



C.R.P. (NPD) No.1938 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.12.2021

Delivered on : 14.02.2022

CORAM :

THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

C.R.P. (NPD) No.1938 of 2017

and

C.M.P.No.9382 of 2017

V.Santhamoorthy

... Revision Petitioner

Vs.

Vijayaragavan

... Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decretal order, dated 07.04.2017, in I.A.No.4 of 2017 in A.S.SR.No.222 of 2017 on the file of the District Court, Nagapattinam.

For Petitioner : Mr.M.L.Ramesh

For Respondent : Mr.A.Muthukumar



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ORDER

(Through Video Conferencing)

This Civil Revision Petition has been filed against the order passed by the learned District Judge, Nagapattinam, in I.A.No.4 of 2017 in A.S.SR.No.222 of 2017, dated 07.04.2017, dismissing the petition to condone the delay of 415 days in filing the Appeal Suit by the defendant against the decree and judgment, dated 30.03.2015, passed in O.S.No.114 of 2012 on the file of the learned Additional Sub-Court at Mayiladuthurai.

2.For the sake of convenience, the revision petitioner and the respondent are hereinafter referred to as “defendant” and “plaintiff” respectively.

3.The facts leading to the filing of the present Civil Revision Petition are as follows :

- The plaintiff filed the suit for specific performance of the sale agreement executed between the plaintiff and the defendant, with an alternative relief to direct the defendant to pay a sum of Rs.5,74,000/-



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with interest and costs to the plaintiff.

- The case of the plaintiff was that the defendant agreed to sell the suit property to the plaintiff and the sale consideration was fixed at Rs.9,00,000/- and a sale agreement was executed between the parties and a sum of Rs.5,00,000/- was paid as advance by the plaintiff to the defendant. It is the further case of the plaintiff that the plaintiff was ready to pay the balance sale consideration, however, the defendant postponed the performance of his part for one reason or other. Hence, the suit.
- The defendant took a stand that the sale agreement was executed only as a security for the loan of Rs.1,50,000/- obtained by the defendant from the plaintiff.
- The trial Court, on considering the oral and documentary evidence, decreed the suit, however, granted the alternative relief directing the defendant to pay the sum of Rs.5,00,000/- with interest to the plaintiff.
- Since the defendant failed to deposit the decreed amount, the plaintiff filed an Execution Petition in E.P.No.45 of 2015.
- Pending Execution Petition, the defendant sought to file the Appeal



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Suit along with a petition to condone the delay of 415 days in filing the Appeal Suit.

- The Appellate Court dismissed the petition and the defendant has preferred the present Revision Petition before this Court, challenging the order of dismissal of the petition for condonation of delay.

4.The learned counsel for the defendant/revision petitioner submitted that, pending execution proceedings, there were settlement talks between the parties and therefore, the defendant could not file the Appeal Suit within the period of limitation. The learned counsel further submitted that the trial Court had only decreed the alternative relief and not the specific performance as prayed by the plaintiff. He further submitted that the defendant was negotiating for settlement by paying the admitted amount of Rs.1,50,000/- obtained by him as loan from the plaintiff, but when the attempt failed, the defendant preferred a revision before this Court and in the said revision petition, this Court directed the defendant to deposit a sum of Rs.2,00,000/-, which the defendant was unable to comply with, due to the pathetic financial condition of the defendant. The learned counsel further submitted that the defendant was not able to mobilize funds to



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deposit the Court fee, Advocate fee and other charges and hence, he was unable to file the Appeal Suit on time. Therefore, the learned counsel prayed for condonation of the delay of 415 days in filing the Appeal Suit by the defendant.

5.Per contra, the learned counsel appearing for the plaintiff/respondent submitted that the defendant failed to pay the decreed amount and hence, the execution petition was filed and in the course of the execution proceedings, the defendant had paid then and there a considerable amount, however, on 09.11.2016, an order of attachment was passed since he failed to pay the amount further. The learned counsel further submitted that, in the revision petition filed by the defendant against the attachment order, this Court directed the defendant to deposit a sum of Rs.2,00,000/-, however, the defendant failed even to pay the said amount, and thereafter, the defendant has chosen to file the Appeal Suit after a lapse of 415 days with a petition to condone the delay. The learned counsel submitted that the Appellate Court has rightly dismissed the petition and hence, prayed for dismissal of this Revision Petition.



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6.This Court gave its anxious consideration to the rival submissions and perused the entire materials available on record.

7.It is to be noted that, though the original suit was filed for specific performance, the suit was not decreed for specific performance as prayed for by the plaintiff, but only the alternative relief was decreed for payment of Rs.5,00,000/- which was received by the defendant as advance, to the plaintiff with interest. On a perusal of the judgment passed in the suit, it can also be seen that the plaintiff has proved the payment of Rs.5,00,000/- to the defendant. However, the defendant has failed to prove that he has not received the said advance amount from the plaintiff, nor has he raised any plausible ground in the memorandum of grounds of appeal, in order to prove the same. On a perusal of the memorandum of grounds of appeal sought to be filed by the defendant, it is seen that the defendant has primarily assailed only the specific performance, which has, in fact, already been decided in favour of the defendant in the suit.



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8.Be that as it may, the fact remains that the defendant has not deposited the decreed amount and he had chosen to remain silent till the attachment order was passed in the Execution Petition, and even in his attempt to challenge the attachment order, this Court had directed the defendant to deposit a part of the decreed amount, however, the same also has not been complied with. Now, the defendant seeks to file an appeal against the suit with a delay of 415 days. The contentions of the defendant that compromise talks were going on between the plaintiff and the defendant, and the defendant was running out of money, in the opinion of this Court, are no good reasons to condone the delay, when the very compromise talks are disputed by the plaintiff. Hence, this Court does not find any infirmity or perversity in the impugned order passed by the Appellate Court, dismissing the petition for condonation of delay in filing the appeal.



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9. Therefore, this Civil Revision Petition stands dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

14.02.2022

Internet : Yes
Index : Yes / No
Speaking order / Nonspeaking order

To

1. The District Judge,
Nagapattinam.
2. The Additional Sub-Judge,
Mayiladuthurai.



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S. KANNAMMAL, J.

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