

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2022

CORAM:

THE HON'BLE MR. JUSTICE M.DURAI SWAMY
AND
THE HON'BLE JUSTICE MR. SUNDER MOHAN, J

C.M.P.No.10558 of 2021
in O.S.A.SR.No.94861 of 2020

Reliance Home Finance Limited,
Reliance House, Ground Floor,
No.5, Haddows Road,
Nungambakkam,
Chennai - 600 006.

... Petitioner/3rd Party

v.

S.K.A. Abdul Kader (Since deceased)

1. N.H. Rahima
2. A.Shek Mohamed Aliar
3. A. Hameed Sulthan
4. Mallika Fathima

(Plaintiffs 1 to 4 impleaded as per order
dated 17.09.2015 in A.No.4851/2014)

5. Mrs. Vijayalakshmi
6. G. Suresh
7. Ms. Nivedha Ramesh
8. Minor Krishnan

Represented by Guardian
Mrs. Vijayalakshmi

9. M.Rajendra Kumar
- 10.M.Omprakash
- 11.Santhosam
- 12.The Sub Registrar,

Adyar, Chennai - 600 020.

... Respondents

(Defendants 7 to 9 were impleaded
as per order dated 14.03.2019 in A.No.9536/2018)

CMP No.10558 of 2021: Civil Miscellaneous Petition filed under
section 17 and Article 123 of the Limitation Act to condone the
delay of 4329 days in filing the Original Side Appeal against
the order dated 18.03.2008 made in O.A.No.308 of 2008 in C.S.
No.280 of 2008.

O.S.A.SR.No.94861 of 2020 : Original Side Appeal filed under
Clause 15 of Letters Patent and Order 36 Rule 9 of Original
Side Rules to set aside the order passed in O.A.No.308 of 2008,
dated 18.03.2008.

OA.No.308 OF 2008: Original Application praying that this Honble Court be pleased to grant Ad-interim injunction restraining the respondents their men, agents, servants or any one authorized by them from alienating or encumbering or altering or in any way dealing with the schedule mentioned property in any manner.

For Petitioner : Mr. N. Vasantha Kumar

For Respondents : Ms. Srividhya Aravindan
1 to 4 Mr. Vadivel Deenadayalan,
Addl. Govt. Pleader -R12

ORDER

(Order of the Court made by M.DURAISWAMY,J.)

There is a delay of 4329 days in filing the Original Side Appeal challenging the order passed in O.A.No.308 of 2008, dated 18.03.2008.

2.1 The plaintiffs filed the suit in C.S.No..280 of 2008 for specific performance and for other reliefs. In the said suit, the plaintiffs took out an application in O.A.No.308 of 2008 seeking for an order of interim injunction restraining the defendants from alienating or encumbering or altering or in any way dealing with the suit property.

3. The learned Single Judge, by order dated 18.03.2008, directed the defendants not to create any fresh alienation. In spite of the said order of interim injunction granted by the learned Single Judge, the appellant, viz., Reliance Home Finance Limited, advanced loan to the purchaser of the suit property from the defendants.

4. According to the parties, the defendants sold the suit property to the purchaser on 12.04.2017. However, the appellant-Finance Company advanced loan to the purchaser even prior to the execution of the sale i.e. on 12.04.2017 itself.

5. On a perusal of the sale deed executed by the defendants viz., G.Vijayalakshmi and others in favour of one A.Santhosh, it is clear that the appellant-Finance Company had drawn the cheques even prior to the execution of the sale deed i.e.

(i) Nine cheques dated 31.03.2017 for a sum of Rs.4,28,23,855/- and

(ii) Nine cheques dated 10.04.2017 for a sum of Rs.4,28,23,855/-

favouring 1st and 2nd vendors respectively. When the borrower had purchased the property only on 12.04.2017, the appellant-

Finance Company choose to issue the cheques in favour of the vendors much prior to the execution of the sale deed. In other words, when the borrower got title to the property only on 12.04.2017, the reason for issuing the cheques even prior to 12.04.2017 has not been explained by the appellant-Finance Company. That apart, when this court had granted an order of interim injunction in favour of the plaintiffs restraining the defendants from alienating or encumbering the suit property, the appellant-Finance Company advanced huge amount to the purchasers.

6. The learned counsel appearing for the 2nd respondent submitted that the appellant-Finance Company had knowledge about the pendency of the suit as early as on 25.05.2017, the date on which a notice was sent to the appellant-Finance Company informing them that legal action would be initiated against them for violating the order of interim injunction granted by this court in O.A.No.308 of 2008, dated 18.03.2008.

7. The learned counsel appearing for the appellant-Finance Company submitted that no notice was sent to the appellant-Finance Company and that it was only sent to its sister-concern.

8. On a perusal of the notice dated 25.05.2017 and also the acknowledgement annexed in the typed set of papers, it is clear that the notice dated 25.05.2017 was very much addressed to the appellant and the acknowledgement was also received by the respondents' counsel

9. The learned counsel for the appellant submitted that in the acknowledgement, the seal of Reliance Commercial Finance Limited has been affixed hence, it should not be taken as proper service of notice.

10. When the notice was addressed to the appellant's company the affixure of seal shall not vitiate the proper service of notice on them. Therefore, from the production of notice dated 25.05.2017 and the acknowledgement in respect of the service of the said notice, the respondents established that the appellant had full knowledge about the order of interim injunction granted by this court in the month of May 2017 itself.

11. It is also brought to the notice of this court that the appellant was impleaded as 8th defendant in 2019 at the instance of the plaintiffs. It is also pertinent to note that in spite of coming to know about the pendency of the suit and the order of interim injunction granted by this court, the appellant choose not to file any application to get themselves

impleaded in the pending suit. It was only at the instance of the plaintiffs they were impleaded as 8th defendant. Even after the impleadment of the appellant in the suit, they did not choose to file any application seeking for vacating the order of interim injunction granted on 18.03.2008. After keeping quiet till 22.12.2020, the appellant filed the above appeal only on 23.12.2020.

12. From the above it is clear that in spite of having knowledge about the pendency of the suit in C.S.No.280 of 2008 and also the order of interim injunction granted in O.A.No.308 of 2008, dated 18.03.2008, the appellant has filed the above appeal challenging the order passed in O.A.No.308 of 2008 only on 23.12.2020 along with a petition to condone the delay of 4329 days in filing the Original Side Appeal. The appellant has not given any acceptable reasons for the inordinate delay of 4329 days in filing the appeal.

13. In the judgment reported in 2015 (1) SCC 680 [H.Dohil Constructions Company Private Ltd. v. Nahar Exports Limited and another], the Hon'ble Supreme Court has categorically held that unless the party seeking for condonation of delay give sufficient cause for the delay, the delay should not be condoned.

14. The ratio laid down by the Hon'ble Supreme in the said judgment squarely applies to the facts and circumstances of the present case.

15. In the case on hand, it is clear that the appellant has not explained the reasons for condoning the inordinate delay of 4329 in a proper manner. The mortgaged loan granted by the appellant-company is clear violation of the order granted in O.A.No.308 of 2008, dated 18.03.2008. Further, the appellant was not diligent in prosecuting the matter in a proper manner.

16. For the reasons stated above, we are not inclined to condone the inordinate delay of 4329 days in filing the Original Side Appeal. The Petition is liable to be dismissed. Accordingly, the Civil Miscellaneous Petition is dismissed. Consequently, O.S.A.SR.No.94861 of 2020 is rejected.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

Rj

To

1.The Sub Registrar,
Adyar,
Chennai - 600 020.

2.The Sub Assistant Register,
Original Side, High Court,
Madras.

+3cc to M/s.K.Jayasudha, Advocate, S.R.No.32949

+2cc to Mr.Aravindan, Advocate, S.R.No.32805

C.M.P.No. 10558 of 2021
in O.S.A.SR.No.94861 of 2020

NR(CO)
SB(30/06/2022)