

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2019

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

C.R.P.(NPD) No.3490 of 2019

K.Narasimalu

... Petitioner

-Vs-

S.Krishnan

... Respondent

Prayer : Civil Revision Petition under Article 227 of the Constitution of India against the fair and decreetal order dated 08.08.2019 passed in I.A.No.607 of 2017 in O.S.No.130 of 2007 on the file of the learned District Munsif Judge, Sholinghur.

For Petitioner : Mrs.Vijayalakshmi K.Rajaratnam
For Respondent : Mr.A.Gowthaman

ORDER

This revision petition has been filed against the against the fair and decreetal order dated 08.08.2019 passed in I.A.No.607 of 2017 in O.S.No.130 of 2007 on the file of the learned District Munsif Judge, Sholinghur.

2. Before the Court below, the respondent filed a suit for specific performance against the revision petitioner and in the said suit, even though written statement was filed by the revision petitioner, subsequently he could not represent. Therefore, he was set exparte and the suit was decreed on 11.09.2012. In order to set aside the exparte decree, the application under Order IX Rule 13 was filed, where there has been a very huge delay of 1714 days. In order to condone the

said delay, the present application was filed under Section 5 of the Limitation Act. The said application, having been heard, was rejected by the impugned order, as against which the revision petitioner / defendant filed the present revision.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent, and also perused the materials placed on record.

4. Though the suit was laid for the purpose of specific performance, the learned counsel appearing for the revision petitioner / defendant has made submissions stating that, the very suit was laid based on a sale agreement dated 04.08.2004, which is in fact a revenue stamped receipt for receipt of Rs.90,000/- even though it has been styled as a sale agreement.

5. In this context, he would further submit that even in the year 2002 itself, the revision petitioner / defendant entered into a registered sale agreement with one Veera Thirumavalavan as early as on 05.07.2002 for a sale consideration of Rs.4,00,000/- for the subject land. When that being the position, absolutely there is no necessity for the petitioner to go with the sale agreement with the present plaintiff / respondent for the subject land only for a paltry sum of Rs.90,000/-. Therefore, it cannot be construed as a sale agreement.

6. Whatever be the issue. That can be decided only by adducing evidence

before the Court below. Therefore, this Court does not want to express any opinion on the same, since the present issue is only with respect to condoning the delay, as to whether the huge delay of 1714 days can be condoned.

7. In support of his application, the revision petitioner has filed an affidavit, where he has taken a stand that, he has been continuously taking treatment for several years at the hospital for Coronary Artery disease and he has been under continuous medical treatment for years together.

8. Though this reason has been given in the affidavit, it is pointed by the learned counsel for the respondent that despite this disease or illness since the revision petitioner had been working and after retirement on superannuation, he did not immediately come forward to this Court to set aside the exparte decree and he came only after three years. Therefore, the reason stated in the present application is not acceptable or plausible one and on that ground, the delay cannot be condoned.

9. Learned counsel for the respondent / plaintiff, submits that, pursuant to the exparte decree, no E.P has been filed to execute the same through the sale agreement between the parties and the respondent / plaintiff has been put in possession of the suit property, based on which patta has already been applied and obtained by the respondent plaintiff and he is continuously enjoying the property

and at the age of 78 years, the respondent / plaintiff need not be put into trouble by reopening the case for trial.

10. However, the learned counsel for the revision petitioner would submit that, the property is worth about more than Rs.10,00,000/- now, even the sale agreement in the year 2002 was for Rs.4,00,000/- and therefore, definitely the sale agreement allegedly made between the parties in the year 2004 only for Rs.90,000/- not at all can be treated as a sale agreement with enforceability. Therefore, the revision petitioner / defendant has got a good case to be agitated before the Court below and hence, chance may be given to the revision petitioner.

11. I have considered the said submissions made by the learned counsel appearing for both sides. Taking into consideration the overall issue as well as the position of the parties and the facts available in this case, this Court is inclined to condone the delay, even though it is 1714 days, on medical grounds, of course on terms. Since the delay is more than 1700 days, that should be compensated properly by way of paying hefty costs to the respondent / plaintiff. Accordingly, the delay of 1714 days can be condoned on terms.

12. In the result, the impugned order is set aside on condition that the revision petitioner shall pay Rs.35,000/- (Rupees Thirty Five Thousand only) to the respondent / plaintiff as costs-cum-compensation for the prejudice caused to the

respondent / plaintiff in condoning the said delay of 1714 days. Moreover, during all these years, as claimed by the respondent / plaintiff, he has been continuously enjoying the suit property, without having executed the sale deed in his favour pursuant to the exparte decree, as admittedly E.P., so far has not been filed by the respondent / plaintiff. That aspect also has been taken into account while passing the present order allowing the Civil Revision Petition.

13. The Civil Revision Petition is allowed accordingly on the above terms of payment of costs-cum-compensation and the same shall be made by the revision petitioner to the respondent within a period of 30 days from the date of receipt of a copy of this order, either to the party or to the counsel for the respondent.

18-11-2019

Index : Yes / No
Internet : Yes / No
KST

To

The District Munsif, Sholinghur.

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R. SURESH KUMAR, J.

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