

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(NPD)No. 3651 of 2018

and

C.M.P.No. 20327 of 2018

1.Murugesan
2.Jaganathan
3.Sankar

...Petitioners

Vs.

Subramani

....Respondent

Prayer: Civil Revision Petition filed under Section 115 of C.P.C., against the fair and final orders of the learned Sub-Ordinate Judge, Uthangarai dated 09.02.2018 in I.A.No. 166 of 2017 in O.S.No. 123 of 2014.

For Petitioners : Mr.J.Hariharan for V.Nicholas

For Respondent : Mr.R.Agilesh

ORDER

The petitioners, who are the defendants in O.S.No. 123 of 2014 are on revision challenging the order dismissing their application for condonation of delay of 193 days in seeking to set aside the exparte decree

made in the said suit.

2. The suit is one for specific performance. It was originally instituted on the file of the Sub-Court, Krishnagiri thereafter, it was transferred to Sub-Court, Uthangarai and renumbred as O.S.No. 123 of 2014. Upon transfer to the Sub-Court, Uthangarai, notice was served upon the parties. Since the defendants did not appear, they were set exparte and the exparte decree came to be passed on 16.06.2016. Claiming that the defendants could not keep track of the proceedings since they lost their relative and they could not follow up the proceedings with the counsel, the delay of 193 days was caused.

3. This application was resisted by the plaintiff contending that the defendants have not given sufficient explanation for the delay. According to the plaintiff, it is only with a view to drag on the proceedings, this application has been filed. It is also claimed that the defendants had filed an earlier application seeking condonation of delay of 95 days on 19.10.2016 and the same was returned. Subsequently, the present

application which has been filed for condonation of delay of 193 days without representing the earlier application, is not maintainable.

4. The learned Trial Judge, upon consideration of the averments made in the affidavit and the counter affidavit concluded that the defendants have not made out sufficient cause for condonation of delay. The learned trial Judge also took note of the fact that an earlier application was filed and the same was not represented.

5. I have heard Mr.J.Hariharan, learned counsel for the petitioners and Mr.R.Agilesh, learned counsel appearing for the respondent.

6. Mr.J.Hariharan, learned counsel appearing for the petitioners would vehemently contend that the Court should have adopted a liberal approach when the suit is one for specific performance and valuable right to property is involved. He would also submit that non-representation of the earlier petition was the mistake of the said counsel and it is because of the said mistake the petitioners were forced to file the second application with a

longer delay. He would also point out that the plaintiff claims to have been put in possession of the property pursuant to the agreement and therefore even if the exparte decree is set aside, the plaintiff will not be prejudice because he claims to be in possession and enjoyment of the property that is subject matter of the suit.

7. Contending contra, Mr.R.Agilesh, learned counsel appearing for the respondent would submit that no reason has been assigned by the petitioners for the delay of 193 days. He would also point out that the fact that the earlier application was filed was suppressed in the affidavit filed in support of the instant application. He would also point out that the defendants 1 to 3 namely, the petitioners before the Trial Court have sold the properties to the 5th defendant and since they did not have any interest over the property, they cannot seek to set aside the exparte decree. I have considered the rival submission.

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7. The reasons assigned by the petitioners for the delay is that one of their relatives died on the hearing date and they could not contact the

counsel immediately and due to communication gap, the delay had occurred. This is vehemently denied by the plaintiff. It is also pointed out that, in fact, the petitioners have filed an application on 19.10.2016 seeking condonation of delay of 95 days in filing an application to set aside the exparte decree and the same was returned on 24.10.2016. They have not chosen to represent the application and they have come up with fresh application seeking condonation of delay of 193 days. The fact that the petitioners have not chosen to represent the application filed on 19.10.2016 will not prevent them from seeking condonation of longer delay. It is common knowledge that the filing of papers into Court, return of papers and representing are the matters between the Court and the counsel. The parties are even unaware of the technicalities and complications involved in such presentation and representation of the case.

9. Finding that the earlier counsel who had filed an application had not responded the petitioners have come up with the present application for condonation of delay on 19.10.2016. I do not think that the trial Court was right in imputing knowledge of the procedural wrangles on petitioners

and non suiting them particularly in matters of delay, that too, in seeking to set aside the exparte decree for specific performance.

10. Even though the reasons assigned may not be fully satisfactory, I am of the considered opinion that the suit being one for specific performance and valuable right to property is involved, the defendants should be given a chance to contest the suit on merits, more so when the plaintiff, decree holder claimed that he has paid the entire amount, he is also in possession of the property, no prejudice would be caused to him.

10. I therefore, find that the order of the trial Court should be interfered with and hence this revision is allowed, the order of the trial Court is set aside, the delay of 193 days in filing an exparte decree is condoned on condition the petitioners pay a sum of Rs.5,000/- as cost to the counsel for the respondent appearing before the trial Court on or before 25.01.2021. On payment and production of receipt, the trial Court will number the application filed under Order IX Rule 13 of the Code of Civil

Procedure and proceed with the same in accordance with law. No costs.

Consequently, connected miscellaneous petition is closed.

16.12.2020

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Internet: Yes/No

Index: Yes/No

Speaking / Non-speaking.

To:

The Sub-Ordinate Judge,
Uthangarai.



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R.SUBRAMANIAN, J.

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