

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 13.09.2019

ORDER PRONOUNCED ON : 20.09.2019

CORAM:

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

Civil Revision Petition (NPD) No.2857 of 2014

N.Rajendran

Petitioner

Vs

Narasimhan (died)

1. Radha

2. Yasodha

Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decretal order dated 26.06.2013 passed in I.A.No.346 of 2010 in O.S.No.55 of 1999 on the file of Subordinate Court, Dharmapuri.

For Petitioner : Mr.P.Valliappan

For Respondents : No appearance

ORDER

Aggrieved over the order passed in IA No.346 of 2010 in OS No.55 of 1999, the petitioner, who is the plaintiff in the above referred suit has preferred this Civil Revision Petition.

2. On 19.03.1999, the petitioner herein has filed a suit against one Narasimhan and seeks the relief of specific performance, directing the defendant to execute the sale deed in respect of suit schedule property, after receiving Rs.10,000/- as sale consideration. During the pendency of the Suit, as directed by the trial Court, the petitioner has not paid any batta for sending summons to the respondent. Hence, without any alternative, the learned Subordinate Judge, Dharmapuri has dismissed the suit filed by the petitioner on 08.01.2003. In the meantime, the defendant Narasihman died and thereby after impleading his legal representatives as 1st and 2nd defendants/respondents, the petitioner has filed an application under Section 5 of Limitation Act, in which he prayed to condone the delay of 2764 days in filing the application under Order 9 Rule 9 of CPC, to set aside the dismissal order passed by the learned Subordinate Judge, Dharmapuri. The learned Subordinate Judge, Dharmapuri after affording opportunity to the present revision petitioner/defendant had dismissed the application filed by the petitioner. Aggrieved over the said findings, the petitioner herein is before this Court with the present Civil Revision Petition.

3. The learned counsel appearing for the revision petitioner /plaintiff would contend that in these type of applications filed under Section 5 of Limitation Act, the period of delay is immaterial. The learned counsel further submitted that when sufficient cause was projected by the

petitioner, the Court below ought to have condoned the delay occurred. Moreover, the learned counsel relied upon the judgment of our Honourable Apex Court reported in 2017 12 SCC 840, wherein, our Honourable Apex Court has held in paragraph 11 as follows:-

11. The term "sufficient cause" is to receive liberal construction so as to advance substantial justice, when no negligence, inaction or want of bonafides is attributable to the appellants, the Court should adopt a justice-oriented approach in condoning the delay. In State of Nagaland V.Lipok Ao4, it was held as under: SCC p.757, para 8)

8.... Section 5 is to be construed liberally so as to do substantial justice to the parties. The provision contemplates that the court has to go in the position of the person concerned and to find out if the delay can be said to have resulted from the cause which he had adduced and whether the cause can be recorded in the peculiar circumstances of the case as sufficient."

4. In this occasion, it is to be necessary to bear in mind that the Hon'ble Apex Court, while at the time of deciding the issue in filing the land acquisition original petition, the conclusion as stated above, only after

considering the eligibility of the petitioner in availing the compensation. Applying the said principle in the case in our hand, the petitioner has filed a Suit, seeking the relief of specific performance. But in the present case, while at the time of dismissing the application filed by the petitioner, the learned Subordinate Judge has categorically mentioned the period of adjournments given to the petitioner for payment of batta, for sending notice to the defendants. In fact, it is pertinent to note that the suit filed by the plaintiff was adjourned 13 times, only for the purpose of receiving batta. More than that, for impleading the legal representatives of the deceased sole defendant, the case has been adjourned from 27.08.2002 to 08.01.2003 i.e for eight times. Only in the said circumstances, without any alternative, the court below has dismissed the suit on 08.01.2003 as "steps not filed and as abates". Apart from that, the petitioner has filed an application under Section 5 of limitation act to condone the delay of 2764 days, without mentioning any sufficient reason. In the affidavit filed in support of the petition, the petitioner has stated the reason as only because he is out of station, he has not met the counsel in time and file the petition. In fact, the said averment has not been substantiated with the relevant evidence.

5. Even though the liberal approach is necessary for deciding these type of applications, in order to advance substantial justice, the petitioners have to prove that there was no negligence and inaction on their part. But in this case, without showing any satisfactory explanation

for the delay of 2764 days, the petitioner has filed the application. So, the principle set out in the judgment referred above is entirely different from the case placed before this court. In the affidavit filed by the petitioner, nothing was averred for the delay, particularly for non-payment of batta and for non filing of the petition to set aside the abatement. Therefore, the order passed by the learned Subordinate Judge is well within the parameter of the law.

6. In view of the above discussions, I am of the opinion that there is no infirmity found in the order passed by the learned Subordinate Judge, Dharmapuri and the same is confirmed as such. Accordingly, the Civil Revision Petition is dismissed. No costs.

20.09.2019

vrn

To

The Subordinate Court, Dharmapuri.

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R.PONGIAPPAN, J.,

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**Pre-delivery Order in
Civil Revision Petition (PD) No.2857 of 2014**

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20.09.2019