

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2019

CORAM :

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.3045 of 2014

and

M.P.No.1 of 2014

The State of Tamil Nadu,
Rep.by District Collector,
Siluvampatty Village,
Namakkal Taluk & District.

...Petitioner

Vs.

K.Manimalan

...Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the judgement and decree dated 12.07.2012 passed in I.A.No.1290 of 2011 in O.S.No.10 of 2006 on the file of the Additional District Munsif Court, Namakkal.

For Petitioner : Mr.Dev Narendran
Government Advocate (CS)

For Respondent : Mr.D.Dhanya Kumar

ORDER

Challenging the order dated 12.7.2012 passed in I.A.No.1290 of 2011 in O.S.No.10 of 2006 on the file of the Additional District Munsif, Namakkal, the defendant has filed the above Civil Revision Petition.

2. The respondent/plaintiff filed the suit in O.S.No.10 of 2006 for a mandatory injunction. Since the defendant has failed to appear before the trial Court, the suit in O.S.No.10 of 2006 was decreed by the trial Court by judgment and decree dated 15.09.2006. Thereafter, the defendant, the District Collector, Namakkal District filed an application in I.A.No.1290 of 2011, to condone the delay of 1882 days in filing the application to set aside the exparte decree. In the affidavit filed in support of the petition, the defendant has stated that a letter sent by the Additional Government Pleader did not reach him and therefore, the written statement could not be filed. Hence, the defendant was set exparte and an exparte decree was passed. Further, the defendant has stated that he came to know about the exparte decree only when the Court Amin went to his office.

3. The reasoning given by the defendant for the inordinate delay of 1882 days cannot be accepted.

4. In the judgment reported in *(2015) 1 Supreme Court Cases 680 [H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and another]*, the Hon'ble Supreme Court held as follows:

“...
24.

When we apply those principles of *Bhattacharjee case [Esha Bhattacharjee v. Raghunathpur Nafar Academy, (2013) 12 SCC 649 : (2014) 1 SCC (Civ) 713 : (2014) 4 SCC (Cri) 450 : (2014) 2 SCC (L&S) 595]* to the case on hand, it has to be stated that the failure of the respondents in not showing due diligence in filing of the appeals and the enormous time taken in the refiling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bona fides as displayed on the part of the respondents. Further, when the respondents have not come forward with proper details as regards the date when the papers were returned for refiling, the non-furnishing of satisfactory reasons for not refiling of papers in time and the failure to pay the court fee at the time of the filing of appeal papers on 6-9-2007, the reasons which prevented the

respondents from not paying the court fee along with the appeal papers and the failure to furnish the details as to who was their counsel who was previously entrusted with the filing of the appeals cumulatively considered, disclose that there was total lack of bona fides in its approach. It also requires to be stated that in the case on hand, not refiling the appeal papers within the time prescribed and by allowing the delay to the extent of nearly 1727 days, definitely calls for a stringent scrutiny and cannot be accepted as having been explained without proper reasons. As has been laid down by this Court, courts are required to weigh the scale of balance of justice in respect of both the parties and the same principle cannot be given a go-by under the guise of liberal approach even if it pertains to refiling. The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the respondents not deserving any indulgence by the court in the matter of condonation of delay. The respondents had filed the suit for specific performance and when the trial court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the respondents were really keen to get the decree for specific performance by

filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered.

25. We, therefore, find total lack of bona fides in its approach and the impugned order [*Nahar Exports Ltd. v. Hardeep Kaur, Civil Misc. Nos. 11354-55 of 2012 in RFA No. 268 of 2012, order dated 16-12-2013 (Del)*] of the High Court in having condoned the delay in filing as well as refiling, of 9 days and 1727 days respectively, in a casual manner without giving any reason, much less acceptable reasons, cannot therefore be sustained. The appeals are allowed and the impugned order is set aside. Direction to admit the appeals of the respondents in RFAs Nos. 268-88 of 2012 and 319 of 2012 is also set aside and shall stand dismissed. No costs.”

5. In the ratio laid down by the Hon'ble Supreme Court in **(2015) 1 Supreme Court Cases 680**, squarely applies to the facts and circumstances of the present case. The defendant has not explained the reasons for the delay of 1882 days in a proper manner. The trial Court has rightly dismissed the application.

6. I do not find any error or irregularity in the order passed by the trial Court. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

05.04.2019

Index : Yes / No
Internet : Yes
Speaking order / Non Speaking Order
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To

The Additional District Munsif Court,
Namakkal.



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M.DURAISWAMY, J.

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