

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.1484 of 2020

Karuppannan

S/o late C.Ettianna Gounder

.. Appellant

-vs-

1. Eswaramurthy

S/o late Kuppa Gounder

2. Lakshmi

W/o late Kuppa Gounder

3. Latha

W/o Balu

4. Kuppayee

W/o Arthanari Gounder

.. Respondents

Prayer: Memorandum of Grounds of Civil Miscellaneous Appeal filed under Order XLIII, Rule 1(c) of the Code of Civil Procedure, against the fair and decretal order dated 27.11.2019 made in I.A.No.1 of 2019 in O.S.No.289 of 2010 on the file of the IV Additional District and Sessions Court, Bhavani.

For Appellant :: Mr.N.Manokaran

JUDGMENT

Heard learned counsel for the appellant through video conferencing due to the Covid-19 pandemic.

2. This civil miscellaneous appeal has been directed against the impugned fair and decretal order dated 27.11.2019 passed in I.A.No.1 of 2019 in O.S.No. 289 of 2010 by the learned IV Additional District and Sessions Judge, Bhavani.

3. Mr.N.Manokaran, learned counsel appearing for the appellant/plaintiff pleaded that the appellant/plaintiff filed the suit in O.S.No.289 of 2010 before the District Court, Erode seeking for the relief of specific performance against the respondents/defendants. After filing of the suit, the first respondent/first defendant also filed the written statement denying the transaction that took place between the parties. Although the written statement has mentioned that the agreement has been created, the suit was dismissed for default on 4.1.2017. Immediately after the trial Court dismissed the suit for default on 4.1.2017, an application in I.A.No.1 of 2019 in O.S.No.289 of 2010 has been filed under Order 9, Rule 9 read with Section 151 of the Code of Civil Procedure. When the matter was taken up after two years for hearing, the delay thereon cannot be attributed either on the appellant/plaintiff or on his counsel. But the trial Court, taking a stand that although an application under Order 9, Rule 9 of the Code of Civil Procedure has been filed within time to set aside the dismissal order dated 4.1.2017, dismissed the application on the ground that two years time has been taken to list the matter for hearing. Therefore, the delay in listing the matter cannot be fastened on the counsel or on the appellant/plaintiff, he pleaded.

4. Here is the place where this Court is unable to support the said argument. The reason being that the suit for specific performance filed by the appellant/plaintiff was dismissed for default on 4.1.2017. It is the own case of the appellant/plaintiff that he immediately filed an application under Order 9, Rule 9 read with Section 151 of the Code of Civil Procedure for restoring the suit. When the said interlocutory application was diligently filed within time, it is not known why the very same plaintiff or his counsel has slept over this matter for two long years. Therefore, the trial Court, finding fault with the huge delay in bringing up the matter for restoration, has rightly refused the prayer of the appellant/plaintiff for allowing the interlocutory application filed under Order 9, Rule 9 read with Section 151 of the Code of Civil Procedure.

5. However, Mr.N.Manokaran, learned counsel appearing for the appellant pleaded that, taking note of the fact that the appellant/plaintiff is aged about 80 years, some leniency can be shown.

6. But the Limitation Act does not discriminate between a senior citizen or an adult and then, in the event of a senior citizen coming to the Court, some leniency can be shown. When the appellant/plaintiff has filed the interlocutory application within time to restore the suit, it is not known why he kept

quiet for two long years. Therefore, the delay, which has been considered as long one and highly belated, cannot be condoned. Delay defeats justice. Appellant's own delay caused his defeat. Hence, finding no infirmity with the impugned decretal order, the civil miscellaneous appeal fails and it is dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ss

To
The IV Additional District and Sessions Judge
Bhavani

+1 cc to M/s.n.Manokaran, Advocate Sr.No. 32089

C.M.A.No.1484 of 2020

SSV(CO)
RMP (02/11/2020)



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