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C.R.P. (NPD) .No.3167 of 2015



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD).No.3167 of 2015

and

M.P.Nos.1, 2 of 2015 & C.M.P.Nos.1069, 1070 of 2016

Vanakkara Azeez Basha

.. Petitioner

Vs.

R.Sridhar

.. Respondent

Prayer: This Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decretal order dated 02.06.2015 made in I.A.No.68 of 2014 in O.S.No.101 of 2009 on the file of the Principal District Court, Vellore.

For Petitioner : Mr.Palani Selvaraj

For Respondent : Mr.M.Sriram,
Senior Counsel
for Mr.S.Yashwanth

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).

This Civil Revision Petition is filed against the fair and decretal order dated 02.06.2015 made in I.A.No.68 of 2014 in O.S.No.101 of 2009 on the file of the Principal District Court, Vellore.



2.The petitioner is the 2nd defendant and the respondent is plaintiff in O.S.No.101 of 2009 on the file of the Principal District Court, Vellore. The respondent filed the said suit against one Beebee John @ Shahina Bee, mother of the petitioner as 1st defendant and the petitioner herein for the relief of specific performance for agreement of sale dated 15.06.2006. In the said suit, the said Beebee John @ Shahina Bee and the petitioner did not appear. They were set exparte and exparte decree was passed on 24.08.2011. The respondent filed E.P.No.131 of 2011 for a direction to the petitioner and said Beebee John @ Shahina Bee under Order XXI Rule 35, for execution of the sale deed and for a direction to the petitioner and said Beebee John @ Shahina Bee to deliver the possession to the respondent. On 05.12.2012, the sale deed was executed by the Court. The respondent filed E.A.No.71 of 2013 to break open for taking delivery of possession by Court's amin and hand over the possession to the respondent. The same was ordered and lock was broke open and suit property was handed over to the respondent on 22.02.2014.

3.The petitioner filed E.A.No.28 of 2014 under Order XXI Rule 58 and Sections 47 & 151 of C.P.C. to dismiss E.P.No.131 of 2011, E.A.No.71 of 2013, E.A.No.183 of 2013 and E.A.No.24 of 2014 by adjudicating the claim



of the respondent and stay of further proceedings in the E.P.No.131 of 2011.

Subsequently, the petitioner filed the present I.A.No.68 of 2014 in O.S.No.101 of 2009 to condone the delay of 922 days in filing the petition to set aside the exparte decree. According to petitioner, he and his Mother / 1st defendant (hereinafter referred to as '1st defendant') were suffering from various ailments and went to Bangalore in the year 2005 for taking treatment. The first defendant suffers from psychiatric problem and at various times will make hue and cry and used to act unsensely. Due to petitioner's and 1st defendant's ailment, the petitioner was forced to stay in Bangalore for months together. Taking advantage of the same and abusing due process of law, the respondent got exparte decree dated 24.08.2011. The petitioner was not issued with any suit summons or notice in the E.P. Due to ill health and mental condition of 1st defendant, the Mother of the petitioner, he could not remain in Ambur, where the suit property is situated. The petitioner came to know about the exparte decree only on 22.02.2014, when Court amin broke open the lock of the petitioner's house. The petitioner obtained certified copies and filed the present petition to condone the delay of 922 days in filing the petition to set aside the exparte decree dated 24.08.2011. The 1st defendant filed suit in O.S.No.10 of 2012 on the file of the Principal District Munsif, Ambur, against the respondent for permanent injunction restraining



the respondent herein from interfering with her peaceful possession and enjoyment of the suit property. In the written statement filed by the respondent in the said suit, the respondent has not mentioned about the exparte decree passed in the present suit and suppressing the death of the 1st defendant on 06.11.2013, continued to mislead the Court and obtained exparte order in E.P. also. The petitioner has got good case on merits. If delay is not condoned, the petitioner will be put to irreparable loss and hardship and prayed for condoning the delay.

4.The respondent filed counter affidavit and denied all the averments made in the affidavit and submitted that the petitioner except stating that he is temporarily residing in Bangalore, he has not furnished the Bangalore address. It is not correct to state that petitioner and his mother were taking treatment. The petitioner and 1st defendant have not filed any document to prove their case. The petitioner's wife filed O.S.No.152 of 2007 on the file of the District Munsif Court, Ambur, against the respondent for permanent injunction and the same was dismissed on 06.03.2008. The respondent denied that suit summons were not served on the petitioner. The petitioner refused to receive the summons sent by the Court and summons were served on the petitioner and 1st defendant by effecting paper publication. It is not correct to



state that the petitioner came to know about the exparte decree only on 22.02.2014. The petitioner is having house on each side of the suit property.

The petitioner informed about the death of the 1st defendant in the suit in O.S.No.10 of 2012 filed by the 1st defendant herein against the respondent only after the respondent took possession of the suit property. Based on the sale agreement dated 15.06.2006, the suit was filed and decree was passed on 24.08.2011. The respondent took possession in E.A.No.71 of 2013 and the present petition has been filed to some how or other prevent the respondent from enjoying the fruits of the decree. The petitioner has not explained the delay properly and prayed for dismissal of I.A.No.68 of 2014.

5.Before the learned Judge, the petitioner examined himself as P.W.1, one P.K.Althap Ahamed was examined as P.W.2 and marked five documents as Exs.P1 to P5. The respondent examined himself as R.W.1 and no document was marked. The learned Judge considering the averments in the affidavit, counter affidavit and oral and documentary evidence, by the order dated 02.06.2015, dismissed the I.A.No.68 of 2014.

6.Against the said order dated 02.06.2015 made in I.A.No.68 of 2014, the petitioner has come out with the present Civil Revision Petition.



7.The learned counsel appearing for the petitioner reiterated the averments in the affidavit filed in support of the present I.A.No.68 of 2014. It is the contention of the learned counsel appearing for the petitioner that petitioner and 1st defendant, due to their illness have gone to Bangalore in the year 2005 itself. The petitioner has produced document to show that he was residing at Bangalore during the relevant period. The petitioner examined himself as P.W.1 and examined one P.K.Althap Ahamed as P.W.2 and filed Ration Card, Gas connection, Aadhar card and medical report of petitioner and 1st defendant to prove that he was residing at Bangalore. The learned Judge did not consider the documents filed by petitioner. On the other hand, the learned Judge, erroneously held that petitioner has not filed any document to prove his case. Due to this error, the impugned order is liable to be set aside. The learned counsel appearing for the petitioner further contended that in the proof affidavit, he has given his Bangalore address. The learned Judge has not considered the same. The petitioner did not receive summons and came to know about the exparte decree only on 22.02.2014, when the Court official broke open the lock of the suit property. The petitioner immediately filed E.A.No.24 of 2014 in E.P.No.131 of 2011 under Order XXI Rule 58 & 42 under Section 151 of C.P.C. After obtaining the certified copy of the plaint



and other documents, the petitioner filed the present I.A.No.68 of 2014 in O.S.No.101 of 2009 to condone the delay of 922 days in filing the petition to set aside the exparte decree. The petitioner has given valid and acceptable reason for condoning the delay.

8. According to the petitioner, he and 1st defendant did not execute the alleged sale agreement and they have handed over the original documents to the respondent only after obtaining the loan. The finding of the learned Judge that once the petitioner entered into sale agreement, then it is the duty of the petitioner to inform his absence to the agreement holder is preconceived and perverse resulted in taking away and destroying the petitioner's right to prove that alleged sale agreement are forged and fabricated. The learned counsel appearing for the petitioner further contended that 1st defendant filed suit in O.S.No.10 of 2012 against the respondent for permanent injunction restraining the respondent herein from interfering with her peaceful possession and enjoyment of the suit property. The respondent filed written statement on 28.06.2013 after obtaining exparte decree for specific performance. With dishonest intention, the respondent did not mention the exparte decree obtained by him in O.S.No.101 of 2009 and also taken directly contradictory stand with regard to ownership of suit property. This clearly



shows that respondent is abusing the process of Court to grab the petitioner's property. The learned counsel appearing for the petitioner contended that application for condoning the delay must be liberally considered and petitioner must be given an opportunity to put forth his case on merits. When the property worth heavy amount is involved, the delay has to be condoned and case has to be decided on merits. Substantive rights of parties should not be defeated only on the ground of delay. The petitioner, in view of the stand taken by him, must be given an opportunity to prove that alleged agreement of sale is forged and fabricated and must be given an opportunity to contest the case on merits. No prejudice would be caused to the respondent and prayed for allowing the Civil Revision Petition.

9. In support of his contention, he relied on the following judgments:

(i) 2015 (1) CTC 811 [Ajay Kumar Gulecha Vs. J.Vijayakumar and another];

“14. The Hon’ble Supreme Court recently in Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & others, 2013(5) CTC 547 (SC) : 2013 (5) LW 20 held that there should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an Application for condonation of delay. The Hon’ble Supreme Court referred to its earlier judgments in G. Ramegowda, Major and others v. Special Land Acquisition Officer,



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Bangalore, 1988(2) SCC 142; O.P. Kathpallia v. Lakhmira Singh (dead) and others, 1984 (4) SCC 66; State of Nagaland v. Lipok AO and others, 2005 (1) MWN (Cr.) 166 (SC) : 2005 (3) SCC 752; New India Insurance Co. Ltd. v. Shanti Misra, 1975 (2) SCC 840; Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation and another, 2010 (5) SCC 459, which declared that the Court should be liberal in dealing with Condone Delay Petition. The principles are elucidated in the said judgment and Paragraphs 15 & 16 of the Judgment are usefully extracted as follows:

'15. From the aforesaid authorities the principles that can broadly be culled out are:

(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the Courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms sufficient cause should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the Counsel or litigant is to be taken note of.



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(v) *Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*

(vi) *It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the Courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*

(vii) *The concept of liberal approach has to en capsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

(viii) *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

(ix) *The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the Courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*

(x) *If the explanation offered is concocted or the grounds urged in the application are fanciful, the Courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*



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(xi) *It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*

(xii) *The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*

(xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

(a) *An Application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the Courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*

(b) *An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*

(c) *Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.*



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(d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.'

The Hon'ble Supreme Court also referred to some of its Judgments regarding Law of Limitation. Paragraphs 10,11 & 12 are usefully extracted as follows:

'10. In this context, we may refer with profit to the authority in Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation and another, 2010 (5) SCC 459, where a Two-Judge Bench of this Court has observed that the law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the Law of Limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the Courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. Thereafter, the learned Judges proceeded to state that this Court has justifiably advocated adoption of liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate.

11. In Improvement Trust, Ludhiana v. Ujagar Singh and others, 2010 (6) SCC 786, it has been held that while considering an Application for condonation of delay no straitjacket formula is



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prescribed to come to the conclusion if sufficient and good grounds have been made out or not. It has been further stated therein that each case has to be weighed from its facts and the circumstances in which the party acts and behaves.

12. A reference to the principle stated in Balwant Singh (dead) v. Jagdish Singh and others, 2010 (8) SCC 685 would be quite fruitful. In the said case the Court referred to the pronouncements in Union of India v. Ram Charan, AIR 1964 SC 215; P.K. Ramachandran v. State of Kerala, 1997 (2) CTC 663 (SC); 1997 (7) SCC 556; and Katari Suryanarayana v. Koppiseti Subba Rao, 2009 (4) CTC 286 (SC) : 2009 (11) SCC 183 and stated thus:

25. We may state that even if the term sufficient cause has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of reasonableness as it is understood in its general connotation.

26. The Law of Limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the Applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of



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justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.”

(ii) (2015) 15 SCC 659 [GMG Engineering Industries and others Vs.

Issa Green Power Solution and others]:

“7. It is well settled that the expression ‘sufficient cause’ is to receive liberal construction so as to advance substantial justice. When there is no negligence, inaction or want of bonafide is imputable to the appellants, the delay has to be condoned. The discretion is to be exercised like any other judicial discretion with vigilance and circumspection. The discretion is not to be exercised in any arbitrary, vague or fanciful manner. The true test is to see whether the applicant has acted with due diligence.”

(iii) (2012) 12 SCC 693 [B.Madhuri Goud Vs. B.Damodar Reddy]:

“5.We have heard Learned Counsel for the parties. The Limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that they approach the court for vindication of their rights without unreasonable delay. The idea underlying the concept of limitation is that every remedy should remain alive only till the expiry of the period fixed by the legislature. At the same time, the courts are empowered to condone the delay provided that sufficient cause is shown by the applicant for not availing the remedy within the prescribed period of limitation.



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6.The expression “sufficient cause” used in Section 5 of the Limitation Act, 1963 and other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which serves the ends of justice. No hard-and-fast rule has been or can be laid down for deciding the applications for condonation of delay but over the years courts have repeatedly observed that a liberal approach needs to be adopted in such matters so that substantive rights of the parties are not defeated only on the ground of delay.”

(iv) 2008 (1) CTC 785 [Ravi Enterprises, rep. By its Partner T.S.Ravi Vs. Indian Bank, Thiruvottiyur Branch, T.H.Road, Thiruvottiyur, Chennai 600 019 and others]:

“14.We are of the view that refusal to condone delay can result in a meritorious matter being thrown at the early stage and cause of justice being defeated. Moreover, the law courts should not prefer to adopt a pedantic approach and on the other hand a pragmatic approach has to be made to deliver substantial justice overriding technical considerations as far as the present case is concerned. Furthermore, a party does not stand to benefit by adopting delay. Per contra, he runs a grave risk. It cannot gainsaid that judiciary is respected because it is capable of removing injustice and is expected to do so. Admittedly, the claim of the first respondent Bank is for Rs.20,71,776/- together with interest at the rate of 19.89% p.a. with quarterly rests from the date of the application till the date of realisation etc. The learned counsel for the writ petitioners informs this Court that already a sum of Rs.15 lakhs was paid and the petitioners/appellants/defendants are willing to pay the rest of the



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amount and to settle the matter. It cannot be denied that the Debt Recovery Tribunal has power to recall the Recovery Certificate even after its issuance on the basis that the matter was settled between the creditor/Bank and the borrower/guarantor. No wonder the recovery of due is an essential function of any Bank. At this juncture, it cannot be lost sight of that the preamble of the Recovery of Debts due to Banks and financial Institutions Act, 1993 speaks of expeditious adjudication and recovery of debts due to banks and financial institutions. Moreover, merely because an application for setting aside the ex parte order having been allowed to go for wilful default and also allowed the restoration petition also dismissed for default, it cannot said by any means that the writ petitioners lack bonafides in their endeavour to set aside the ex parte order. In short, the length of delay is immaterial, in our considered opinion.”

10.Per contra, the learned Senior Counsel appearing for the respondent submitted that petitioner, apart from owning the suit property, is also owning two other houses at northern and southern sides of the suit property. The petitioner has leased out the house on the southern side of the suit property for rent and is staying in the suit property and the house in the northern side of the suit property. The petitioner has admitted in cross examination that he is residing in the suit property and the house on the northern side of the suit property. According to the petitioner, he has shifted his residence to Bangalore in the year 2005 itself as he was compelled to take treatment for himself and for 1st defendant. The medical records produced by the petitioner



to show that he was in Bangalore are lab reports and prescriptions issued by Doctors. These documents are cooked up documents. The petitioner has not produced any document to show that he took treatment as inpatient. Even in the documents produced, it is seen that he has taken treatment for few days commencing from 2008 to 2011. The petitioner has not produced any lease deed to prove that he was residing in Bangalore. The address given in the Ration Card and Gas connection are two different addresses. The petitioner has not produced any document now filed in the typed set of papers in Sl.Nos.2 to 6 before the Trial Court and the same cannot be relied on by the petitioner in the present Civil Revision Petition. P.W.2 in his cross examination has stated that the petitioner used to visit Ambur once or twice in a month and will stay for one or two days in the suit property. The petitioner in the affidavit filed in support of the present petition has given only the Ambur address, i.e., the suit property and has stated that he is temporarily residing at Bangalore. In the affidavit, he has not given his Bangalore address. Only when the same was pointed out by the respondent in his counter, the petitioner in the proof affidavit has given some Bangalore address.

11.The learned Senior Counsel appearing for the respondent further



submitted that the wife of the petitioner filed suit in O.S.No.152 of 2007 on the file of the District Munsif Court, Ambur, against the respondent for permanent injunction. In the said suit, the petitioner's wife has given her address as the present suit property and the schedule of the property is also one and the same. Similarly the 1st defendant filed suit in O.S.No.10 of 2012 on the file of the Principal District Munsif, Ambur, for permanent injunction restraining the respondent herein from interfering with her peaceful possession and enjoyment of the suit property. She has also given the address of the suit property as her address in the plaint. The petitioner was contesting the cases before the Magistrate Court and other Court by giving his Ambur address. Hence, he cannot contend that he was residing in Bangalore or suit summons were not served on him and 1st defendant. Further, the Court has issued summons to the petitioner and 1st defendant and summons were returned by the Bailiff with endorsement 'defendants left 10 years before and settled at abroad' and subsequently, returned as 'no such persons', third time returned as 'defendants 1 & 2 vacated 3 years ago'. As far as notice sent by registered post with acknowledgment due through Court is concerned, the same has been returned with endorsement as 'door locked and intimation given'. In view of the same, the petitioner and 1st defendant were served by effecting paper publication. Hence, the petitioner cannot say that no summons



were sent to him and 1st defendant. Immediately after broke open and delivery of possession was given to the respondent, the petitioner filed E.A.No.24 of 2014 in E.P.No.131 of 2011 on 22.02.2014 itself. The petitioner filed the present I.A. to condone the delay only on 04.04.2016 and not explained the delay with acceptable and valid reasons. If the impugned order is set aside, the respondent will be put to irreparable loss and hardship and prejudice will be caused to the respondent. The Court can exercise the discretion only when the petitioner gives valid and acceptable reasons and his intention is bonafide. The learned counsel appearing for the respondent further contended that the petitioner has admitted in the cross examination that he is residing in the suit property and in the property in the northern side of the suit property. The tenants residing in the southern side of the suit property knows that petitioner is in Bangalore. P.W.2 / P.K.Althap Ahamed knows him from his young age and hence, the petitioner cannot say that P.W.2 or the tenants did not inform the petitioner about the suit summons.

12.In support of his contention, the learned Senior Counsel relied on the following judgments:

(i) 2005-2-L.W. 218 [Jayaprakash and another Vs. Kamala]:

“4.I have gone through the reasons stated in the affidavit filed



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in support of the petition, the objection raised by the respondent/plaintiff, the evidence of P.W.1 and the impugned order under challenge. It is seen from the evidence of P.W.1 that the petitioners were aware of passing of the decree much prior to the filing of the present application. After going through the reasons stated in the affidavit and the evidence of P.W.1, I am satisfied that the petitioners have not shown sufficient cause for condoning the delay in preferring the petition to set aside the ex parte decree. As rightly observed by the learned District Munsif, the ex parte decree cannot be set aside in a casual manner more so, when sufficient cause is not established by the party. Inasmuch as the Court below after considering the claim of both parties and after finding that there is no sufficient cause for condonation, dismissed the petition filed under Section 5 of the Limitation Act, in the absence of any other material, I do not find any error or infirmity or valid ground for interference; hence the Revision fails and the same is dismissed. Connected C.M.P. is also dismissed.”

(ii)2006-4-L.W.650 [M.Ramakrishnan V. Vinod Kumar Goyal]:

“15. The learned counsel for the revision petitioner is also justified in contending that when the exparte decree was passed on 29.7.2002 itself, no petition to condone the delay was filed by the respondent herein even though I.A.No.19988/2003 was filed by him only on 9.9.2003. Filing a condone delay petition under Sec.5 of the Limitation Act is not an empty formality and when there is a delay, the same has to be explained by the Applicant to the satisfaction of the court.

16. Hence the order of the trial court on the face of it is vitiated as it has failed to advert to the entire facts of the case and

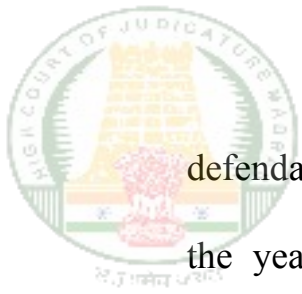


also has omitted to note that the delay was not at all explained by the respondent.”

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13. Heard the learned counsel appearing for the petitioner as well as the learned Senior Counsel appearing for the respondent and perused the entire materials on record.

14. The respondent filed O.S.No.101 of 2009 against the mother of the petitioner as 1st defendant and petitioner as 2nd defendant, for specific performance of agreement of sale dated 15.06.2006. On 24.08.2011, an exparte decree was passed in favour of the respondent. The respondent filed E.P.No.131 of 2011 and sale deed was executed in his favour, through Court on 10.12.2012. The respondent filed E.A.No.71 of 2013 for break open of the suit property and to deliver vacant possession to him. As per the order of the Court, lock was broke open and possession was handed over to the respondent on 22.02.2014. The petitioner, on 26.02.2014, filed E.A.No.28 of 2014, under Order XXI Rule 58 and Sections 42 & 151 of C.P.C. The petitioner also filed I.A.No.68 of 2014 in O.S.No.101 of 2009 on 04.04.2014, to condone the delay of 922 days in filing the petition to set aside the exparte decree dated 24.08.2011. According to the petitioner, he and his mother / 1st



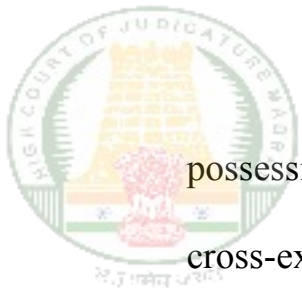
defendant were suffering from various illness and they left for Bangalore in the year 2005 itself and were residing temporarily for taking treatment.

According to the petitioner, the suit summons were not issued to the petitioner and his mother/1st defendant and they were not aware of O.S.No.101 of 2009, filed by the respondent. The petitioner also made averments alleging that he has good case on merits. The respondent filed counter and denied the averments made by the petitioner. The petitioner examined himself as P.W.1 and examined one P.K.Althap Ahamed as P.W.2. The petitioner filed 5 documents viz., medical records of the petitioner, medical records of the 1st defendant, Aadhaar card issued in Karnataka, ration card issued by Karnataka Government and death certificate of the 1st defendant as Exs.P1 to P5. A perusal of these documents show that the medical records are lab reports and prescription issued by Doctor between 2008 and 2011. The petitioner has not produced any documents to show that the petitioner and his mother/1st defendant took treatment as in-patient and that they have taken treatment till 22.02.2014. The petitioner has failed to prove that he and his mother/1st defendant were in Bangalore from 2005-2014, for treatment. The petitioner produced ration card and gas connection issued in Bangalore. At the time of filing of Civil Revision Petition, the learned counsel appearing for the petitioner produced various documents. The



contention of the petitioner that he is residing in Bangalore along with his mother/1st defendant from 2005, till 2014 and they were not served suit summons and they had no knowledge about the suit, is not acceptable for the following reasons.

14(i). The petitioner has stated that he and his mother/1st defendant were residing in Bangalore for treatment. He has not stated about the residence of wife, whether she was in Ambur in his suit property or in Bangalore, along with them. It is pertinent to note that wife of the petitioner filed suit is O.S.No.152 of 2007 on the file of the District Munsif Court, Ambur, against the respondent for permanent injunction. In the said suit, she has stated that she is residing in the suit property mentioned in the present suit and respondent is trying to interfere with her possession and enjoyment of the suit property and also filed petition for injunction. The said suit was dismissed on 06.03.2008. Subsequently, the 1st defendant filed O.S.No.10 of 2012 on the file of the Principal District Munsif Court, Ambur, against the respondent for permanent injunction, restraining the respondent herein from interfering with her peaceful possession and enjoyment of the suit property. In the said suit also, the 1st defendant had given her address showing that she is residing in the present suit property and respondent is interfering with her



possession for the past 4 to 5 months before filing of suit. Further, in the cross-examination of P.W.1, he has stated that apart from the suit property, he is having property on the northern side and southern side of the suit property.

He is residing in the suit property and the property in the northern side of the suit property. He further stated that he has leased out the property on the southern side of the suit property to the tenant. He also examined one P.K.Althap Ahamed as P.W.2. The petitioner, as P.W.1, deposed that P.W.2 – P.K.Althap Ahamed is residing at third house from the suit property. In cross-examination, the petitioner admitted that he knew about the suits filed by his wife and 1st defendant, against the respondent. The respondent filed two cases against the petitioner for dishonour of cheques and Abdul Rahman, Advocate conducted the case filed by his wife and 1st defendant / mother appeared on behalf of the petitioner. He also stated that he cancelled the ration card issued by the Tamil Nadu Government 5 to 6 years back, when he gave evidence in 2016. He also admitted that P.W.2 - P.K.Althap Ahamed gave document with regard to possession handed over by the respondent. The admission made by the petitioner in the cross-examination has to be considered along with contention of the petitioner that suit summons were not issued to him. P.W.2 has stated that P.W.1/the petitioner used to come to Ambur once in a month or twice in a month and stay in the suit property for few days. But he denied



any knowledge of suit summons sent to the petitioner and his mother. It is the contention of the respondent that petitioner and 1st defendant refused to receive suit summons.

14(ii). In view of such contradictory stand taken by the petitioner and respondent, the documents relating to issue of summons were called-for from the lower Court. From the records, it is seen that on three occasions, suit summons and registered post were sent to the petitioner and 1st defendant. The registered post was sent to the suit property address on 18.03.2010 and was returned on 19.03.2010 with an endorsement stating “door locked and intimation given”. Similarly, the endorsements were made in returned covers subsequently when registered post was sent on 22.07.2010 and 08.02.2011. From the records, it is seen that the suit summons were sent through Bailiff to the petitioner and 1st defendant, on 30.07.2010 and Bailiff returned the summons with endorsement “10 years prior to that date, settled at abroad”. On 08.02.2011, the summons were returned by the Bailiff with endorsement “no such person in the said address”. On 22.03.2011, the Bailiff returned the suit summons with endorsement “the petitioner and 1st defendant vacated three years before”. From the endorsement of the Bailiff and the postal authority, it is clear that the suit summons through Bailiff and registered post



were sought to be served on the petitioner and 1st defendant on three occasions and were returned unserved. It is admitted fact that the property on the southern side of the suit property owned by the petitioner was leased out to a tenant and P.W.2 – P.K.Althap Ahamed is residing in third house. It is unbelievable that tenant was not aware of whereabouts of his landlord and not informed about the attempts made by the Bailiff and postman to serve the summons and registered post to the petitioner. Similarly, P.W.2 – P.K.Althap Ahamed, who is residing only in the third house of the suit property was not aware of the suit summons and registered post sought to be served on the petitioner and 1st defendant. This Court takes note of the fact that immediately when the lock was broke open and possession was handed over to the respondent, the said P.K.Althap Ahamed/P.W.2 informed the petitioner about the same. Taking note of this fact into account, the contention of the petitioner that he came to know about the exparte decree only on 22.02.2014 is not believable and acceptable. Further, the petitioner has filed E.A.No.24 of 2014 on 26.02.2014 itself and filed the present I.A., only on 04.04.2014. The petitioner has not produced alleged certified copies of plaint and exparte decree obtained by him to substantiate his case. The reason given by the petitioner for the delay from 22.02.2014 to 04.04.2014 is not valid and acceptable.



15. Considering all the above materials in its entirety, this Court is of the view that the petitioner has not given sufficient reason for condoning the delay of 922 days. In the affidavit filed in support of the application to condone the delay, the petitioner has given the address of the suit property and has not given any Bangalore address. Only when the respondent pointed out the same in the counter affidavit filed, the petitioner gave the Bangalore address. The petitioner alleged to have entered into rental agreement with landlord in Bangalore, but he has not produced the same. The contention of the learned counsel appearing for the petitioner that the petitioner must be given an opportunity to contest the suit on merits and substantial right of the petitioner should not be shut down at the threshold, is not acceptable in the facts and circumstances of the case. In the judgments relied on by the learned counsel appearing for the petitioner itself, the Hon'ble Apex Court held that condoning the delay is discretion of the Court and it has to be exercised properly. The Hon'ble Apex Court, in paragraph no.7 of the judgment reported in **(2015) 15 SCC 659** referred to above, relied on by the learned counsel appearing for the petitioner, held that it is the discretion of the Court to condone the delay. The discretion has to be exercised like any other judicial discretion with vigilance and circumspection. The discretion shall not



be exercised in any arbitrary, vague or fanciful manner. The Hon'ble Apex Court has held that true test is to see whether the applicant has acted with due diligence. The Hon'ble Apex Court also held that only when there is no inaction or bonafide on the part of the applicant, the delay has to be condoned. In the order dated **19.06.2015** made in **C.R.P.(PD).Nos.4004 and 4005 of 2014**, this Court referred to the judgment of the Hon'ble Apex Court reported in **2011 (4) SCC 363 (Lanka Venkateswarlu (dead) by Lrs, Vs. State of Andhra Pradesh and others)**, wherein it has been held that justice must be done to both the parties equally and then only ends of justice can be achieved. In the present case, the petitioner has not acted diligently, as he failed to take any action when it was brought to the notice that respondent is interfering with the possession of the petitioner's wife and the 1st defendant in the suit property in the years 2007 and 2011 respectively. It is well settled that length of delay is not a criteria and reason given by the petitioner must be sufficient and bonafide. The intention should not be malafide. In the present case, the reason given by the petitioner is not sufficient and valid. The petitioner has not acted in a bonafide manner. There is no straight jacket formula for condoning or rejecting application for delay. Each case has to be considered on the facts and circumstances of the case. The delay cannot be condoned in a casual manner, especially when sufficient cause is not



established by the party. Filing a petition for condoning the delay under Section 5 of the Limitation Act is not an empty formality and when there is delay, the same has to be explained by the applicant to the satisfaction of the Court. The two judgments relied on by the learned counsel appearing for the respondent are squarely applicable to the facts of the present case. In view of the above materials, the judgments relied on by the learned counsel appearing for the petitioner do not advance the case of the petitioner and on the other hand, to a larger extent, it supports the case of the respondent.

16. For the above reason, the Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

27.10.2021

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Index : Yes / No

Internet : Yes / No

To

The Principal District Judge,
Vellore.



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