



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.09.2019

CORAM :

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (MD) No.2003 of 2011

and

M.P. (MD) No.1 of 2011

1.Vijayakumari

2.S.Yagneswaran

... Petitioners/Petitioners 1 & 4/
Petitioners 1 & 4/Defendants 1 & 4

vs.

1.M.Veeranan

... 1st Respondent/Respondent/
Respondent/Plaintiff

2.S.Ragevendran

3.S.Ezhil arasi

... Respondents 2 & 3/Petitioners 2 & 3/
Petitioners 2 & 3/Defendants 2 & 3

Prayer:- This Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the order dated 29.06.2011 made in I.A.No.291 of 2010 in I.A.No.234 of 2006 in O.S.No.12 of 2005 on the file of the learned District Munsif Judge, Usilampatti.

For Petitioners : Mr.Vallinayagam senior counsel for
Mr.D.Sadiq Raja

For R1 : Mr.Niranjan S.Kumar

For R2 : Mr.N.Shanmugaselvam

For R3 : Disd

ORDER

The above Civil Revision Petition is filed challenging the order passed by the learned District Munsif Judge, Usilampatti in I.A.No.291 of 2010 in I.A.No.234 of 2006 in O.S.No.12 of 2005.

2.The defendants 1 and 4 are the petitioners before this Court.

3.The brief facts, which are necessary for disposing the above civil revision petition, are as follows:

<https://hcservices.ecourts.gov.in/hcservices/>



4.The first respondent herein/plaintiff had filed a suit in O.S.No.12 of 2005 for specific performance of an agreement of sale said to have been executed by the husband of the first petitioner herein/1st defendant and the father of the second petitioner herein/4th defendant on 07.04.1998.

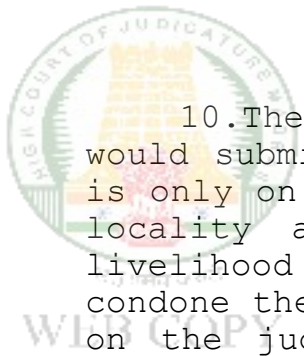
5.From the records, it is seen that though the petitioners/defendants 1 and 4 had entered appearance through their counsel before the Court below, they have not proceeded to contest the suit and ultimately, an ex parte decree came to be passed on 21.07.2005. Further, it is seen that the petitioners had filed a petition in I.A.No.234 of 2006 in O.S.No.12 of 2005 to set aside the ex parte decree with a delay of 4 days. It appears that in I.A.No.234 of 2006, though notice was ordered to the respondent/plaintiff by the Court below, the petitioners/defendants have failed to take steps to serve the respondent and ultimately, I.A.No.234 of 2006 came to be dismissed for default on 22.06.2007. Three years later, ie., in the month of July 2010, the petitioners/defendants have filed another application in I.A.No.291 of 2010 to restore the application in I.A.No.234 of 2006 with a delay of 1036 days.

6.The reason that has been given in the affidavit filed in I.A.No.291 of 2010 for condoning the delay of 1036 days is that after the death of the husband of the first petitioner herein/1st defendant, the petitioners/defendants 1 and 4 were not able to maintain themselves and therefore, they moved to Coimbatore to eke-out their livelihood and due to the same, they were unable to meet their counsel to proceed the case further. Meanwhile, I.A.No.234 of 2006 was dismissed for default and only at the time they met their counsel, they came to know about the dismissal of the said application and immediately thereafter, they have filed the application in I.A.No.291 of 2010 with a delay of 1036 days.

7.The said application was opposed by the respondent/plaintiff by stating that the petitioners/defendants had protracted the proceedings and that the sale had also been executed in favour of the plaintiff in E.P.No.9 of 2008 and that therefore, the clock cannot be set back.

8.The learned District Munsif, Usilampatti, taking note of the extraordinary delay found that the petitioners/defendants had not given adequate and sufficient reasons to condone the said delay and had proceeded to dismiss the said application and the same is the subject matter of the present petition. Challenging the said order, the revision petitioners/defendants 1 and 4 are before this Court.

9.Heard the learned counsel on either side and perused the papers.



10.The learned senior counsel appearing for the petitioners would submit that the delay of 1036 days in filing the application is only on account of the fact that the petitioners were not in the locality as they have moved away from their place for their livelihood and that the Court below should take more liberal view to condone the said delay. In support of his contention, he would rely on the judgment of this Court in the case of Meenakshisundaram Textiles Vs. Valliammal Textiles reported in 2011 (3) CTC 168.

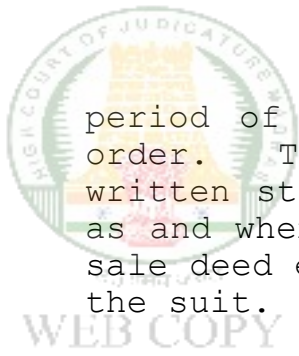
11.On the other hand, the learned counsel appearing for the respondents 1 and 2 would submit that the conduct of the petitioners would clearly indicate that they are attempting to drag on the proceedings. Further, he would submit that by the ex parte decree dated 21.07.2005, the first respondent/plaintiff has got the sale deed executed in his favour, and also obtained patta in his name and therefore, at this juncture, this Court cannot set the clock back.

12.It is no doubt true that the delay of 1036 days is inordinate but this Court should also take note of the said ex parte judgment, based on which execution petition has been filed and the sale deed was obtained by the plaintiff. Order XX Rule 4 CPC would clearly state that the judgments of the Courts shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision. However, the judgment in the instant suit does not conform with these requirements as provided under Order XX Rule 4 CPC and does not reflect the issues involved in the present case. In a suit for specific performance, the Courts have to definitely consider the fact as to whether the plaintiff has been ready and willing to perform his part of the contract and the judgment in question does not spell out whether the issue has been considered. The issue regarding readiness and willingness to perform the obligation under the contract is a sine qua non for a suit for specific performance.

13.Considering the fact that the judgment passed in O.S.No.12 of 2005 does not contain the essential ingredients of a judgment, though there is a delay on the side of the revision petitioners, this Court is inclined to allow this revision and the same is allowed and the order passed in I.A.No.291 of 2010 in I.A.No.234 of 2006 in O.S.No.12 of 2005 on the file of the learned District Munsif, Usilampatti, dated 29.06.2011, is hereby set aside.

14.However, taking into consideration the conduct of the revision petitioners in protracting the proceedings, they are directed to pay a sum of Rs.20,000/- to the learned counsel appearing for respondents 1 and 2, within a period of two weeks from the date of receipt of a copy of this order.

15.The learned District Munsif, Usilampatti on being shown proof of the payment of costs as directed above shall proceed with the revision petitioners in O.S.No.12 of 2005 and dispose of the same, within a



period of six months from the date of receipt of a copy of this order. The petitioners herein are also directed to file their written statement in the above suit, within a period of two weeks, as and when the suit in O.S.No.12 of 2005 is restored to file. The sale deed executed in favour of plaintiff shall await the outcome of the suit.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar(CS)

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To

The District Munsif,
Usilampatti.

+1 CC to M/s.NIRANJAN S. KUMAR, Advocate (SR-89332[F] dated 25/09/2019)

C.R.P. (MD) No.2003 of 2011
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JMN(24.10.2019) 4P : 3C