

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No. 90 of 2018
in
C.M.P.No. 421 of 2018

A.Jothirmahalingam ..Petitioner/Petitioner

Vs.

S.Santhi ..Respondent/Respondent

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, seeking to set aside the fair and decreetal order dated passed in I.A.No. 1 of 2017 in unnumbered C.M.A dated 27.07.2017 on the file of the Principal District Juge, Vellore.

For Petitioner : Mr.PA.Sudesh Kumar

For Respondent : Mr.V.Raghavachari

O R D E R

This Civil Revision Petition has been filed by the petitioner challenging the order made by the Principal District Judge,Vellore refusing to condone the delay of 256 days in filing the Civil Miscellaneous Appeal.

2. The necessity to file a Civil Miscellaneous Appeal arose in finding factual backdrop. The respondent herein filed a suit for specific performance in O.S.No. 114 of 2014. An exparte decree came to be passed in the said suit on 27.02.2015. Almost immediately on 10.03.2015, an application was filed to set aside the exparte decree in I.A.No. 33 of 2015. The said application came to be dismissed by the Trial Court on 29.10.2015. It should be pointed out that the exparte decree came to be passed even before the expiry of the 90 days time that is available to

the defendant, under law, to file a written statement.

3. The Trial Court, however, dismissed the IA by an order dated 29.10.2015. Aggrieved by the same, the petitioner preferred an appeal before the Principal District Court, Vellore. There was a delay of 256 days in filing the appeal. The petitioner sought for condonation of delay claiming that the petitioner had intended to file a revision against the order and he was advised that only an appeal would lie. It is also stated in the affidavit filed in support of the application that the petitioner was assaulted by the four unknown persons on 08.09.2016 in which he was severely injured and that he has also preferred a police complaint regarding the said incident. It is further stated that the petitioner was admitted in the hospital and was taking treatment. The petitioner and his family members were put to lot of mental stress and strain because of the attack of the gangsters. All these incidents prevented the petitioner from filing the appeal in time.

4. The said application was opposed contending that the EP notice was served on the petitioner in the same address and the sale deed was also executed by the executing Court in favour of the respondent. The learned Appellate Judge dismissed the application on a pedantic approach. This Court as well as the Hon'ble Supreme Court have been repeatedly pointing out that the Court should be liberal in considering the matter of delay, more so, when substantial rights of the parties are involved.

5. In the case on hand, the suit is one for specific performance. The learned Appellate Judge, in my opinion, must have adopted a more liberal approach. The Principal District Judge had stated that the I.A.33 of 2015 was dismissed on 29.10.2015 and the petitioner was attacked by the gangsters only on 08.09.2016 that is nearly after a year and therefore, delay in filing the application has not been explained properly. The learned Appellate Judge has not adverted to the further reason given that the petitioner had entrusted the papers with a counsel at Chennai for filing a revision and he was later advised that the revision would not lie and appeal should alone be filed. The Principal District Judge has also taken note of the fact that the sale deed was executed. Even if sale deed had been executed, equities can work out between the parties after the disposal of the suit on merits in the event the exparte decree is set aside. I am therefore, of the considered opinion that the order of the Principal District Judge, Vellore is liable to be set aside and it is accordingly set aside. The delay of 256 days in filing the appeal will stand condoned. This civil revision petition is allowed. Consequently, connected miscellaneous petition is closed.

6. The Principal District Court, Vellore is directed to number the appeal and proceed with the same in accordance with law dispose of the appeal at the earliest on a priority basis.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkn

To:-

The file of the Principal District Judge, Vellore.

+lcc to Mr.V.Raghavachari, Advocate, sr no.26641

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SR (CO)

RMP (08/12/2020)



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