are paying the rents as per the direction of the Court, only to the credit of the suit and submit that in the event of suit is not being restored, the substantial rights of the parties will be defeated. In the affidavit, he has clearly pleaded that he has bonafidely believed the counsel. Therefore, once the parties were bonafidely believed the counsel beyond certain limit but the counsel did not informed the proceedings properly, the parties cannot be suffered.

9. It is the contention of the learned counsel appearing for the respondents 1 to 3 that the delay is not explained properly through documentary evidence. The learned counsel for D4 also

contented that there is no explanation for each and every day delay.

10. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents and also perused the materials.

11. Of course, there is a delay of 589 days in filing the restoration application. The facts obtained in this case is not in dispute as referred above. The above suit has been filed to enforce the memorandum of understanding entered between the revision petitioner and the respondents 1 to 3. The revision petitioner has also filed a suit for specific performance against the fourth defendant in C.S.No. 235 of 2009 which is pending before this Court. O.S.No.235 of 2009 filed to enforce the memorandum of understanding entered between the revision petitioner and the respondents 1 to 3. These facts are not in dispute. The suit was originally transferred to the City Civil Court in the year 2012. The trial Court also considered the memo filed by the revision petitioner, to that effect, steps have already been taken to transfer the suit. However, as there were no representation, the suit was dismissed for default on 02.12.2014.

12. Of course, the counsel's mistake cannot be a ground to condone the huge delay. The parties have to be vigilant about their case and that cannot be a ground to condonation of delay.

13. This Court is of the view that considering the nature of the suits between the parties, on technical reasons by way of delay, substantial rights of the parties not to be defeated. The limitation Act is not meant to destroy the substantial rights of the parties. When a party shows reason for that the delay beyond his control, Court should extent liberal approach. No doubt, each day's delay has to be explained by the parties who seek condonation of such delay. Similarly, the Court also should take in consideration of fact that the mere delay does not destroy the rights of the parties. Ultimate object of the Court is to serve substantial justice and not to non suit the parties on mere technicalities. When an application was taken before the Court that there was a delay due to some health condition, the Court ought to have given liberal approach, keeping in mind the substantial rights of the parties.

14. Considering the nature of the two suits and the rent

also paid by the respondent in the credit of the suits, one more

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opportunity is given to the revision petitioner to prosecute his case, subject to the payment of cost of Rs.10,000/- (Rupees ten thousand only) payable to the respondents 1 to 3 on or before 30.04.2019 and on such payment, the revision petition is allowed, in the event of non-payment of costs, the revision will be dismissed automatically.

15.04.2019

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Index:Yes/No

Internet:Yes/No

Speaking order: Non-speaking order

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To

The XVII Additional City Civil Court,
Chennai.

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