



C.R.P.(NPD) No.3608 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (NPD) No.3608 of 2019
and C.M.P. No.23628 of 2019

Kanagaraj

.. Petitioner

Vs.

Sudha

.. Respondent

Civil Revision Petition is filed under Section 227 of Consitution of India, against the judgment and decree passed in E.A. No.61 of 2017 in E.P. No.26 of 2016 in O.S. No.90 of 2013 pending on the file of the Sub Court, Udumalpet.

For Petitioners : Mr. G.Vinoth

For Respondent : Mr. R.Babu

ORDER

This Civil Revision Petition is filed aggrieved by the order passed by the Sub Judge, Udumalpet, in E.A. No.61 of 2017 in E.P. No.26 of 2016 in O.S. No.90 of 2013.

2. Brief facts that are necessary for the disposal of this Civil Revision



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Petition are as follows:

The respondent as plaintiff filed a suit in O.S. No.90 of 2013 for specific performance of an agreement of sale dated 11.04.2012. An *ex parte* decree was passed on 29.11.2013. Thereafter the respondent filed an execution petition. It is stated that an *ex parte* order was passed on 18.01.2017. The revision petitioner filed a petitioner E.P. No.61 of 2017 to condone the delay of 138 days in filing a petition to set aside the *ex parte* order in E.P. No.26 of 2016. The said application was dismissed by the lower Court only on the ground that the application to set aside the *ex parte* order cannot be filed beyond thirty days. Referring to Section 5 of the Limitation Act and the provisions of Order 21 Rule 106 C.P.C., the lower Court found that Section 5 of Limitation Act is not applicable and that an application to condone the delay beyond thirty days is not maintainable.

3. Learned counsel for the revision petitioner submitted that the application to condone the delay of 138 days is maintainable and that the lower Court ought to have seen that the application under Section 5 of the Limitation Act is maintainable in view of the settled law as it has been held by this Court in few judgment. Learned counsel appearing for the petitioner also relied upon the



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judgment of the learned single Judge of this Court in the case of *N.Rajendran Vs. Shriram Chits Tamil Nadu Pvt. Ltd.*, reported in 2011 (8) MLJ 12. The relevant portion of the said judgment is extracted hereunder:

“...

42. Act 22 of 2002 contained a provision for repeal and savings under Section 16. Section 16(1) was in pari materia with Section 32(1) of Act 46 of 1999, both of which were identical to Section 97(1) of Act 104 of 1976. Therefore, what should be taken to have been repealed would be those provisions of the State or High Court Amendment, which became inconsistent with the amendments introduced. There is nothing on record to show that the proviso to Sub-rule (3) of Rule 105, which would now become the proviso to Sub-rule (3) of Rule 106 of Order XXI, is, in any way, inconsistent with the amendments introduced either in 1976 or in 1999 or even in 2002. So long as the proviso under Sub-rule (3) is not shown to be inconsistent with any of the amendments, it cannot be stated to have been repealed under the Central Amendment Acts.

43. Therefore, I am of the view that the order of the Court below, refusing to entertain the application on the ground that it was filed beyond 30 days and that there was no power to entertain the same, is not in accordance with law. Hence, the impugned order of the Court below is set aside and the Court below is directed to number the application and take it up for hearing.”

4. Learned counsel appearing for the respondent however submitted that as



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per the *ex parte* order in the Execution Petition, a sale deed has been executed in favour of the respondent and that the Execution Petition itself was closed.

5. The revision petition cannot be dismissed as infructuous by referring to a subsequent event which had happened during pendency of the revision petition. If the *ex parte* order is set aside, the petitioner can seek restitution. In view of the binding precedent, this Civil Revision Petition is allowed and the order of the learned Sub Judge, Udumalpet, in E.A. No.61 of 2017 in E.P. No.26 of 2016 in O.S. No.90 of 2013 is set aside. No costs. Consequently, connected miscellaneous petition is closed. The application filed by the petitioner in I.A. No.61 of 2017 in E.P. No.26 of 2016 in O.S. No.90 of 2013 stands allowed.

11.01.2022

Speaking order / Non-speaking order
Index: Yes / No
bkn



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To
The Sub Judge, Udumalpet.



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S.S.SUNDAR, J.,

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