



C.R.P. No. 2770 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2022

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 2770 of 2019
and
C.M.P. No. 18165 of 2019

Subramaniam,
S/o. Chinnasamy

... Petitioner

Versus

Ranganayaki,
W/o. Sekar

... Respondent

PRAYER : Civil Revision Petition filed under Sec.115 of Civil Procedure Code, praying to set aside the fair and decreetal order of learned Sub-Court, Kallakurichi dated 25.01.2019 made in I.A.No.610 of 2018 in O.S. No. 156 of 2009.

For Petitioner : Mr.S.Senthilkumar

For Respondent : Mr.R.Bharathkumar



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ORDER

WEB COPY The Revision Petitioner herein is the defendant in the suit in O.S.No.156 of 2009 on the file of Sub-Judge, Kallakurichi. The said suit was filed by the respondent/plaintiff for the relief of specific performance against the defendant praying to execute the sale deed as per the agreement dated 16.08.2007.

2. In the said suit proceedings, the defendant appeared and filed his written statement denying the sale agreement. Thereafter, when the suit was posted for P.W.1 cross, the defendant has not appeared and hence, he was set exparte on 29.04.2015. After two years, the plaintiff filed the execution petition in E.P.No.64 of 2017 to execute the decree and after receiving notice in E.P., the Revision Petitioner had a knowledge about the exparte decree. Thereafter, he took steps to set aside the exparte decree, however, there was a delay of 1038 days arose. Hence, he has filed the application in I.A.No. 610 of 2018 under Sec.5 of Limitation Act seeking to condone the delay. The said application was strongly objected by the plaintiff stating that proper reason was not assigned for the inordinate delay. On considering



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submissions of both sides, the trial court concludes that there is no valid reason stated by the petitioner in his application. Accordingly, it was dismissed.

3. The learned counsel for Revision Petitioner would submit that the plaintiff not served the notice to the defendant to his correct address, only through some of them, he has followed the court proceedings and he filed written statement immediately. Thereafter, as his earlier counsel not given proper instructions, he was not able to follow the suit proceedings. Subsequently, on receipt of notice in E.P., he came to know about the execution petition and immediately, he filed this application. He has stated proper reasons for the delay. But, the same was not appreciated by the trial judge. If the delay is not condoned, his valuable right in the suit will also be defeated, and the value of the property is more than Rs.25 lakhs. So, he prayed to set aside the order passed by the trial court.

4. The learned counsel for respondent/plaintiff submitted that in the affidavit, he has stated that after receiving notice only, he filed his written statement. Thereafter, he purposely remains absent and exparte decree was passed. Thereafter, the plaintiff filed the execution proceedings in E.P.



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No.64 of 2017. On receipt of notice in the said E.P., the defendant filed the said application purposely only in order to drag on the proceedings without assigning any reason. The said application was rightly dismissed by the trial judge, which needs no interference. In support of his contentions, he relied on the authority held by this court in the case of ***P.R.Ravichandran and Others vs. K. Aswani Kumar*** dated 04.08.2015 in ***M.P. No. 2 of 2014 in A.S.SR.No28282 of 2014***, in para 22 and 24 as follows :-

22. In C.Raghupathy Vs. C.Govindan and Others, reported in 2009 (1) CTC 319, there was a delay of 942 days, in setting aside an ex parte decree. After contest, the application for condonation was dismissed. The reason assigned, by the revision petitioner therein was that his counsel, did not fulfill his obligations properly and hence, there was a delay. Rebutting the same, the respondents therein, have submitted that there was lack of bonafide and when the question of limitation was based on principles of public policy, the victorious litigant should not be expected to remain disgruntled, indefinitely for the period to be determined, at the whims and fancies of opponent. Objection blaming the counsel for the delay has also been resisted on the ground, that it is for the party to keep in contact with him and failure to do so, amounts to negligence. After considering the rival submissions,



this Court has accepted the contentions of the respondents therein, and held that

even by engaging a counsel, party to the case is not that relieved of his duties and obligations. Where a party either does not fully brief the counsel or keep no contact with him, it is the party who is in default and negligence and has to bear the consequences."

This Court has also observed that

"when there is total lack of bonafides on the part of the petitioner, while coming forward with the application, I am of the view that this case does not deserve liberal approach formula in matters relating to condonation of delay. Therefore, the reason adduced by the petitioner that there was a communication gap between him and his previous counsel on record for seeking condonation of extraordinary delay of 942 days in filing an application to set aside the exparte decree has to be dismissed."

*24. In **S.Ramakrishnan and two others, Vs. S.Rajeswari**, reported in 2010 (6) CTC 10, a learned Single Judge of this Court has considered a case of refusal to condone the delay of 1128 days in filing an application to set aside the exparte decree. The revision petitioner therein has claimed that he had knowledge of the decree only during the execution*



proceedings. The lower Court has dismissed the application, holding that no sufficient cause was shown. The learned single Judge, on the uncontroverted facts and circumstances, found that though, the revision petitioner therein, had appeared before the Court below, through a counsel, who subsequently failed to cross examine the plaintiff's witness and hence, after adjournments to various dates, a decree came to be passed and in the above said circumstances, held that it is not open to the revision petitioner therein, to plead ignorance of the decree and seek for condonation of the inordinate delay of more than three years."

5. Heard and considered rival submissions made by learned counsel for petitioner as well as respondent and perused the records.

6. On considering submissions of both sides and on perusal of records, it reveals that the plaintiff filed a suit for specific performance to execute a sale deed based on a sale agreement said to be executed by the defendant on 16.08.2007. Previous notices was not served on with the defendant and the same were returned as unclaimed. The contention of defendant is that he has not received any notice in the address, which is mentioned in the plaint schedule. On perusal of plaint schedule, the address of defendant is mentioned as No.13C, Krishna Nagar, Emmappair Village,



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Kallakurichi Taluk. But, the aadhar card filed by the defendant shows that he is residing at No. 121, Mariamman Kovil Street, Ka.Mamanandal, Kallakurichi, Villupuram District. Even in the ration card, his address is mentioned as No.39, Old Mariamman Koil Street, Ka.Mamanandal, Kallakurichi, Villupuram District. So, the address proof clearly shows that the defendant is residing at No. 121, Mariamman Kovil Street, Ka.Mamanandal, Kallakurichi, Villupuram District. But, the plaintiff mentioned his address in the cause title as No.13C, Krishna Nagar, Emmappair Village, Kallakurichi Taluk. Furthermore, in the suit, summons sent to the address in No.13C, Krishna Nagar, Emmappair Village, Kallakurichi Taluk was returned as no such addressee. Thus, the fact reveals that from the beginning, the notice was not served on the defendant with the correct address. However, through somehow, the defendant came to know about the suit proceedings and he wanted to file vakalat and to follow the proceedings, but due to the lack advice from his counsel, he is not able to follow the suit proceedings, due to which, the delay of 1038 days arose. Hence, the Revision Petitioner has filed the said application under Sec.5 of Limitation Act seeking to condone the delay of 1038 days. The power to be



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exercised under Section 5 of the Limitation Act is a discretionary exercise that is if the trial Court is satisfied that there is sufficient cause that is enough to condone the delay. But, the learned counsel for plaintiff submitted that the defendant has not stated any such sufficient particulars for the delay and the trial court rightly appreciated the facts and dismissed the application.

7. On coming to the facts of this case, the plaintiff filed a suit for specific performance and valued the suit at Rs.4,70,000/- and paid a court fee under Sec.42(a) of Tamil Nadu Act as per the alleged sale agreement. But, the defendant denied the alleged sale agreement and also contended that the value of the property is more than Rs.25 lakhs and only based on a false agreement, the plaintiff approached the court. Therefore, he is having valuable defence to defend his case, it cannot be taken away on mere following the technicalities. This was observed by the learned judge of this court reported in **2005 (3) MLJ 439** in the case of ***Yanaimal Thottam Trust vs. B.Lakshmanan and another.*** Therefore, this court is of the view that in a suit for specific performance, the plaintiff is equally burdened to avail remedy by proving his case, so also, if defendant not given fair opportunity,



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his valuable right will be defeated. Accordingly, even though he has not stated the reasons sufficiently, this Court is inclined to condone the delay and to allow this Civil Revision Petition. The defendant is directed to pay part of cost of Rs.20,000/- before the trial court to the credit of suit in O.S.No.156 of 2009 within a period of four weeks from the date of receipt of copy of this order. On such payment, the trial court is directed to proceed with the trial and dispose the case within a period of three months thereafter. In the result, this Civil Revision Petition is allowed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

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Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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To

Sub-Judge, Kallakurichi.



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T.V.THAMILSELVI, J.

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