



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (MD) Nos.1688 & 1689 of 2019
and
C.M.P. (MD) Nos.8718 & 8720 of 2019

Thirunagalingam .. Petitioner in both CRPs.

-vs-

Lingeswaran .. Respondent
in CRP(MD) No.1688/2019

Tamizharasi .. Respondent
in CRP(MD) No.1689/2019

Prayer :- Petitions filed under Section 115 of Code of Civil Procedure against the fair and decretal orders dated 19.08.2019 made in I.A.Nos.119 of 2019 and 462 of 2018 respectively in O.S.No.110 of 2015 on the file of the learned Subordinate Judge, Paramakudi.

For Petitioner : Mr.S.Srinivasa Raghavan
(In both CRPs)

For Respondent : Mr.A.Sivaji
(In both CRPs)

COMMON ORDER

The petitioner/plaintiff is before this Court challenging the orders dated 19.08.2019 passed by the Sub Court, Paramakudi in I.A.Nos.119 of 2019 and 462 of 2018 respectively, in O.S.No.110 of 2015.

2.For the sake of convenience, the parties are referred to as per their rank in the suit in O.S.No.110 of 2015.

3.I.A.No.462 of 2018 is filed by the second defendant under Section 5 of the Limitation Act, to condone the delay of 467 days in



filing the petition to set aside the ex-parte decree passed against her.

3.1.I.A.No.119 of 2019 is filed by the first defendant to condone the delay of 712 days in filing the petition to set aside the ex-parte decree passed against him.

3.2.Both the Interlocutory Applications arise out of a single suit viz., O.S.No.110 of 2015.

4.The facts, necessary to dispose of the above Civil Revision Petitions, are as follows:-

4.1.The plaintiff and the first defendant had entered into an Agreement of Sale dated 17.08.2015 in respect of the suit scheduled property. Under the agreement, the plaintiff had agreed to purchase the property for a sum of Rs.3,00,000/- for which a sum of Rs.2,60,000/- was paid as advance on the date of the signing of the agreement. The balance amount of Rs.40,000/- was to be paid within a period of one month from the date of the agreement.

4.2.It is the case of the plaintiff that he was ready and willing to proceed with the sale. However, on 10.09.2015, when he had approached the first defendant with the balance sale consideration requesting him to execute the Sale Deed, the first defendant refused for not coming forward to execute the Sale Deed immediately. Thereafter, on 12.09.2015, the plaintiff was surprised to receive a caveat, in which the second defendant was impleaded as a party. After enquiry, it was found that the first defendant had illegally sold the suit scheduled property to the second defendant. Since the first defendant did not even thereafter come forward to execute the Sale Deed, the plaintiff had come forward with the present suit.

4.3.The first defendant had taken a plea that the agreement was executed only as a security for the loan borrowed by the plaintiff and he denied that he had entered into an agreement to sell the property to the plaintiff.

5.Mr.S.Srinivasa Raghavan, learned counsel appearing for the petitioner would submit that though written statement was filed by both the defendants, however, they did not participate in the trial and thereafter, the learned Sub Judge, Paramakudi had decreed the suit as prayed for.

6.It is informed by the learned counsel appearing for the plaintiff that possession was given to the plaintiff on the date of signing of the agreement and the Sale Deed had also been executed through Court in favour of the plaintiff and the defendants, who are the fence-sitters, have not come forward with any application to set



aside the ex-parte order earlier.

7. After the Sale Deed was executed in favour of the plaintiff, on 16.02.2018 and 19.02.2018, applications have been moved by the second defendant and first defendant seeking to condone the delay of 712 days and 467 days respectively, in filing the petitions to set aside the ex-parte decree. In the affidavit filed in support of the said applications, the defendants would submit that P.W.1 was suffering from Jaundice and therefore, they could not attend the proceedings, as a result of which the suit was decreed. They would submit that the ex-parte judgment came to their knowledge only on 16.06.2018. The plaintiff had filed a counter stating that the applications are nothing but an abuse of process of Court, since the defendants were very much aware about the pendency of the suit as well as the stage at which it was and after filing the written statement, they have not come to participate in the proceedings. The Sale Deed in respect of the property has already been executed in favour of the plaintiff by the Court and possession of the property is also in the hands of the plaintiff. If at this juncture, the ex-parte decree is set aside, it would cause tremendous hardship to the plaintiff.

8. Learned counsel appearing for the petitioner/plaintiff would draw the attention of this Court to the fact that the defendants were aware about the pendency of the proceedings and after filing their written statement, the defendants have stayed away from the proceedings. The ex-parte decree had been passed as early as on 07.02.2017. However, the applications have been filed much later and there are no convincing reasons given for condoning the delay. In the affidavit filed by the 1st defendant in support of the petition to condone the delay in setting aside the ex-parte decree, the reason that has been provided is that the first defendant had come to know about the ex-parte decree through his relative, a resident of Nainar Kovil and thereafter, he has ascertained the situation with his advocate, therefore, he was not able to participate in the proceedings. As regards the second defendant, she would submit that she was suffering from Jaundice and therefore, could attend the Court. Thus, the reasons are not sufficient to condone such a huge delay. He would submit that condonation of delay is not a matter of right and the person seeking the condonation has to establish sufficient cause for having the delay condoned.

9. Per contra, Mr.A.Sivaji, learned counsel appearing on behalf of the respondents/defendants would contend that the defendants have a very good case to urge on merits. The Agreement of Sale is not an agreement, but only given as a security. Further, the first defendant has sold the property to the second defendant and is bound to clear the title in respect of the suit scheduled property. He



would further submit that a reading of the Agreement of Sale would reveal that it was only given as a security, since the Agreement of Sale contains a sentence that “ஷை அட்வான்ஸ் தொகைக்கு ஷை கீழ் கண்ட சொத்து ஐயம்”. He would further contend that the plaintiff has not proved his readiness and willingness and these factors have not been taken into account by the learned Sub Judge, Paramakudi before decreeing the suit. Therefore, the learned Sub Judge has rightly condoned the delay. He would further submit that as directed by the Court below, the costs have also been deposited to the credit of the suit.

10.Heard the learned counsels for the parties and perused the materials placed on record.

11.The defendants have filed the Interlocutory Applications for condoning the delay in filing the necessary petitions for setting aside the ex-parte decree. The affidavit is totally bereft of any reason as to why the defendants have come forward to file these applications with such a huge delay. The reason given was that the second defendant was suffering from Jaundice. It is to be noted that in the case of the first defendant, the delay was enormous, that is, 712 days followed by the second defendant with a delay of 467 days. Apart from a vague plea of Jaundice, no other reasons have been given for the delay. The defendants were very much aware about the pendency of the suit, since they have entered appearance and filed their written statement. After the filing of the written statement, the defendants have not evinced any interest in proceeding with the trial and ultimately, the ex-parte decree came to be passed. Another factor that has to be taken note of is that on 10.09.2015, when the plaintiff had approached the first defendant to execute the Sale Deed with the balance sale consideration of Rs.40,000/-, the first defendant, who took time to revert, thereafter, had filed a caveat.

12.The learned counsel for the respondents/defendants had submitted that there was no pre-suit notice.

13.Considering the fact that the first defendant himself has filed the caveat, it only implies that he was aware that proceedings would be initiated against him. Though the first defendant has taken a plea that the Agreement of Sale was nothing but a security for a loan, he has however, not taken immediate steps to participate in the proceedings. Therefore, in the absence of sufficient reasons for the condonation of delay, the order passed by the learned Sub Judge, Paramakudi in condoning the delay by awarding compensation, is totally erroneous. The learned Sub Judge has totally overlooked the fact that the Sale Deed has now been executed in favour of the plaintiff and the balance sale consideration has also been deposited into Court.



14. In the above circumstances, the orders dated 19.08.2019, passed by the learned Sub Judge, Paramakudi in I.A.Nos.462 of 2018 and 119 of 2019 cannot be sustained and are accordingly, set aside. Consequently, the Civil Revision Petitions are allowed. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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Note:-In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

The Subordinate Judge, Paramakudi.

+2 CC to M/s.A. SIVAJI, Advocate (SR-33867[F] dated 09/11/2021)

+2 CC to M/s.S. SRINIVASA RAGHAVAN, Advocate (SR-33872[F] dated 09/11/2021)

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