



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Civil Appellate Jurisdiction)

Wednesday, the Twenty Second day of June Two Thousand and Twenty Two

WEB COPY

PRESENT

The Hon`ble Mr.Justice C.V.KARTHIKEYAN

C.M.P.(MD).No. 10011 of 2021

In

Rev.Aplc(MD).SR.No. 51198 of 2021

M.SIVAKUMAR

... PETITIONER / PETITIONER /
PETITIONER / APPELLANT

Vs

P.S.VIJAYAKUMAR

... RESPONDENT / RESPONDENT /
RESPONDENT / RESPONDENT

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to condone the delay of 565 days in filling the Review Application in Review Appl. (MD)S.R. No. 51198 of 2021 against the order made in C.M.P. (MD)No. 11444 of 2017 on the file of this Honourable Court, dated 31.07.2018.

PRAYER IN Rev.Aplc(MD).SR.No. 51198 of 2021:

To review the judgment and decree dated 31.07.2018 made in C.M.P.No.11444 of 2017 in A.S.(MD)No.273 of 2009 on the file of this Hon'ble Court.

Prayer in CMP(MD). 11444/ 2017 :

Pleased to extend the time limit to deposit the amount as per the judgment & decree dated 12.04.2017 made in A.S.(MD).No.273 of 2009 on the file Honble Madurai Bench of Madras High Court by allowing this Civil Miscellaneous Petition.

Prayer in A.S(MD) No.273 of 2009:

Appeal Suit filed under section 96 of Civil Procedure Code, against the judgment and decree dated 08/07/2008 made in O.S.No.16 of 2007 on the file of the Additional District Judge/Fast Track Court No.2, Tuticorin.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.CHAMUNDI BOSE, Advocate for the petitioner, the court made the following order:-



This Petition has been filed seeking to condone the delay of 565 days in filing Review Application against the order in C.M.P. (MD).No. 11444 of 2017 in A.S.(MD).No. 273 of 2009.

2. The petitioner herein was the appellant in A.S.(MD).No. 273 of 2009.

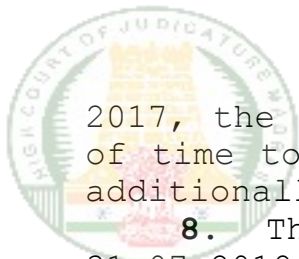
3. A.S.(MD).No. 273 of 200 had been filed by the plaintiff in O.S.No. 16 of 2007 on the file of the Additional District Court, Fast Track Court No.II, Tuticorin. That suit had been filed for specific performance of an agreement of sale with respect to the suit schedule properties. It was claimed that there was an agreement of sale on 08.09.2006. The plaintiff had paid an advance of Rs.25,000/- and the total sale consideration had been determined at Rs.6,50,000/-. It was claimed that though the plaintiff was ready and willing to pay the balance sale consideration, the defendant had sent a notice cancelling the agreement. The plaintiff sent a reply and then filed the suit for specific performance.

4. In the written statement, the defendant admitted execution of the agreement and also admitted receipt of advance sale consideration. It was however stated that since time was the essence of the contract, the agreement had been cancelled and therefore the defendant resisted grant of decree for specific performance.

5. During the course of trial, the agreement of sale was marked as Ex.A-1 and the Advocate's notice cancelling the agreement of sale was marked as Ex.A-2. The reply notice was marked as Ex.A-3. The learned Additional District Judge, Fast Track Court No.II, Tuticorin, on consideration of the evidence, dismissed the suit with costs. It was stated that time was the essence of the agreement and that the plaintiff did not come forward to pay the balance sale consideration and also did not perform other stipulations found in the agreement.

6. The plaintiff then filed A.S.(MD).No. 273 of 2009. That First Appeal came up for consideration before me and placing reliance on the Judgments of the Hon'ble Supreme Court in **Chand Rani (smt.) (dead) by LRs. V. Kamal Rani (Smt.) (dead) by LRs.**, reported in 1993 (1) SCC 519, **Govind Prasad Chaturvedi V. Hari Dutt Shastri** reported in 1977 (2) SCC 539 and **Hansabi and Ors. Vs. Syed Karimuddin & Ors.** reported in 2001 SAR (Civil) 48, I had allowed the Appeal Suit with costs. Opportunity was granted to the plaintiff to deposit the balance sale consideration of Rs.6,25,000/- together with interest at 6% p.a., within a period of two months.

7. This Judgment was dated 12.04.2017. Time to deposit the balance sale consideration was till 12.06.2017. The plaintiff did not take up that particular opportunity. Much later in December



2017, the plaintiff filed C.M.P.No. 11444 of 2017 seeking extension of time to deposit the said sum of Rs.6,25,000/-. However the time additionally sought was not mentioned.

8. That petition came up for consideration again before me on 31.07.2018 and holding that the reasons seeking extension of time was not bona fide, the petition was dismissed. It was stated that the application itself had been filed after considerable delay and after the time to deposit had expired. It was further observed that the additional period required to deposit had also not been mentioned in the affidavit. It was also specifically found that the plaintiff was shifting the blame on the counsels unnecessarily and did not deserve any consideration.

9. To review that particular order, the plaintiff filed Review Application SR.No. 51198 of 2021 and the present Civil Miscellaneous Petition has been filed seeking to condone the delay of 565 days in filing the Review Application.

10. In the affidavit filed in support of the said application, it had been stated that though the petitioner was ready with the cash to effect payment of the balance sale consideration, he did not know the procedure and could not contact his counsel. He produced as evidence a bank statement dated 24.01.2018. It was stated that the order should be reviewed. It was also stated that the delay was owing to COVID-19 pandemic, when he was hospitalised and thereafter, had met the counsel but then later, the bundle was misplaced by the counsel and in view of these reasons, there had been a delay of 565 days.

11. A counter affidavit had been filed on behalf of the respondent wherein it had been stated that the reason for the delay of 565 days had not been explained and that the application was not maintainable and had been filed without any bona fide reasons.

12. Heard the learned counsels.

13. The petitioner herein had originally filed O.S.No. 16 of 2007 before the Additional District Judge, Fast Tract Court No.II, Tuticorin, seeking specific performance of an agreement of sale. The suit was dismissed. The First Appeal filed by the petitioner was however allowed. This Court had granted time to deposit the balance sale consideration. Six months after expiry of the time, a petition was filed seeking extension of time to deposit the amount. That petition was found to lack bona fide and was dismissed. It was specifically observed that the petitioner herein had shifted the blame on his counsels.

14. Further, the statements of accounts to show availability of funds related to a subsequent period. No documents were produced to show that the petitioner had the sufficient money to deposit the amount within the period stipulated by this Court. It had also been



stated that the affidavit contained false details and a fictitious person had been created by the petitioner herein to justify the delay. That application was dismissed. Thereafter, a Review Application has been filed and in filing the Review Application, there had been a delay of 565 days.

15. The petitioner claims protection owing to the COVID - 19 Pandemic, I hold that the reason advanced lacks bona fide. The order in C.M.P.(MD).No. 11444 of 2017 was passed on 31.07.2018. The lock down period came into effect only from March 2020. Even before that, the limitation for filing a Review Application had long expired. The reason for not filing Review Application within the time period has not been explained.

16. It is clear that within the time period granted by this Court, the petitioner herein did not have sufficient resources to pay the balance sale consideration. The entire case of the petitioner herein rests on false pleadings. The delay has not been explained. There is no indication that the petitioner herein had the amount to pay the balance sale consideration. Even otherwise the application seeking extension of time, the balance sale consideration was filed well after the time had expired. In view of all these reasons, I am not inclined to condone the delay of 565 days.

17. It is also seen that the petition was filed in September 2021. The Registry, both in the Principal Bench and in the Madurai Bench had been receiving fresh applications/ fresh petitions / fresh appeals and all judicial papers through online. There is no reason given as to why that opportunity was also not taken. I hold that the reasons for the delay are not convincing and cannot be accepted. Moreover in the interregnum period, valuable right had accrued to the respondent and that cannot be set at nought by condoning the delay.

18. This Civil Miscellaneous Petition is therefore dismissed. No costs.

sd/-

22/06/2022

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO
THE ADDITIONAL DISTRICT JUDGE/FAST TRACK COURT NO.2,
TUTICORIN.

ORDER IN
C.M.P.(MD).No. 10011 of 2021
In
Rev.Aplc(MD).SR.No. 51198 of 2021
Date :22/06/2022

MK/JM/SAR.II/24.06.2022/5P/2C

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