



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2023

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CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD)No.4330 of 2015

Madapalli Farmers Service
Co-operative Society
Represented by its President
R.Sivakumar
Madapalli, Tirupattur Taluk
Vellore District.

... Petitioner

Vs.

1.R.Nachimuthu Gounder (died)
Represented by his Power Agent
N.Thangamuthu

2. The Deputy Registrar of Co-operative Societies
Tirupattur Kasp
Tirupattur, Vellore District.

3. Ramathal
4. N.Subramanian
5. Shanmugam

(Respondents 3 to 5 brought on record as legal
heirs of the deceased 1st respondent viz.,
Nachimuthu Gounder vide Court order
dated 05.07.2023 made in C.M.P.Nos.
16819 to 16821 of 2016 by VLNJ)

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India
against the order dated 11.06.2015 made in I.A.No.168 of 2014 in I.A.No.706 of 2011



in A.S.No.Nil of 2011 (CFR.No.12125 of 2014) on the file of the Principal Sub Court,
Erode.

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For Petitioner : Mr.Rubin
for Mr.R.V.Amarnath

For R2 : Mr.B.Tamil Nidhi
Additional Govt. Pleader

For R3 to R5 : Mr.S.Kaithamalai Kumaran

ORDER

The revision arises against an order dated 11.06.2015 made in I.A.No.168 of 2014 in I.A.No.706 of 2011 in A.S.No.Nil of 2011 (CFR.No.12125 of 2014) on the file of the Principal Sub Court, Erode.

2. The 2nd defendant in O.S.No.237 of 2002 on the file of the District Munsif Court, Dharapuram, is the Civil Revision Petitioner and the plaintiff is the 1st respondent herein. The said suit was presented for declaration that the auction sale dated 21.07.2000 is *void ab initio* and is not binding on the plaintiff. Consequential relief was also sought for restraining the 2nd defendant/revision petitioner from interfering with the plaintiff's peaceful possession and enjoyment of the property.

3. The suit was originally filed before the District Munsif Court at Dharapuram. Thereafter, the said suit was transferred and tried by the Principal District Munsif



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Court at Erode and it was re-numbered as O.S.No.515 of 2007. The said suit was decreed by the judgment dated 12.09.2007. Aggrieved by the same, a regular appeal was filed by the revision petitioner before the Sub Court at Erode. The said appeal was dismissed for default. The appeal papers were returned but were not represented immediately. There occasioned delay in refiling/representation.

4. I.A.No.706 of 2011 was presented by the revision petitioner for condonation of delay of 1019 days in representing the appeal papers. A detailed counter was filed by the plaintiff and application in I.A.No.706 of 2011 was dismissed for default on 07.08.2013. To restore the said I.A.No.706 of 2011, an application was filed in I.A.No.168 of 2014 to condone the delay of 355 days in filing the application which had been filed to condone the delay in representing the appeal papers. The said application was dismissed by the learned Principal Subordinate Judge, Erode, holding that sufficient cause has not been shown for the purpose of condonation of delay. The learned trial Judge also held that the plaintiff has moved this application without any care for the proceedings and therefore, he was not inclined to exercise the discretion to condone the delay. Against the said order, the present revision has been filed by the 2nd defendant/revision petitioner.

5. Here I recall the judgment of the Supreme Court that a party hands over the papers to an Advocate expecting him to prosecute the appeal. If due to the mistake of



the latter, the appeal is dismissed, the former should not suffer. For the mistake of the Advocate, a party must not be penalised or made to suffer. This plea applies especially in First Appeals, where the role of the party is extremely limited. The reference is the judgment of the Supreme Court in the case of **Rafiq and others vs. Munshilal and others** reported in **AIR 1981 SC 1400**.

6. The petitioner before me is a public institution. I am able to perceive that due to regular change in the Officers, (those who are in-charge of the administration), the appeal has not been prosecuted properly. Vital rights of the Co-operative Society are involved. Hence, I do not want to nip the case in the bud by confirming the order of dismissal of the application to condone the delay. I have gone through the affidavit and I am satisfied that sufficient cause has been given by the appellant/Civil Revision Petitioner to condone the delay.

7. Mr.Kaithamalai Kumaran, learned counsel appearing for the respondents 3 to 5 would take me through his counter and point out that the entire attempt is only to drag on the proceedings and the successful decree holder is sought to be harassed by the pendency of the proceedings.

8. Therefore, I have to balance the interest of the plaintiff as well as the defendants and consequently, I pass the following order:



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(i) The delay caused in presenting the application to restore the appeal, which had been dismissed for default in I.A.No.168 of 2014 is condoned.

(ii) The delay in representation of the appeal in I.A.No.706 of 2011 is also condoned. The learned Principal Subordinate Judge, Erode, is directed to take the appeal on file.

(iii) For the hardship that has been faced by the 1st respondent/plaintiff, the appellant/Civil Revision Petitioner shall pay a sum of Rs.10,000/- (Rupees Ten thousand only) in all, as costs to the 3rd respondent or 5th respondent. The cost shall be paid on or before 07.08.2023. On such payment and production of proof thereof, the learned First Appellate Judge shall number the appeal and dispose of the same on merits, on or before 30.04.2024.

(iv) There is no necessity to file a separate application to bring on record the legal representatives of the deceased original plaintiff/1st respondent herein, because this Court has already impleaded them as parties in the Civil Revision Petition. Impleading of the party in the Civil Revision Petition will enure to the benefit of the appeal.

9. The appeal is allowed on the above terms. No costs.

05.07.2023
(2/3)

Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No

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CRP(NPD)No.433



V.LAKSHMINARAYANAN,J.

Kj

To

The Principal Subordinate Judge
Erode.

C.R.P.(NPD)No.4330 of 2015

05.07.2023
(2/3)