

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.03.2020

Coram

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CRP (NPD) No.3984 of 2019

and

CMP No.26235 of 2019

1. A.Kanagavalli

2. R. Valarmathi

... Petitioners

Vs.

1. The Secretary,
Chengalpattu Co.op. Housing Society,
Door No.1/13, 1st Main Road,
50 Feet Road, Anna Nagar,
Chengalpattu, Kancheepuram.

2. The Special Officer,
Chengalpattu Co.op. Housing Society,
Door No.1/13, 1st Main Road,
50 Feet Road, Anna Nagar,
Chengalpattu, Kancheepuram.

3. The Sub Registrar,
Chengalpattu Co.op. Housing Society,
Door No.1/13, 1st Main Road,
50 Feet Road, Anna Nagar,
Chengalpattu, Kancheepuram.

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 17.09.2019 made in I.A.No.347 of 2018 in Co.Op.CMA. No.4 of 2012 on the file of the Principal District Judge, Kancheepuram at Chengalpattu.

For Petitioners : Mr.T.Dhanasekaran

For Respondents : Mr.R.Kamaraj - R1

Ms.R.Girija - R2 & R3

Additional Government Pleader

ORDER

This Civil Revision Petition has been filed to set aside the order and decretal order dated 17.09.2019 made in I.A.No.347 of 2018 in Co.Op.CMA. No.4 of 2012, on the file of the Principal District Judge, Kancheepuram at Chengalpattu.

2. The petitioners herein have filed the Co.Op.CMA. No.4 of 2012 on the file of the Principal District Judge, Kancheepuram at Chengalpattu for setting aside the impugned order in ARC. No.11/2004-2005, dated 25.07.2009 which was passed by the third respondent and the same is dismissed for default on 12.06.2015. Challenging the order in Co.Op.CMA. No.4 of 2012, the petitioners herein have filed an Application in I.A.No.347 of 2018 before the Principal District Judge, Chengalpattu to restore the above said Co.Op.CMA. No.4 of 2012. The said application was dismissed by the Trial Court on 17.09.2019 on the ground that the petitioners have filed the application with a delay of 510

days. Challenging the above said order, the present civil revision petition has been filed.

3. The learned counsel appearing for the petitioners submitted that due giddiness of sugar and high blood pressure, the petitioners could not present before the trial Court on the date of hearing. While dismissing the application for restoration of CMA, which was already condoned by the Court below as well as this Court in W.P.No.1151 of 2010 with liberty to file an application to condone the delay in preferring the CMA, since the petitioners were prosecuting the matter before this Court in writ proceedings instead of approaching the Appellate Court. The trial court ought to have condoned the delay of 50 days in filing the petition for restoration of CMA, which was dismissed for default on 12.06.2015. However, the Trial court has erroneously dismissed the application and hence the order of the Trial Court is liable to be set aside.

4. The learned counsel appearing for the first respondent submitted that the public auction notice was issued to the petitioners on 25.07.2009. But the petitioners have not taken any steps to discharge the loan amount.

After lapse of three years, the petitioners filed the petition before this Court to condone the delay of 510 days. This Court was pleased to direct the petitioners herein to pay the loan amount on condition that the delay was condoned. In spite of repeated adjournments, the I.A.No.29 of 2011 was dismissed for default on 12.06.2015. Thereafter, the petitioners herein have filed an application in I.A. No.98 of 2013 to restore the appeal with a delay of 50 days. Again the petitioner have not argued the case and that therefore, the learned Principal District Judge, Chengalpattu dismissed the same. Against the order, the petitioners have filed this revision, does not warrants any interference of this Court.

5. The learned counsel for the third respondent has also adverted the statements made by the first respondent.

6. Heard the learned counsel for the petitioners as well as the respondents and perused the materials available on record.

7. According to the petitioners that they have already been paid 50% of loan amount to the respondent's society and due to the illness of

the petitioners, they were not appeared before the Court below while hearing. In view of the submissions made by the learned counsel for both the parties, this Court is inclined to pass the following order:-

i) The order passed by the Trial Court in I.A.No.347 of 2018 in Co.Op. CMA No.4 of 2012 on the file of the Principal District Judge, Kancheepuram, Chengalpattu dated 17.09.2019 is set aside.

ii) The Principal District Judge, Kancheepuram, Chengalpattu is directed to dispose of the Co.Op. CMA No.4 of 2012 on merits and in accordance with law, as expeditiously as possible or within a period of twelve weeks from the date of receipt of a copy of this order.

8. With the above directions, this Civil Revision Petition is allowed. No costs. Consequently, Connected miscellaneous petition is closed.

WEB COPY

16.03.2020

Index : Yes/No

Internet: Yes/No

Speaking order/Non Speaking order

rli

CRP (NPD) No.3984 of 2019

D.KRISHNAKUMAR, J.

rli

To

The Principal District Judge,
Kancheepuram, Chengalpattu.



CRP (NPD) No.3984 of 2019
and
CMP No.26235 of 2019

16.03.2020

WEB COPY