

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (NPD) No.2811 of 2018 and
CMP No.16440 of 2018

P.Kengadevi

.. Petitioner

Vs.

1. R.Kalaifarasi
2. R.Valarmathi @ Chitra

... Respondents

Prayer: Civil Revision petition filed under Article 227 of the Constitution of India, against the order dated 06.04.2017 made in I.A.No.394 of 2015 in O.S.No.147 of 2012 passed by the learned Principal Subordinate Judge, Puducherry.

For Petitioner : Mr.R.Thiagarajan

For Respondents : Mr.C.T.Mohan

ORDER

The 2nd defendant in O.S.No.147 of 2012, a suit for specific performance, whose application for condonation of delay of 651 days in filing

an application to set aside an exparte decree was dismissed by the trial Court is on revision.

2. I have heard Mr.R.Thiagarajan, learned counsel appearing for the petitioner and Mr.C.T.Mohan, learned counsel appearing for the 1st respondents/plaintiff.

3. The suit was laid by the plaintiff seeking specific performance of an agreement of sale, dated 15.10.2009. According to the plaintiff the 1st defendant namely the owner of the property had agreed to sell the property to her for a consideration of Rs.1,60,000/- and has received an advance of Rs.95,000/- on the date of agreement. The balance of sale consideration is payable within six months from the date of the agreement. Claiming that despite demands, the 1st defendant did not come forward to execute the sale deed and the 1st defendant has sold the property to the 2nd defendant on 15.02.2010, disregarding the agreement, the plaintiff has sued for specific performance.

4. The defendants remained exparte and an exparte decree came to

be passed in the suit on 03.12.2013. Thereafter, the 2nd defendant (Subsequent purchaser) alone came up with the application to set aside the exparte decree. There was a delay of 651 days in setting aside the exparte decree. The reasons for the delay were that upon receipt of the notice, she had required the 1st defendant about the details of the suit and the 1st defendant had informed her that it is only loan transaction and she would satisfy the debt and get the suit withdrawn and the 2nd defendant need not be worried by the suit.

5. It is the contention of the 2nd defendant that she believed the 1st defendant and had not chosen to prosecute the suit. It is also claimed that the entire transaction is a loan transaction and there is substantial delay in filing the suit. The said request for condonation of delay was resisted by the plaintiff contending that there was no proper explanation for the delay. The suit has been decreed as early as on 03.12.2013 and the 2nd defendant who is a subsequent purchaser and not a party to the agreement has no *locus standi* to seek to set aside the exparte decree.

6. The trial Court upon a consideration of the facts and circumstances of the case, agreed with the second contention and concluded that the 2nd defendant did not have locus standi to have the exparte decree set aside and dismissed the application.

7. Mr.R.Thiagarajan, learned counsel appearing for the petitioner, would submit that a subsequent purchaser is a necessary party to the suit for specific performance. He would also draw my attention to the Judgement of the Hon'ble Supreme Court in ***Lala Durga Prasad and another Vs. Lala Deep Chand and others*** reported in ***AIR 1954 SC 75*** wherein the Hon'ble Supreme Court had approved that the correct form of a decree in a suit for specific performance is the one that would require the subsequent purchaser also to join the execution of the Sale Deed.

8. According to Mr.R.Thiagarajan, learned counsel appearing for the petitioner, in view of the Judgement of the Hon'ble Supreme Court, a subsequent purchaser is a necessary party to the suit for specific performance and without he being made a party to the Sale Deed to be executed by the

Court valid title will not pass on to the plaintiff. Therefore, according to Mr.R.Thiagarajan, the reasoning of the trial Court for dismissing the application cannot be sustained.

9. Mr.C.T.Mohan, learned counsel appearing for the respondents while conceding that the subsequent purchaser is a necessary party to the suit, would contend that the delay has not been properly explained. All that the 2nd defendant has said that as a reason for enormous delay of 651 days is that she believed the 1st defendant. This reason according to Mr.C.T.Mohan, is wholly insufficient for condoning a long delay of 651 days. Mr.C.T.Mohan would also draw my attention to the prayer in the suit where a relief to cancel the sale deed in favour of the 2nd defendant has been sought for.

10. I have considered the rival submissions.

11. As already stated, the suit is one for specific performance and the sale in favour of the 2nd defendant is on 15.02.2009. The suit itself came to be filed some time in 03.10.2012. The exparte decree was passed on 03.12.2013. The 2nd defendant would claim that she came to know about the decree when notice in I.A.No.1212 of 2014 was served on her. This

application was filed in October 2015.

12. The Hon'ble Supreme Court, in *University of Delhi Vs. Union of India and another* reported in *2019 SCC on line 1634* has held that the Court should not adopt a very strict approach in matters of delay particularly the valuable rights of parties. After referring to the Judgment in *Collector, Anantnag Vs. Kattiji* reported in *100 LW 676*, the Hon'ble Supreme Court has held that if the reason offered is plausible and is not shown to be false or malafide, the Court should always lean in favour of condoning the delay as the opposite party cannot claim a vested right in injustice. Applying the said principles laid down by the Hon'ble Supreme Court, if we are to look at the explanation offered by the 2nd defendant for the delay, I must conclude that the delay has been satisfactorily explained. After all the 2nd defendant is a subsequent purchaser and she would claim that she had met the 1st defendant after receipt of notice and the 1st defendant informed her that it is only a loan transaction and she would repay the loan and get the suit withdrawn. This reasoning of the 2nd defendant has not been shown to be totally false or unbelievable.

13. In view of the same, I am satisfied that the 2nd respondent has explained the delay satisfactorily and deserves a chance to contest the suit on merits. She being a subsequent purchaser, she is always entitled to take the defence that she is a bonafide purchaser for value without notice of the pre-existing agreement. This defence available to the subsequent purchaser is a substantial defence in a suit for specific performance.

14. I, Therefore, do not see any reason to deny an opportunity to the 2nd defendant to contest the suit. For the foregoing reasons, the order of the trial Court is set aside. The Civil Revision petition stands allowed and the application in I.A.No.394 of 2015 in O.S.No.147 of 2012 on the file of the learned Principal Subordinate Judge, Puducherry will stand allowed. The delay of 651 days in seeking to set aside the exparte decree is condoned, subject to however, the petitioner paying a sum of Rs.5,000/- (Rupees five thousand only) towards cost on or before 05.10.2020. The cost shall be paid to the counsel appearing before this Court and upon production of the receipt, the trial Court will proceed to number the application under Order 9 Rule 13

of Code of Civil Procedure and dispose of the same on merits. Consequently,
connected miscellaneous petition is closed.

07.09.2020

Note : Time bound order

vum

Index: Yes/No

Speaking order / Non speaking order

To

The Principal Subordinate Judge,
Puducherry.



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R.SUBRAMANIAN, J.

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