

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.R.P.(NPD).No.232 of 2017

1. Rajakumar  
2. Vijayakumari  
3. Vijaykumar .... Respondents/Plaintiffs/Petitioners

-VS-

K.Panneerselvi ... Petitioner/Defendant/Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 26.09.2016 passed in I.A.No.292 of 2013 in O.S.No.468 of 2007 on the file of the Principal Subordinate Judge, Tirupur.

For Petitioners : Mr.T.S.Baskaran

For Respondent : M/s.T.M.Hariharan

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**ORDER**

Challenging the fair and decreetal order passed in I.A.No.292 of 2013 in O.S.No.468 of 2007 on the file of the learned Principal Subordinate Judge, Tirupur, the petitioners have filed the above Civil Revision Petition.

2. Plaintiffs / petitioners herein had filed a suit in O.S.No.468 of 2007 for specific performance, in which an exparte decree was passed on 27.04.2012 in favour of the plaintiffs. Aggrieved by the same, the defendant filed an application in I.A.No.292 of 2013 for condonation of delay of 67

days in filing the petition to set aside the exparte decree dated 27.04.2012, on the ground that since the defendant was suffering from stomach pain and taking treatment, she was not able to represent the suit. The Trial Court has allowed the said application on payment of cost of Rs.5,000/- to the petitioners herein.

3. Learned counsel for the petitioners / plaintiffs has submitted that after the exparte decree dated 27.04.2012 was set aside, the plaintiffs have filed their counter in I.A.No.292 of 2013 stating that the reason given for 67 days delays in filing the petition to set aside the exparte decree is not bonafide and moreover, the petitioners also deposited the balance sale consideration and filed an execution petition in E.P.No. 80 of 2012 on the basis of the exparte decree. It is further submitted that a case has been registered against the defendant in Crime No.618 of 2012 on 07.05.2012 by Tiruppur Police Station for the offence of trespass and the second plaintiff has already filed writ petition before this Court in W.P.No.29043 of 2012.

4. It is also stated by the learned counsel for the petitioners that the delay has also not been correctly calculated and that there is a delay of 275 days and not 67 days. Hence, it was prayed before the Trial Court that on that ground also, the application ought to be dismissed. The Lower Court, after taking into consideration the submissions of both the parties, held

that there is a sale agreement on 19.09.2005 and defendant / respondent was set exparte not once, but twice, as she was set exparte for the first time for non filing of the written statement and after restoring the petition, the same was filed. Subsequent thereto, another exparte decree was passed on 27.04.2012, which is the subject matter of the present Civil Revision Petition. However, the Lower Court has accepted that the calculation of number of days in filing the petition is correct and that the reason given for non appearance was accepted.

5. The Hon'ble Supreme Court in the case of H.Dohil Constructions Company Private Limited vs. Nahar Exports Limited and Another reported in (2015) 1 SCC 680, while discussing the delay aspect, observed as under:

“20. In the case on hand, the delay in refiling was of 1727 days. As rightly pointed out by the learned Senior Counsel for the appellant(s), the respondents paid the scrutiny charges on 11.04.2008 as disclosed in Receipt No.73 issued by the High Court of that date. When the appeal papers were filed on 06.09.2007 and the scrutiny charges were paid on 11-04-2008, it was quite apparent that the processing of papers of the appeals for its registration did commence in the month of April 2008. Thereafter, if rectification of whatever defects were not carried out by the respondents or its counsel between April 2008 and May 2012, it is the bounden duty of the respondents to have

satisfactorily explained such a long delay in refiling. When we refer to the applications filed on behalf of the appellant(s), we find that there was no convincing explanation as to how the respondents were disabled from rectifying the defects pointed out by the Registry and refiling the appeal papers within time. The respondents only attempted to throw the blame on the previous counsel to whom appeal papers were entrusted for filing in September 2007. As pointed out by the learned Senior Counsel for the appellant(s), there were no details as to whom it was entrusted and what were the steps taken to ensure that the appeals filed were duly registered for pursuing further remedy as against the said judgment of the trial court. As a matter of fact the appeal papers were filed without payment of any court fee. This only affirms the stand of the appellant(s) that there was no bonafide in the respondents' claim and that they were seriously interested in challenging the Judgment of the trial court as against the non-grant of relief of specific performance. We also fail to see as to who Respondent 1, which is a limited company involved in the business of exports, which would certainly have its own legal department, can plead that after entrusting the papers to some counsel whose name was not disclosed even before this Court did not even bother to take any follow-up to ensure that its appeals were duly registered in the High Court. In this context the maxim *vigilantibus non dormientibus jura subveniunt* (law assists those who are vigilant and not those who sleep over their rights) aptly applies to the case on hand. The respondents simply by throwing the blame on the previous counsel whose identity was not disclosed claimed that irrespective of the enormous delay of

1727 days in refiling the same should be condoned as a matter of course as there was only 9 days' delay involved in filing the appeals.

24. When we apply those principles of Bhattacharjee Case to the case on hand, it has to be stated that the failure of the respondents in not showing due diligence in filing of the appeals and the enormous time taken in the refiling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bona fides as displayed on the part of the respondents. Further, when the respondents have not come forward with proper details as regards the date when the papers were returned for refiling, the non-furnishing of satisfactory reasons for not refiling of papers in time and the failure to pay the Court fee at the time of the filing of appeal papers on 06.09.2007, the reasons which prevented the respondents from not paying the court fee along with the appeal papers and the failure to furnish the details as to who was their counsel who was previously entrusted with the filing of the appeals cumulatively considered, disclose that there was total lack of bona-fides in its approach. It also required to be stated that in the case on hand, not refiling the appeal papers within the time prescribed and by allowing the delay to the extent of nearly 1727 days, definitely calls for a stringent scrutiny and cannot be accepted as having been explained without proper reasons. As has been laid down by this Court, courts are required to weigh the scale of balance of justice in respect of both the parties and the same principal cannot be given a go-by under the guise of liberal approach even if it pertains to refiling. The filing of an

application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the respondents not deserving any indulgence by the court in the matter of condonation of delay. The respondents had filed the suit for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered.”

6. It is seen that the Trial Court, on perusal of the entire materials available on record before it, came to the conclusion that the delay has been properly explained by the defendant / respondent herein and accepting the same, the application filed by the defendant was allowed in the interest of justice, which, according to me, is perfectly valid and warrants no interference by this Court.

7. In the result, the Civil Revision Petition stands dismissed and the suit is restored on file on payment of further cost of Rs.10,000/- over and above Rs.5,000/- which shall be payable within a period of three weeks

**S.VAIDYANATHAN,J.**

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from the date of receipt of a copy of this order to the plaintiffs / petitioners herein. Since the matter is of the year 2007, the Trial Court is directed to take up the matter and proceed with the same on day to-day basis without adjourning the matter beyond three working days at any point of time and bring the issue to a logical end within nine months from the date of receipt of a copy of this order. It is made clear that in case either of the parties seeks adjournment before the Trial Court except the ground of death in the family, a cost of Rs.3,000/- shall be imposed on the party seeking adjournment for each and every hearing. It is clarified that the purpose of imposition of costs is to ensure speedy trial of the matter pending before the Lower Forum. No costs.

Index: Yes / No  
Internet: Yes / No  
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To:

The Principal Subordinate Judge,  
Tiruppur.

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