

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2019

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(NPD)No.1624 of 2019

R.Ramesh Babu

... Petitioner

Vs.

1.Nalini Ranganathan

2.B.Ranganathan

3.M.E.R.Umapathy

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code against the order dated 14.03.2019 passed in I.A.No.152 of 2018 in O.S.No.6384 of 2011 on the file of the XVII Additional City Civil Court at Chennai.

For Petitioner : Mr.G.RM.Palaniappan

For Respondents : Mr.P.K.Deepa Divyavarthini
for Mr.R.Manickavel

ORDER

The petitioner and his parents entered into an agreement with the defendants to purchase the suit property and paid advance. Thereafter, the petitioner and his parents have paid major portion of the sale consideration to the defendants and the balance sale consideration of

Rs.4,70,000/- was agreed to be paid on the date of registration. On verification of title as well as the physical verification of the property, it was found that the defendants were not the original owners of the property offered for sale, but it is owned by somebody else. Therefore, they filed two suits before this Court for refund of amount paid towards sale consideration to the defendants in C.S.No.201/1997 and 202/1997. Later due to change of pecuniary jurisdiction, the suit was transferred to City Civil Court, Chennai. In the process, the C.S.No.202/1997 was transferred and renumbered as O.S.No.6384/2011. However, the other suit in C.S.No.201/1997 was not transferred. The petitioner had taken earnest efforts to find out the details of the other suit, which should have been transferred. The said C.S.No.201 of 1997 was transferred on a later point of time and renumbered as O.S.No.4227 of 2016. In the process they have not prosecuted O.S.No.6384 of 2011 and the same was dismissed for default.

2. Thereafter, the junior to the counsel on record, filed two applications vide I.A.Nos.20 & 21 of 2012 for condoning the delay of 27 days in filing the petition to restore the suit and for setting aside the order of "dismissal for default". Unfortunately the junior counsel while typing, erroneously swapped the cause titles of CS.No.201 & 202 of 1997. Because of the mistake, a delay of 2373 days had occurred in filing the

petition, to restore the suit which was dismissed for default on 24.11.2012. The trial Court dismissed the condone delay petition and aggrieved over the same, the petitioner is before this Court.

3. Considering the facts and circumstances of the case and from the perusal of the record, it is seen that the junior counsel on record wrongly typed the cause title and thereby, the delay of 2372 days has occurred. Had he typed the correct cause title, the delay would have been only 27 days. It is also a fact that the connected suit filed by the parents is pending, wherein the defendants had deposited the advance amount without interest. In such circumstances, it cannot be considered that the petitioner was lethargic or not diligent in pursuing the suit. It is well settled principle that for the mistake on the part of the counsel, the litigant shall not suffer. The Hon'ble Supreme Court in the case reported in **AIR 1981 (SC) 1400 [Rafiq v. Munshilal]** held as under:-

"The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the Court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will

look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. Mr. A.K. Sanghi stated that a practice has grown up in the High Court of Allahabad amongst the lawyers that they remain absent when they do not like a particular Bench. May be we do not know, he is better informed in this matter. Ignorance in this behalf is our bliss. Even if we do not put our seal of imprimatur on the alleged practice by dismissing this matter which may discourage such a tendency, would it not bring justice delivery system into disrepute. What is the fault of the party who having done everything in his power and expected of him would suffer because of the default of his advocate. If we reject this appeal, as Mr.A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative."

4. It is also well settled in various judgments of the Hon'ble

Supreme Court that the cases shall be decided on merits for rendering substantial justice rather than rejecting them on technicalities. Hence, in the interest of justice, the litigant should be permitted to contest the case on merits. The unintentional mistake committed by the junior counsel on record shall not affect the petitioner. However, the hardship caused to the respondent should be suitably compensated.

5. Considering the same, this Court is inclined to allow the condone delay petition by setting aside the order passed by the trial Court in I.A.No.152 of 2018 in O.S.No.6384 of 2011 on the file of the XVII Additional City Civil Court, Chennai, by imposing compensatory costs.

6. Accordingly, the delay of 2372 days is condoned on payment of cost of Rs.50,000/- payable to M/s.P.K.Deepa Divyavarthini, Junior counsel appeared before this Court, within a period of four weeks from today, failing which, the order of the trial Court shall revive.

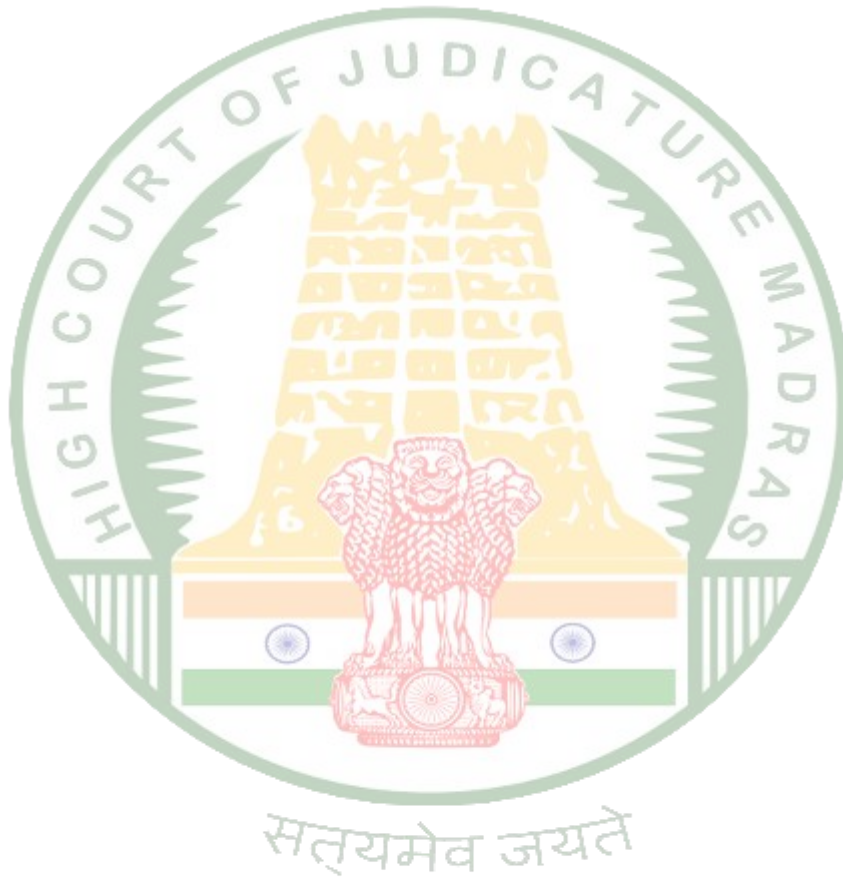
7. The Civil Revision Petition is allowed with the above direction. No costs.

06.08.2019

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Index:Yes/No

Speaking Order/Non Speaking Order



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M. GOVINDARAJ, J.
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To

The Judge,
XVII Additional City Civil Court,
Chennai.



Order made in

C.R.P.(NPD)No.1624 of 2019

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