IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2021

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(PD) No. 2865 of 2018
&
CMP No.16854 of 2018

B. Govindharaj ... Petitioner

Vs.

1. The Government Employees
Welfare Association
rep. by its President K.M. Devaraj &
its Secretary P. Ganesan
No.43/274, Kalamegam Street
Thiruvallur Town, Thiruvallur District.

2. The Managing Trustree
Sudarasanam Educational and Charitable Trust
No.11/5 1st East Main Road, Shenor Nagar
Chennai 600 030. ... Respondents

Prayer: Criminal Revision Petition filed under Section 115 of the Civil Procedure Code against the fair order and decreetal order dated 05.06.2018 passed in I.A.No.11/18 in O.S. No. 27/2014 on the file of the III Additional District Judge, Thiruvallur at Poonamalle.

For Petitioner : Dr. A. Thiyagarajan,
Senior Counsel
for Mr.M.Nallathambi

Respondent No.1 : Notice served
No appearance

For Respondent No.2 : Mr.M.V.Seshachari

ORDER

This civil revision petition is filed against the fair and decreetal order dated 05.06.2018 passed in I.A.No.11/2018 in O.S. No. 27/2014 on the file of the III Additional District Judge, Thiruvallur at Poonamalle, thereby dismissing the petition for extension of time to pay the deficit court fees.

2.The petitioner is the plaintiff and the respondents are the defendants. The petitioner filed a suit for specific performance in respect of the suit property and permanent injunction.

3.While filing the suit, the petitioner valued the suit property at Rs.2,28,06,000/- and the Court fee was fixed at Rs.17,10,451/-. However, the petitioner paid only a sum of Rs.1,451/-. Therefore, the petitioner filed the petition under Section 149 C.P.C for extension of time for the payment of deficit court fees. The said application was returned for some defect and the same was re-presented with the delay of 91 days in re-presenting the application under Section 149 of C.P.C. Though the Court below allowed the petition to condone the delay in re-presentation, dismissed the petition filed for extension of time for the payment of deficit court fees. Aggrieved by the same, the present Civil Revision Petition has been filed.

4.The learned Senior counsel appearing for the petitioner submitted that the petitioner filed a suit for specific performance and permanent injunction and valued the suit for a sum of Rs.2,28,06,000/- and the Court fee was fixed at Rs.17,10,451/-. However, the petitioner paid only a sum of Rs.1,451/- as court fees. The remaining court fee was not paid due to non-availability of court fee stamps.

5.Initially, a petition was filed in I.A.No.56 of 2014 for extension of time for payment of deficit court fee and thereafter, it was returned for want of certain compliance. When the said petition was re-presented, there was a delay of 91 days in re-presentation and the condone delay petition was numbered as I.A.No.389 of 2011 and the same was allowed on 21.01.2014. Similarly, the petition for extension of time filed under Section 149 C.P.C was also allowed. However, the order in I.A.No.389 of 2011 was challenged before this Court in CRP.(PD).No.4089 of 2014 and this Court, by an order dated 23.10.2017, set aside the order in I.A.No.389 of 2011 and this Court directed the Court below to number the petition for extension of time and to dispose of the said application within a period of one month from the date of receipt of a copy of this order.

6.As directed by this Court, the Court below re-numbered the petition and dismissed the petition for extension of time to pay the deficit court fee. He further submitted that only for the reason that, at the time of filing the suit, there was no court fee stamp available and as such, the petitioner could not pay the entire court fees. In fact, on the date of filing of the petition for extension of time is on 11.08.2011, the petitioner paid the deficit court fees. According to the learned senior counsel for the petitioner, though specific time of 11 months was fixed in the agreement of sale, after expiry of 11 months, the respondents received subsequent payments till 21.07.2007. Therefore, time is not the essence of the contract and the petitioner also paid the deficit court fees, when filing the petition for extension of time. Now, the suit is numbered and in fact, the respondents also filed their written statement and the suit is pending for trial.

7.Per contra, the learned counsel for the respondents contended that the very suit itself is barred by limitation, since the time is essence of the contract. As per the agreement of sale dated 04.11.2004, the total sale consideration is fixed at Rs.1,05,40,000/- and a sum of Rs.25,00,000/- was paid as advance. The balance sale consideration has to be paid by the petitioner within a period of 11 months from the date of the agreement of sale. Though there is an endorsement for the receipt of part of the balance sale consideration after expiry of 11 months as specifically stipulated in the agreement of sale, it does not mean that extended the time to perform their part of the contract. Unless there is a specific endorsement in respect of extension of time, the petitioner ought to have filed the suit within a period of three years from the date of expiry of time stipulated. Admittedly, the agreement of sale was entered on 04.11.2004 and time was fixed as 11 months to perform their part of the contract. The suit has been filed only on 21.07.2010 and therefore, the suit is barred by limitation. When the suit itself is barred by limitation, the petitioner is not at all entitled for extension of time to pay the deficit court fees under Section 149 of C.P.C. He further submitted that the receipt of the subsequent payment after expiry of time as stipulated in the agreement of sale does not mean that the time is extended automatically to perform their respective part of the contract. In this regard, the learned counsel for the petitioner relied upon the judgment reported in ***(2012) 7 SCC 738 = MANU/SC/0516/2012 (A.Nawab John and Ors Vs. V.N.Subramaniyam), (2019)6 MLJ 381 =***

MANU/TN/5113/2019 (Sundarammal and Ors. Vs. N.Adinarayanan and Ors.), (1994)1 MLJ 146 = MANU/TN/0335/1993 (B.P.Samiappan and Ors. Vs. Arunthavaselvan and Ors.) and (2011) 3 MWN 780 = MANU/TN/3719/2011 (Duraikannu Naicker Vs. K.Ramachandra Iyer).

8.Heard the learned counsel for the petitioner as well as the learned counsel for the respondents.

9.The petitioner is the plaintiff and the respondents are the defendants. The petitioner filed a suit for specific performance on the basis of the agreement of sale on 04.11.2004 and permanent injunction. According to the said agreement of sale, the total sale consideration was fixed at Rs.1,05,40,000/- for the suit properties. On the date of the agreement of sale, the petitioner paid a sum of Rs.25,00,000/- as advance towards part of the sale consideration and the remaining amount to be paid by the petitioner within a period of 11 months and on receipt of the same, the respondents have to execute the sale deed in favour of the petitioner herein. Admittedly, the petitioner did not pay the balance sale consideration within a period of 11 months from the date of agreement of sale. However, he made subsequent payments till 21.07.2007. On the strength of the agreement of sale, the petitioner has filed the suit for specific performance and for permanent injunction. The petitioner valued the suit for a sum of Rs.2,28,06,000/- and the court fees was fixed at Rs.17,10,451/-. However, the petitioner paid a sum of Rs.1,451/- as court fees. Thereafter, the petitioner filed a petition under Section 149 CPC for extension of time to pay the deficit court fees. The said application was returned for want of certain compliance. It was re-presented with a delay of 91 days in re-presentation of the petition for extension of time to pay the deficit court fees. It was numbered as I.A.No.389/2011 and the Court below allowed the same by an order dated 21.01.2014. Similarly, the petition for extension of time also numbered as I.A.No.56/2014 and the same was also allowed on 21.01.2014. It was challenged before this Court by the respondents in CRP.No.4089/2014 and this Court, by an order dated 23.10.2017, directed the Court below to number the petition for extension of time and dispose of the same within a period of one month from the date of receipt of a copy of this order. Unfortunately, the respondents failed to bring to the notice of this Court that the extension of time petition has already been numbered as I.A.No.56/2014 and it was allowed simultaneously along with the petition to condone the delay in re-presentation.

10.In the meanwhile, the suit was transferred from the file of the Principal District Court, Thiruvallur to the Court of III Additional Court, Poonamallee and the suit was numbered as O.S.No.27/2014. As directed by this Court, the petition for extension of time was renumbered as I.A.No.11/2018 and the same was dismissed. The point for consideration is that whether the petition for extension of time to pay the deficit court fee can be allowed, when the suit itself is barred by limitation and whether the suit is barred by limitation.

11.The date of agreement is 04.11.2004 and the time fixed to perform the part of the contract is 11 months. Admittedly, the petitioner did not pay the balance sale consideration within a period of 11 months from the date of agreement of sale. However, subsequently, he made payments till 21.07.2007 on various dates. The said payment was also duly acknowledged by the respondents and endorsement has been made in the backside of the agreement of sale. It is pertinent to note that though the respondents received the subsequent payments, there was no endorsement to the effect that the time to perform their part of the contract is extended. A perusal of the averments made in the plaint does not whisper anything about the extension of contract from date of expiry of the period of 11 months. As per the agreement of sale, the time ended on 04.10.2005. Therefore, Article 54 of the Indian Limitation Act would apply in respect of the suit for specific performance.

12.Admittedly, the present suit has been filed only on 21.07.2010. Therefore, the suit is clearly barred by limitation. However, the petitioner calculated the limitation from his last payment made on 21.07.2007. The question that arises is when the suit is barred by limitation, whether the petitioner is entitled for extension of time to pay the deficit court fees. In this regard, the learned counsel for the petitioner relied upon the judgment reported in ***(2012) 7 SCC 738 = MANU/SC/0516/2012 (A.Nawab John and Ors. Vs. V.N.Subramaniyam)*** in which, paragraphs 34, 35 and 37 are extracted hereunder:

> ***" 34.That leads us to the next question regarding the legal character of Section 149. Is it a provision conferring authority on the Court to call upon a plaintiff to make payment of court fee which was found to be due but short paid on the plaint or is it a provision conferring a right on the plaintiff to make good the deficit court fee at any point of time irrespective of the provisions of the law of limitation and other provisions and principles of law.***
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> ***35.We have already noticed that under Order VII Rule 11, a plaint, which has not properly valued the relief claimed therein or is insufficiently stamped, is liable to be rejected. However, under Rule 13 such a rejection by itself does not preclude the plaintiff from presenting a fresh plaint. It naturally follows that in a given case where the plaint is rejected***

under Order VII Rule 11 and the plaintiff chooses to present a fresh plaint, necessarily the question arises whether such a fresh plaint is within the period of limitation prescribed for the filing of the suit. If it is to be found by the Court that such a suit is barred by limitation, once again it is required to be rejected under Order VII Rule 11 Clause (d). However, Section 149 Code of Civil Procedure, as interpreted by this Court in Mannan Lal (supra), confers power on the Court to accept the payment of deficit court fee even beyond the period of limitation prescribed for the filing of a suit, if the plaint is otherwise filed within the period of limitation. Therefore, the rigour of Order VII Rule 11 Code of Civil Procedure and also Section 4 of the Tamil Nadu Act is mitigated to some extent by the Parliament when it enacted Section 149 Code of Civil Procedure. We may not forget that Limitation is only a prescription of law; and Legislature can always carve out exceptions to the general rules of limitation, such as Section 5 of the Limitation Act which enables the Court to condone the delay in preferring the appeals etc.

36. . . .

37.It is well settled that the judicial discretion is required to be exercised in accordance with the settled principles of law. It must not be exercised in a manner to confer an unfair advantage on one of the parties to the litigation. In a case where the plaint is filed within the period of limitation prescribed by law but with deficit court fee and the plaintiff seeks to make good the deficit of the court fee beyond the period of limitation, the Court, though has discretion under Section 149 Code of Civil Procedure, must scrutinise the explanation offered for the delayed payment of the deficit court fee carefully because exercise of such discretion would certainly have some bearing on the rights and obligations of the defendants or persons claiming through the defendants. (The case on hand is a classic example of such a situation.) It necessarily follows from the above that Section 149 Code of Civil Procedure does not confer an absolute right in favour of a plaintiff to pay the court fee as and when it

> ***pleases the plaintiff. It only enables a plaintiff to seek the indulgence of the Court to permit the payment of court fee at a point of time later than the presentation of the plaint. The exercise of the discretion by the Court is conditional upon the satisfaction of the Court that the plaintiff offered a legally acceptable explanation for not paying the court fee within the period of limitation."***

and further the judgment reported in ***(2019) 6 MLJ 381 (Sundarammal and Ors. Vs. N.Adinarayanan and Ors.)*** , in which, paragraph No.13 is as follows:

> ***"13.Though Section 149 of CPC confers discretionary power on the Court to accept payment of deficit court fee even beyond the period of limitation prescribed for the filing of a suit, if the plaint is otherwise filed within the period of limitation, this discretion should be exercised properly by the Court."***

13.The Hon'ble Supreme Court of India held that the provisions under Section 149 C.P.C confers power on the Court to accept payment of deficit court fee even beyond the period of limitation prescribed in filing of a suit, if the plaint is otherwise filed within the period of limitation. In the case on hand as stated supra, admittedly, the petitioner filed the suit beyond the period of three years from the date of expiry of the contract viz., on 04.10.2005. When a specific time is fixed in the contract, Article 54 applies in case of a suit for specific performance and it is relevant to extract Article 54 of the Indian Limitation Act as follows:

Description of suit	***Period of Limitation***	***Time from which period begins to run***
54.For specific performance of a contract	Three years	The date fixed for the performance, or, is no such date is fixed, when the plaintiff has notice that performance is refused.

14.Therefore, the petitioner ought to have filed the suit on or before 03.10.2008. Hence, the present suit is clearly barred by limitation and as such, the petitioner is not entitled to pay the deficit court fee.

15.The petitioner, after expiry of time stipulated in the agreement of sale, made certain payments and the same were duly received by the respondents till 21.07.2007. Those endorsements were made in the agreement of sale dated 04.11.2004. However, time is not extended to perform their part of the contract. Though the petitioner made subsequent payments after expiry of contractual period, it would not mean that the period of contract was extended till the last payment. The last payment was made on 21.07.2007 and even till filing of the suit on 21.07.2010, the petitioner failed to show that he was ready and willing to perform his part of the contract. It shows that the petitioner failed to prove his readiness and willingness to perform his part of the contract. In this regard, the learned counsel for the petitioner relied upon the judgment reported in ***(1994) 1 MLJ 146 = MANU/TN/0335/1993 (B.P.Samiappan and Ors. Vs. Arunthavaselvan and Ors.)***, in which, para 6 is extracted hereunder:

> ***"6.After hearing counsel on both sides, we are of the view that it is not necessary to consider the various issues of facts, which were***

considered by the court below. We are taking up for consideration the two questions of law, one on limitation and the other on the provisions of the Tamil Nadu Land Reforms Act. In so far as the limitation is concerned, Article 54 of the Limitation Act is very clear in its terms. The period of limitation fixed for a suit for specific performance of a contract is three years from the date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused. In the present casse, time was originally fixed in the agreement for a period of one year. Subsequently, it was extended by endorsements upto 13th August 1972. Thereafter, there was no extension as such. Ex.A-5 in only a receipt for payment of Rs.19,000/- and it does not extent the period for performance. In fact, that payment was made on 3.8.1972 before the expiry of the period fixed under the earlier endorsement dated 13.05.1972. It is not the case of the plaintiff in the pleadings that time was extended as between the parties by implication. In paragraph 8, it is stated as follows:

The plaintiff states, the time of one year for performance stipulated in the agreement to sell is not the essence of contract for one reason that the agreement is with regard to agricultural immovable properties and for the second that parties themselves never regarded or intended that time should be of essence of contract. The subsequent conduct of the parties and turn of events also will show that time was not regarded as essence of contract.

Again in paragraph 23 it is stated,

The plaintiff states that the suit is in time. Performance of suit agreement was refused by defendants 1 and 2 only on 31.07.78 (i.e.) for the first time through their reply notice, which gives plaintiff cause of action to sue and hence the suit is not barred by limitation.

In the cause of action paragraph (paragraph 25) it is stated that the cause of action for the suit arose on 12.4.1971, the date of suit agreement to sell, on 15.5.1972 and

13.08.1972 when the time was extended, on 29.6.1978 when the plaintiff requested performance through a notice and on 31.7.1978 when defendants 1 and 2 for the first time disowned their duties under the contract and refused to execute the sale. Thus, there is absolutely no whisper in the plaint that the parties either by express agreement or by implied agreement extended the time for performance of the contract. Hence, by the terms of Article 54 of the Limitation Act, the suit is filed beyond the period prescribed therefor. Admittedly it is beyond the period of three years from the date fixed for performance in the agreement. Hence, the suit is barred by limitation. The view taken by the court below that time is not the essence of the contract and, therefore, the suit is in time is unsustainable. It is one thing to say that time is not the essence of the contract and it is another thing to say that the suit is barred by limitation. In the present case, the suit is governed by Article 54 of the Limitation Act and it is barred by limitation."

and the judgment reported in ***(2011) 3 MWN 780 = MANU/TN/3719/2011 (Duraikannu Naicker Vs. K.Ramachandra Iyer),*** in which, paragraphs 12, 13 & 14 are extracted hereunder:

> ***"12.Under Article 54 of the Limitation Act, the suit for specific performance has to be filed within three years from the date fixed for the performance and if No. such date is fixed, from the date when the plaintiff has notice that performance is refused. As stated supr, the agreement of sale was dated 1.4.1994 and six months time was provided in the agreement of sale and therefore, after the expiry of six months viz., 30.9.1994, within three years, the plaintiff ought to have filed the suit for specific performance. Admittedly, the suit was filed on 9.2.1998. Therefore, the suit is barred by limitation.***
>
> ***13.Further, it was contended by the Learned Counsel for the Respondent that under Exs.A3 and A4, payments were made on 12.1.1995 and 16.3.1995 and the same were***

accepted by the Appellant and therefore, the payments made under Exs.A3 and A4 would extent the period of limitation and therefore, the suit filed on 9.2.1998 is within the period of limitation.

14.The argument of the Learned Counsel for the Respondent cannot be accepted. Normally, the payment made will extend the period of limitation only in respect of money transaction. Here, in a suit for specific performance, any payment made during the period of three years from the date of agreemetn, will not extent the period of limitation and parties cannot claim that from the last date of payment, they are entitled to seek for performance of the contract within a periiod of three years. The reason is that as per the third column to Section 54 of the Limitation Act, the period of limitation commences from the date fixed for the performance or when the performance was refused. In an agreement of sale, when the date was fixed, the time begins to run from the expiry of the date fixed for

> ***performance of the contract and it can be extended only by a written agreement by the parties extending the periiod for performing the contract. Therefore, in the absence of any agreement or endorsement made by the parties while making the payment that the period is also extended for performing the contract, me repayment will not extend the period of limitation. This has been held by the Division Bench of this Court in (1994) 1 MLJ 146 (cited supra).***

16.This Court held that in a suit for specific performance, any payment made subsequent to the period stipulated in the agreement of sale will not extend the period of limitation and the parties cannot claim that from the last date of payment, they are entitled to seek performance of contract. As per Article 54 of the Limitation Act, a suit for specific performance has to be filed within a period of three years from the date fixed for the performance and if no such date is fixed from the date, when the plaintiff has noticed that performance is refused. In the case on hand, the time was fixed as 11 months from the date of the agreement of sale viz., on 04.11.2004 and the petitioner ought to have filed the suit within three years from 04.10.2005. Admittedly, the present suit has been filed only on 21.7.2010 and as such, the suit itself is barred by limitation. In an agreement of sale, when the date is fixed, the time begins to run from the expiry of the date fixed for performance of the contract and it can be extended only by a written agreement by the parties extending the period for performing the contract. Hence, in the absence of any agreement or endorsement made by the parties, while making subsequent payments that the period is also extended for performing the contract, mere payment will not extend the period of limitation.

In view of the above discussions, this Court finds no infirmity or illegality in the order passed by the Court below. Accordingly, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

05.07.2021

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
sms

To

1. The Government Employees
   Welfare Association
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