



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

C.R.P.NPD (MD)No.637 of 2012

and

MP(MD)No.3 of 2012

WEB COPY

Mohideen Pitchai (died)

1.I.Syed Mohamed

2.M.Meera Sait

:Petitioners/Petitioners/Plaintiffs 2 & 3

Vs.

1.V.Syed Abuthahir Ali

2.V.Kaja Mohideen

3.V.Ismail Khan

4.V.Syed Sulthan Ibrahim

5.Jamila Beevi

6.Rasathi Begam

7.Asaran Alima

8.Nasuka Begam

9.Sabira Begam

10.Pathamuthu Zora

: 1 to 10 Respondents/Respondents/
defendants 1-4 & 6-11

11.M.Sulika Beevi

12.M.Syed Abuthahir Oli

13.M.Beer Mohamed

14.M.Hidayathullah

15.M.Barakkath

16.M.Sathakkathullah

17.M.Uduman Ali

: Respondents/Plaintiffs 4-10

(Cause Title accepted vide order dated

24/02/2012 made in MP(MD)NO.1/12 in

CRP(MD)Sr.28197/11)

PRAYER: Civil Revision Petition under Section 115 of the Code of Civil Procedure against the fair and decreetal order dated 19.04.2011 made in I.A.No.291/2009 in O.S.No.214 of 2006 on the file of District Munsif, Theni.

For Petitioner : Mr.V.Janakiramulu

For Respondents : Mr.M.Senthilkumar for R1 to R3

ORDER

This Civil Revision Petition has been directed against the impugned decreetal order dated 19.04.2011 passed in I.A.No.291/2009 in O.S.No.214/2006 rejecting the request of the petitioner for setting aside the dismissal order dated 13.09.2006 dismissing the suit filed for specific performance.

2. Learned counsel for the petitioner would submit that the petitioner is one of the plaintiffs in O.S.No.214/2006 on the file of the District Munsif Court, Theni, which is filed for specific performance. The petitioner suffered an order of dismissal on 13.09.2006. However, he was unable to move any application for



restoration of the suit within the stipulated time. Finally, he moved an application in I.A.No.291/2009 seeking an order to condone the delay of 1021 days. Finding that there was no sufficient cause shown for condoning the delay, the same was dismissed on 19.04.2011. Though the petitioner was under the bonafide impression that the other plaintiffs would be taking care of his plaint, they have deliberately left out the interest of the petitioner. This was also brought to the notice of the Court below. But this has been completely overlooked and as a result, the request for condoning the delay of 1021 days has not been appreciated. When nine other plaintiffs are prosecuting one suit in O.S.No.214/2006, no prejudice would be caused to anyone by condoning the delay of 1021 days and therefore, the Civil Revision Petition be allowed and the suit, in respect of the petitioners/plaintiffs, be restored, the learned counsel contended.

3. But, this Court finds very difficult to accept the submissions made by the learned counsel for the petitioner.

4. The reason being that when a suit for specific performance was filed, time is the essence of the agreement. But, in the present case, the petitioner/plaintiff along with nine other plaintiffs has not taken care of the suit and accordingly, the suit came to be dismissed. Since the petitioner did not prosecute the suit and even the other plaintiffs also have not taken care of the interest of the petitioner, a huge delay of 1021 days has occurred and hence, the petitioner moved an IA No.291/2009 seeking condonation of the delay of 1021 days to restore the suit. The trial Court, having taken note of the fact that there was huge delay of more than three years and no sufficient cause was shown, rightly dismissed the said petition. This Court, also taking note of the fact that the suit filed for specific performance, is of the considered view that there cannot be delay of 1021 days in taking out an application for restoration. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

RR

To

The District Munsif, Theni.

+1CC To Mr.M.Senthilkumar, Advocate, Sr.No.103988

SMA/31/01/2020/2P/3C

CRP (NPD) (MD)No.637 of 2012

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