

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).No.4092 of 2018
and
C.M.P.No.22625 of 2018

1.Lakshmidevi
2.Gopi
3.Ellavarasan
4.C.Muthu
5.A.Raja
6.A.Raja

...Petitioners

Vs.

C.Chennakesavan

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal orders of the learned Additional District Munsif, Tirupattur, dated 17.09.2018 passed in I.A.No.797 of 2017 in O.S.No.220 of 2010 and allow the above Civil Revision Petition.

For Petitioners 1 to 4 : Mr.J.Hariharan
for Mr.V.Nicholas
For Petitioners 5 & 6 : Mr.K.Balu

For Respondent : Mr.K.S.Gnana Sambandham
for Mr.M.V.Vijaya Baskar

ORDER

The defendants in the suit in O.S.No.220 of 2010 have come up with this Civil Revision Petition challenging the order refusing to condone the delay of 1622 days in filing an application to set aside the ex-parte decree passed in the suit. The suit is one for the specific performance based on the agreement, dated 10.01.2007. The said agreement recites that the total consideration is Rs.30,000/-, out of which, an advance amount of Rs.20,000/- was paid to defendants 1 to 3 on 10.01.2007 and the balance amount is payable on or before 9.12.2007. When the plaintiff came to know that the defendants 1 to 3 sold a portion of the property to the defendants 4 to 6, he issued a notice on 03.05.2010 nearly three years after the agreement, seeking specific performance. Since the defendants did not comply with the

demand made in the said notice, the plaintiff has come up with this suit. The defendants entered appearance and also filed written statement. However, since they did not prosecute the matter further, there was an ex-parte decree on 17.09.2012. The defendants thereafter filed an application to condone the delay of 1622 days in seeking to set aside the ex-parte decree. This application was resisted by the plaintiff contending that the reasons assigned are false and even assuming that they are true, they do not constitute sufficient cause for condonation of such long delay. It is also contended that in the Execution Proceedings, the defendants 1 to 3 were served even in January-2014 and an ex-parte order was passed on 7.02.2014. Therefore, the defendants though aware of the ex-parte decree, did not taken any action to set aside the same within time.

2. Before the Trial Court, served copies of the notices in the Execution Petition were marked as Ex.R1. The Trial Court, upon consideration of the facts and circumstances of the case concluded that the defendants / petitioners have not made out sufficient cause for condonation

of delay. It also pointed out that the defendants 1 to 3 were served in the Execution Petition in January-2014 and the application for setting aside the ex-parte decree came to be filed only on 27.03.2017. Therefore, according to the learned District Munsif there was no sufficient cause for condonation of the delay. Aggrieved by the same, the petitioners have come with this Civil Revision Petition.

3. Heard, Mr.J.Hariharan, learned counsel appearing for the petitioners 1 to 4, Mr.K.Balu, learned counsel appearing for the petitioners 5 & 6 and Mr.K.S.Gnanasambandham, learned counsel appearing for the sole respondent.

4. Mr.K.Balu and Mr.J.Hariharan, learned counsels appearing for the petitioners would vehemently contend that the suit being one for specific performance and the fact that the respondent / plaintiff has chosen to issue notice nearly three years after the agreement, the learned trial Judge should have taken a liberal view and condoned the delay. They would also

submit that cogent reasons have been assigned in the affidavit for condonation of the delay.

5. Contending contra, Mr.K.S.Gnanasambandham, learned counsel appearing for the sole respondent would submit that the Trial Court has rightly concluded that the reasons assigned would not amount to sufficient cause for condonation of such an undue delay of 1622 days. He also pointed out that though the defendants 1 to 3 were served in the Execution Proceedings in January-2014, they have not chosen to file an application for setting aside the ex-parte decree in time.

6. I have considered the rival submissions by the counsels on either side.

7. The reasons assigned for the delay assume importance in the circumstances. The second petitioner in the affidavit has stated that the first petitioner is a chronic patient and she got diabetes and also other complications. It is also stated that she is weighing 120 Kg and she was an

inpatient in the Government Hospital, Natrampalli. The second petitioner has also stated that as he has been doing business in Andhra Pradesh and other states, the first petitioner was only looking after the case. Due to her illness, she could not follow the proceedings and hence the delay. The Hon'ble Supreme Court in ***Delhi University Vs. Union of India reported in 2019 SCC online 1634***, has pointed out that the Court should be liberal in condonation of delay when substantive right to property is involved in the litigation. The suit is one for specific performance and as already stated that the agreement is of the year 2007 and notice seeking specific performance itself was issued in May-2010 i.e., nearly three years after the agreement.

8. Considering the above, I am of the opinion that the defendants 1 to 3 have to be given a chance to contest the proceedings and the defendants 4 to 6, who are the subsequent purchasers, are also entitled to the defence that they are bonafide purchasers for value without notice. It is stated that they were also dependant on the first petitioner, who was taking care of the matter. In the light of the nature of the suit and explanation

offered, I am of the considered opinion that the delay should be condoned, though it is quite long, in order to give the defendants an opportunity to contest the suit.

9. In view of the above, this Civil Revision Petition is allowed the order of the Trial Court in I.A.No.797 of 2017 is set aside and the delay is condoned. No costs. Consequently, connected Miscellaneous Petition is also closed.

13.08.2020

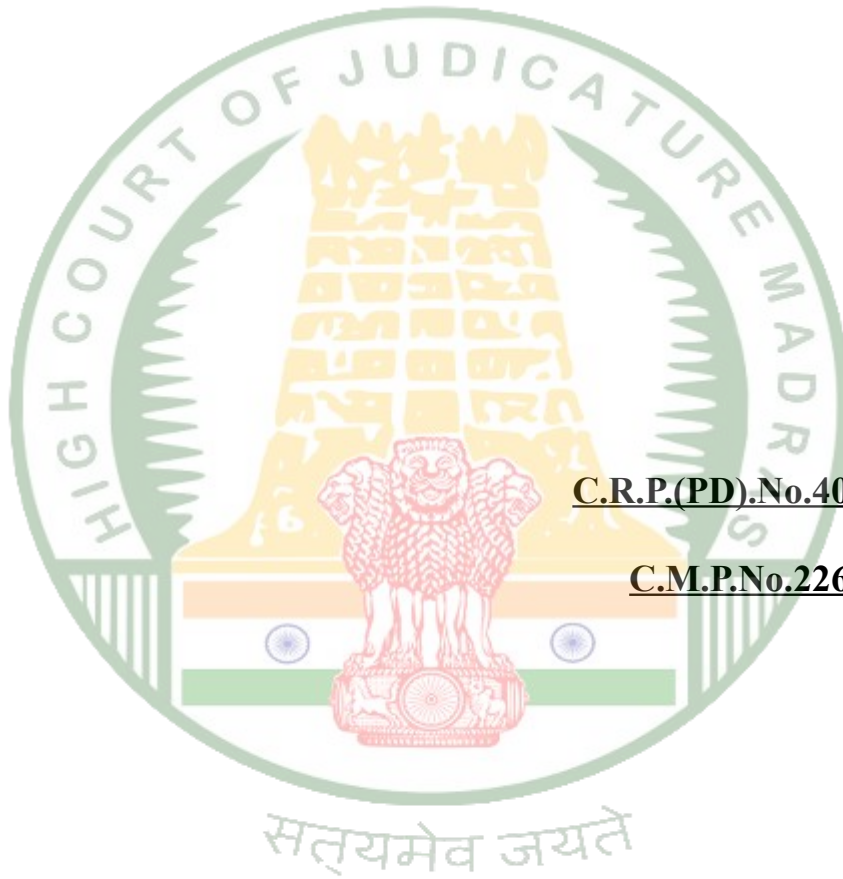
Internet: Yes
Index : No
Speaking order
dna

To

The Additional District Munsif, Tirupattur.

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and
CMP.No.22625 of 2018

R.SUBRAMANIAN, J.
dna



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