

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2019

C O R A M

THE HON'BLE Mr.JUSTICE ABDUL QUDDHOSE

C.R.P.(NPD) Nos.2484 to 2486 of 2014 &
M.P.No.1 of 2014

Lakshmi ... Petitioner in all C.R.Ps.

Vs.

K.V.Balakrishnan ... Respondent in all C.R.Ps.

COMMON PRAYER: Civil Revision Petitions filed under Section 115 of Code of Civil Procedure against the fair and decreetal order dated 23.08.2013 in I.A.Nos.542, 543 & 546 of 2011 in O.S.No.153 of 1995 on the file of the Court of the Subordinate Judge, Poonamallee.

For Petitioner in all C.R.Ps. ... Ms.Gopika Nambiar
for Mr.T.Sai Krishnan

For Respondent in all C.R.Ps. ... Ms.V.Sripriya
for Mr.V.Raghavachari

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COMMON ORDER

The instant civil revision petitions have been filed
challenging the order dated 23.08.2013 passed by the learned

Subordinate Judge, Poonamallee in I.A.Nos.542, 543 & 546 of 2011 in O.S.No.153 of 1995.

Brief facts leading to the filing of these revisions:

2. The petitioner is the plaintiff in the suit O.S.No.153 of 1995 on the file of the learned Subordinate Judge at Poonamallee seeking for relief of specific performance of an agreement of sale dated 16.10.1992. An ex parte decree dated 20.01.2003 came to be passed in the said suit in favour of the petitioner. I.A.No.546 of 2011 was filed by the petitioner in O.S.No.153 of 1995 to condone the delay of 928 days in depositing the balance sale consideration as per the ex parte decree dated 20.01.2003. I.A.No.543 of 2011 was filed by the respondent/defendant to condone the delay of 1458 days in filing an application to set aside the ex parte decree dated 20.01.2003 passed in O.S.No.153 of 1995. I.A.No.542 of 2011 was filed by the respondent to condone the delay of 1567 days in representing the application filed to condone the delay in filing an application to set aside the ex parte decree dated 20.01.2003. The respondent/defendant also filed a counter in I.A.No.546 of 2011 filed by the petitioner/plaintiff to condone the delay of 928 days in depositing

the balance sale consideration as per the ex parte decree dated 20.01.2003. A common counter was filed by the petitioner/plaintiff in I.A.Nos.542 & 543 of 2011 filed by the respondent/defendant.

3. By a common order dated 23.08.2013, the learned Subordinate Judge, Poonamallee dismissed I.A.No.546 of 2011 and allowed I.A.Nos.542 and 543 of 2011. While allowing I.A.No.543 of 2011, the Trial Court directed the respondent/defendant to pay a sum of Rs.2,000/- as cost to the petitioner/plaintiff on or before 05.09.2013. The learned counsel for the respondent/defendant submits that since the petitioner/plaintiff refused to receive the cost of Rs.2,000/-, the said amount has been deposited by the respondent/defendant to the credit of the suit O.S.No.153 of 1995. Aggrieved by the common order dated 23.08.2013 passed in I.A.Nos.542, 543 and 546 of 2011 in O.S.No.153 of 1995, these civil revision petitions have been filed.

4. Heard Ms.Gopika Nambiar, learned counsel for the petitioner and Ms.V.Sripriya, learned counsel for the respondent.

Discussion:

5. This Court has perused the affidavit filed in support of I.A.No.546 of 2011 filed by the petitioner/plaintiff seeking to condone the delay of 928 days in depositing the balance sale consideration as per the ex parte decree dated 20.01.2003. As seen from the affidavit, it is her admitted case that the petitioner was directed to pay the balance sale consideration of Rs.1,00,000/- and get the sale deed registered in her name under the ex parte decree dated 20.01.2003. But it is her case that in the copy of ex parte decree furnished to her, time was not fixed for depositing the balance sale consideration and further, she was under the impression that the balance sale consideration can be deposited within a reasonable time. She has also stated in her affidavit that a common friend, one Mahendran has been talking with the respondent/defendant for settlement, in order to pay the balance sale consideration and get the sale deed privately, as there were discrepancies in the boundaries and description of the property. It is also admitted by the petitioner that the respondent/defendant initially agreed to execute the sale deed and to receive the amount after

rectifying the defects in the description of the suit schedule property. But however, later on, he refused to receive the balance sale consideration by giving lame excuses. According to the petitioner, she believed the mediator as well as the respondent/defendant which resulted in the delay of 928 days in depositing the balance sale consideration as per the ex parte decree dated 20.01.2003.

6. In the affidavit filed in support of I.A.Nos.543 and 542 of 2011, the respondent/defendant who is the petitioner therein has stated that only due to his illness, he was unable to file the applications to set aside the ex parte decree on time. Further, he has stated that a legal notice through his advocate was also issued on 04.02.1994 calling upon the petitioner/plaintiff to pay the balance sale consideration and also cautioned the petitioner/plaintiff that if she failed to comply with the said legal notice, the respondent/defendant would be at liberty to sell the property to the third party without further notice and further, has stated that advance amount of Rs.50,000/- would be forfeited. According to the respondent/defendant, despite legal notice dated 04.02.1994, no reply was forth coming from the petitioner/plaintiff. With these reasons,

the respondent has filed application No.543 of 2011 seeking to condone the delay of 1458 days in filing an application to set aside the ex parte decree dated 20.01.2003 and I.A.No.542 of 2011 was filed to condone the delay of 1567 days in representing the application filed to condone the delay in filing an application to set aside the ex parte decree.

7. This Court has perused and examined the impugned common order and the Trial Court has also raised the reasons for passing of the impugned order as set out in paragraph 12 of the impugned order which reads as follows:

“12. The plaintiff has stated that since the time frame has not been mentioned in the decree she could not deposit the amount within one month. As stated supra in the Judgment itself it has been specifically mentioned that the balance sale consideration of Rs.1 lakh is to be deposited within one month. It is true that in the decree the said portion is left out. However as it is a conditional order the plaintiff ought to have verified the 'A' Diary and the Judgment, regarding the deposit of balance sale consideration. The petitioner has not mentioned the date in which she has obtained the Judgment and decree. In the Judgment as well as in

the 'A' diary the time granted for deposit has been specifically mentioned. The reasons stated by the plaintiff that she was trying for settlement through common friends goes to show that even after the suit has been decreed she was trying to settle the dispute with the defendant. The reasons stated by the plaintiff for non-depositing of balance sale consideration is not satisfactory. The huge delay has not been explained properly by the plaintiff. The contention of the defendant is that he was taking ayurvedic treatment at Kerala during 2003. The defendant has not produced any evidence to show that he was taking treatment during the relevant time at Kerala. However considering the age of the defendant and the relief claimed in the suit, i.e., for specific performance of contract of sale of immovable property, this court is of the view that an opportunity to be granted to the defendant to contest the case on merits. Even in the counter, the plaintiff has stated in Paragraph No.4 that the defendant has filed set aside petition on 19.02.2003 itself in S.R.No.2633 of 2003. The same has been produced by the plaintiff as Exhibit. The defendant has not furnished any particulars regarding the status of the said petition. However on perusal of the receive register it can be ascertained that a set aside petition

was filed in the present suit on 19.02.2003. However since the defendant has filed subsequent petition and he has not proceeded with the above petition, this court is of the view that the said issue need not be gone into now. In view of above circumstances this court is of the view that the petition is to condone the delay in depositing the sale consideration is to be dismissed. The petition to condone the delay in representing the Section 5 petition is to be allowed and the petition to condone the delay in filing set aside petition is to be allowed on payment of costs.”

8. As rightly observed by the Trial Court, under the Judgment and decree dated 20.01.2003, the petitioner was directed to deposit the balance sale consideration within one month. However, the petitioner has filed an application to condone the delay of 928 days in depositing the balance sale consideration. In a suit for specific performance, the petitioner must always be ready and willing to perform her part of the contract. As a prudent and bonafide purchaser, she ought to have paid the balance sale consideration immediately after the passing of the ex parte decree. In the instant case, it was not done, but the petitioner has filed an application to condone the inordinate delay of 928 days in depositing the balance sale consideration.

9. Even though the respondent/defendant has not produced any documentary evidence before the Trial Court to establish his illness, considering the fact that the suit is filed for specific performance, the Trial court has rightly allowed Application Nos.543 and 542 of 2011 filed by the respondent/defendant. Insofar as I.A.No.546 of 2011 is concerned, the Trial Court has rightly dismissed the same as the suit filed by the petitioner/plaintiff is a suit for specific performance and further, the delay being an inordinate one cannot be condoned by the Court.

10. For the foregoing reasons, this Court is of the considered view that there is no merit in these civil revision petitions. Considering the long pendency of the suit, the respondent/defendant is directed to file a written statement within a period of two weeks from the date of receipt of a copy of this Order and after completion of the pleadings, the Trial Court is directed to frame issues and dispose of the suit within a period of six months thereafter.

09.07.2019

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Index : Yes / No

Speaking/Non-Speaking orders

ABDUL QUDDHOSE. J,

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To

The Subordinate Judge, Poonamallee



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