



C.R.P.(NPD).Nos.2491, 2494 and 2505 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(NPD).Nos.2491, 2494 and 2505 of 2021

and

C.M.P.Nos.18779, 18805 and 18866 of 2021

C.R.P.No.2491 of 2021:

K.S.Muralidharan

.. Petitioner

Vs.

Uma Sethuram

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order and decree passed in I.A.No.46 of 2020 in unnumbered A.S.Sr.No.26843 of 2007 on the file of the Principal Judge, City Civil Court, Chennai, dated 13.08.2021.

C.R.P.No.2494 of 2021:

K.S.Muralidharan

.. Petitioner

Vs.

Uma Sethuram

.. Respondent



C.R.P.(NPD).Nos.2491, 2494 and 2505 of 2021

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order and decree passed in I.A.No.48 of 2020 in unnumbered A.S.Sr.No.26859 of 2007 on the file of the Principal Judge, City Civil Court, Chennai, dated 13.08.2021.

C.R.P.No.2505 of 2021:

K.S.Muralidharan

.. Petitioner

Vs.

1.Uma Sethuram

2.Gokul Builders & Estates (Madras) Ltd.,
Rep. by its Managing Director,
28, C.V.Raman Road,
Alwarpet, Chennai – 600 018.

3.Ceebros Property Development,
Rep. by its Managing Director,
19/1, 3rd Cross Street,
R.A.Puram, Chennai – 600 028.

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order and decree passed in I.A.No.47 of 2020 in unnumbered A.S.Sr.No.26844 of 2007 on the file of the Principal Judge, City Civil Court, Chennai, dated 13.08.2021.

For Petitioner : Mr.R.Subramanian
for Mr.J.Ram in all the CRPs.



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COMMON ORDER

These three Revisions have been filed challenging the order of the learned Principal Judge, City Civil Court, Chennai condoning the delay in re-presentation of appeal Sr.Nos.26843, 26844 and 26859 of 2007.

2. Those three appeals were filed against the three suits viz., O.S.Nos.6098 of 1997, 3566 of 1998 and 4596 of 2000. The suit in O.S.No.6098 of 1997 is the suit for specific performance and the other two suits are for permanent injunction. The trial Court while dismissing O.S.No.6098 of 1997, had decreed the other two suits.

3. Aggrieved the 1st respondent herein had filed three appeals through one Mr.S.Sundaragopal, Advocate. It is stated that the appeal papers were returned and the same were taken back by his junior. Thereafter, the husband of the 1st respondent fell sick and he was admitted in the hospital. The 1st respondent who was the Government school teacher was transferred to various places. She also has to undergo some treatment. It is stated that the husband of the 1st respondent also met with an accident and suffered injuries in spleen and the spleen has been removed. While the things stood



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thus, unfortunately, the counsel who appeared for them also died in the year 2016. Thereafter, when the 1st respondent wanted to get back the appeal papers and re-present them, she could not find the appeal papers either in the office of the counsel or with his junior.

4. It is in these circumstances, the respondent had applied for fresh copies and obtained new copies of the judgments and decrees and re-presented the appeals along with the copies of the judgments and decrees obtained later and sought for condonation of delay in re-presentation.

5. The same was stoutly opposed contending that the delay is not, actually, delay in re-presentation, it is delay in presentation. It is also contended that re-construction of papers can happen only if the papers are lost by the Court. It was the further contention that the petitioner had misled the Court and obtained order in CRP stating that her husband is no more.



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6. The learned Principal Judge, City Civil Court, Chennai who heard the application, had concluded that the delay is enormous. He however found as of fact that the appeals were actually filed in 2007. He accepted the reasons assigned by the respondent for the delay in re-presentation. He allowed the applications on condition that the respondent should pay costs of Rs.5,000/- in each of the applications. Challenge in these Revisions is to the said order of the learned Principal Judge allowing the applications and condoning the delay in re-presentation.

7. I have heard Mr.R.Subramanian, learned counsel appearing for Mr.J.Ram, learned counsel for the petitioner.

8. Mr.R.Subramanian, would vehemently contend that the delay is not a delay in re-presentation. According to him the delay in re-presentation would arise only if the papers that are filed into Court are re-presented. What the respondent has sought to do before the trial Court was that she had filed fresh copies of the judgment and decree along with copy of the grounds of appeals that were filed earlier, that would not be a proper re-



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presentation. He would also further contend that there could be no question of re-construction of papers unless the papers are lost by the Court. He would also point out that the 1st respondent has mis-led this Court on earlier occasion and represented that her husband is dead, but, he is still alive.

9. I have considered the submissions of the counsel for the petitioner. No doubt, the delay is enormous, but, I find that cogent reasons have been given in the affidavit explaining the delay. The fact that the respondent was serving as a Government school teacher is not in dispute. The fact that her husband met with an accident and suffered spleen injury is also not in dispute. In fact some evidence in the form of medical records have been placed before the Court to establish that the husband of the 1st respondent had met with an accident.

10. The contention that there cannot be re-construction of records, if the records are not lost by the Court cannot be accepted for the simple reason that loosing of papers can happen anywhere, it can happen in the Court or in the office of the counsel. We have experienced the 2015 floods,



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where several lawyer's offices were inundated. So many papers were lost. If the Court is to accept the contention that re-construction could happen only if the papers are lost by the Court, it would lead to disastrous results. If the party has pleaded that there was an accident or a *bona fide* error by the party which had led to loss of papers, there is nothing wrong in allowing re-construction.

11. As regards the claim that there was mis-representation before this Court, I find that it is a mistake and not mis-representation. The respondent has very clearly stated that her husband had met with an accident, the spleen was injured and the same was replaced at Malar Hospital, Chennai. In the very same paragraph, it is stated that her counsel Mr.S.Sundaragopal died during the year 2016. While narrating the facts in the earlier order, it is made to appear that the husband of the respondent had died. May be that it is a factually incorrect statement. I do not find any lack of *bana fides* in that.

12. After all, the learned Principal Judge, City Civil Court, Chennai had exercised discretion in the matter of condoning the delay in re-



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presentation. I do not see any necessity to interfere with such discretion, particularly, in a revision under Article 227 of the Constitution of India, where my jurisdiction is very limited. I therefore see no merits in the revision and it is accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petitions are closed.

25.11.2021

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Index : No

Internet : Yes

Speaking order

To

The Principal Judge,
City Civil Court, Chennai.



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R.SUBRAMANIAN, J.

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