



CRP(NPD) .No.2372 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on 14.06.2022

Order delivered on 03.08.2022

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

C.R.P.(NPD)No.2372 of 2018

and

C.M.P.No.14694 of 2018

Arumugham

.... Petitioner

Vs

1. N.Kavitha

2. Sathyavani

.... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order of the Subordinate Judge Court at Dharmapuri dated 23.11.2017 in I.A.No.643 of 2017 in I.A.No.23 of 2014 in I.A.No.467 of 2010 in O.S.No.158 of 2010.

For Petitioner : Mr.P.Valliappan

For respondents : Mr.C.Prabakaran for R1
No appearance for R2.



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ORDER

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This Civil Revision Petition has been filed by the plaintiff as against the fair and decretal order of the learned Subordinate Judge, Dharmapuri dated 23.11.2017 made in I.A.No.643 of 2017 in I.A.No.23 of 2014 in I.A.No.467 of 2010 in O.S.No.158 of 2010.

2. The brief facts of the case of the petitioner is as follows:

The petitioner herein is the respondent in I.A.No.643/2017 and plaintiff in O.S.No.158/2010. He has filed a suit for specific performance of sale agreement. An exparte decree was passed on 01.11.2010 and the respondents filed an application in I.A.No.467 of 2010 to set aside the same. The said application was allowed on 11.04.2011, subject to condition of payment of costs but the costs was not paid in time. In the meantime, execution proceedings was initiated in REP.No.81 of 2011. Though the respondents received notice in the execution proceedings and entered appearance, the respondents remained exparte. Thereafter, the respondents filed I.A.No.23 of 2014 seeking extension of time for payment of costs in I.A.No.467 of 2010 and the said application was dismissed on 03.03.2015. Again, the respondents filed an application to set aside the said dismissal



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order in I.A.No.467 of 2010 with a huge delay and the same was also dismissed. Subsequently, the respondents filed I.A.No.643 of 2017 to condone the delay of 818 days in restoring I.A.No.23/2014. The same was allowed on 23.11.2017 by the trial Court without assigning any reason. Hence, this Civil Revision Petition.

3. Heard the learned counsel for the petitioner and the learned counsel for the first respondent and perused the materials available on record.

4. Learned counsel for the petitioner would submit that the application seeking to condone the delay of 818 days in filing the application to restore the application in I.A.No.23 of 2014 is ex-facie erroneous and unsustainable in law. An exparte decree in O.S.No.158 of 2010 was passed on 01.11.2010 and the respondents filed an application in I.A.No.467 of 2010 to set aside the same. The said application was allowed on 11.04.2011 on condition of payment of costs and due to failure on the part of the respondents in paying the costs, the said application was dismissed on 03.03.2015. Subsequently, the respondents filed an application in I.A.No.23 of 2014 to set aside the order in I.A.No.467 of 2010 with a huge delay and the same was also dismissed and thereafter, the respondents filed I.A.No.643 of 2017 to



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restore I.A.No.23/2014 and the same was allowed without assigning any reason. The respondents have not substantiated their case by any valid reason for the delay at every stage of the proceedings. The impugned order suffers from total non-application of mind. Only to drag on the proceedings and to avoid the petitioner from proceeding with the execution proceedings, the respondents are filing applications after applications repeatedly and the trial court, without considering all these aspects, had allowed the application I.A.No.643 of 2017 and that too, without assigning any reason. Hence, the impugned order is liable to be set aside.

5. Per contra, the learned counsel for the 1st respondent would submit that when I.A.No.467 of 2010 was allowed on 11.04.2011 with a condition to pay cost of Rs.500/-, the respondent could not pay the amount as she was not feeling well at that time. Therefore, she filed an application in I.A.No.23/2016 for extension of time for payment of costs and on the date of hearing, she was in Bangalore due to family issues and thus, she was not able to meet her counsel to give instructions and hence, the said petition was dismissed. Subsequently, the respondents filed an application in I.A.No.643 of 2017 to condone the delay of 818 days in restoring I.A.No.23/2014. The



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delay was neither willful not wanton but only due to bonafide reasons. The learned trial Court, on consideration of the reasons stated in the affidavit filed by the respondents, has rightly allowed the petition. The respondents have to be heard for proper appreciation of the case. Hence, he prayed for dismissal of the CRP.

6. The real problem of the petitioner is that after obtaining a decree, he is not able to get the decree executed. It is also the case of the petitioner that he is not only able to get the decree executed but not able to get a finality for the decree. The plaintiff has filed a suit in O.S.No.158 of 2010 seeking the relief of specific performance of sale agreement dated 28.01.2009. The first hearing of the suit was on 22.10.2010 and an exparte decree was passed on 01.11.2010. An application was filed by the defendants under Order 9 Rule 13 CPC to set aside the exparte decree on the ground that the first defendant was not able to meet the lawyer on the date of first hearing on account of the accident and subsequently, on account of health issues. The plaintiff objected the application on the ground that summons had been served even in the month of September and that there was no documents filed to show that the first defendant had taken treatment



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for ill-health and that the application itself has been filed to drag on the proceedings as there is no merits in the main case for the defendants to contest. He would specifically point out that the written statement has not been filed even after expiry of five months. The said application was allowed by the trial Court with a direction to pay a cost of Rs.500/- on or before 11.04.2011. But the said conditional order was not complied within the time. An application was filed seeking extension of time in I.A.No.23 of 2014 and the said application had been posted on 03.03.2015. The first defendant did not appear even on the said date of hearing and the application came to be dismissed on 03.03.2015. Alleging that the 1st defendant was suffering from ill health, again an application in I.A.No.643 of 2017 was filed to restore the earlier application in I.A.No.23 of 2014. Even that application was not filed in time but with a delay of 818 days in filing the restoration. The learned Subordinate Judge, Dharmapuri, condoned the delay on payment of costs of Rs.3000/- to the Dharmapuri District Legal Services Authority on or before 3.1.2018. Challenging the same, this revision has been filed.

7. On perusal of the order passed in I.A.No.643 of 2017, it is seen that the learned trial Judge has observed that since there had been an exparte



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decree, an opportunity to contest the case has to be given to the defendants, subject to payment of costs. A detailed counter has been filed by the plaintiff in the restoration application filed by the defendants stating that for more than 7 years, he is not able to execute the decree and with a delay of 860 days, an application has been filed only when execution proceedings was initiated in E.P.No.81 of 2011. The defendants had been filing applications repeatedly with a dilatory tactics of dragging on the proceedings and misusing the process of Court. The trial Court has not assigned any specific reason for condoning the delay. Whether the delay is avoidable or unavoidable was also not discussed. The repeated applications filed at every stage of the proceedings was not at all considered by the trial Court. The trial Court has also not considered the case of the plaintiff that he was not able to get the decree executed for more than 7 years. Even the written statement was also not filed by the respondents to enable the trial Court to find out whether there is arguable case for the respondents/defendants or not. Under these circumstances, the reason given by the trial Court for condoning the delay stating that an opportunity has to be given to the defendants to contest the case, cannot be countenanced. Thus, this Court is



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of the considered opinion that the impugned order, condoning the delay, is liable to be set aside. Accordingly, the same is set aside.

8. In the result, the Civil Revision Petition is allowed. The order passed by the learned Subordinate Judge, Dharmapuri, dated 23.11.2017 in I.A.No.643 of 2017 in I.A.No.23 of 2014 in I.A.No.467 of 2010 in O.S.No.158 of 2010, is hereby set aside. The execution Court is directed to execute the decree as expeditiously as possible, in any event, within a period of three months from the date of receipt of a copy of this order. Without taking the plea of fresh notice from the executing Court, both parties shall appear before the executing Court on 18.08.2022.

No costs. Consequently, connected miscellaneous petition is closed.

03.08.2022

Index:Yes/No

Speaking/Non-speaking order

vsi

Note: issue order copy on 16.08.2022

To

The Subordinate Judge,

8/10



Dharmapuri.
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J.NISHA BANU, J.

Vsi

Pre-delivery order made in
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