



WEB COPY



*CMP No. 6457 of 2022
in AS SR No.23365 of 2022*

CMP No. 6457 of 2022
in AS SR No.23365 of 2022

R.SUBRAMANIAN, J.
and
R.KALAIMATHI, J.

(Order of the Court was made by R.SUBRAMANIAN,J.)

This petition has been filed seeking condonation of delay of 2119 days in filing the Appeal. The decree subject matter of challenge is one for specific performance of an agreement of sale entered into on 20.07.2012. Under the said agreement, the appellant had agreed to sell his property measuring an extent of about 2287 & ½ sq. feet along with a building for a total consideration of Rs.30,00,000/- and the agreement recites that on the date of the agreement a sum of Rs. 25,00,000/- was paid as advance. A period of two years was fixed for performance of the said agreement. The agreement also bears two endorsements dated 20.12.2012 and 25.08.2013 evidencing payment of Rs.2,00,000/- and Rs.1,00,000/- respectively.

2. The respondent sued for performance of the contract on



*CMP No. 6457 of 2022
in AS SR No.23365 of 2022*

WEB COPY

09.12.2013. The appellants defended the suit contending that the agreement was not intended to be acted upon as an agreement of sale. According to them, it was a financial arrangement by which the plaintiff had lent monies to the 1st defendant.

3. The Trial Court rejected the said defence and decreed the suit on 22.12.2015. Immediately on the very next day, the defendants had applied for copies and had approached the High Court Legal Services Committee for filing the Appeal. The papers were returned by the High Court Legal Service Committee along with the opinion of the lawyer stating that it is not a fit case for filing an Appeal, sometime during April 2017. Thereafter the first appellant fell sick and therefore, he could not prosecute the Appeal further. The Certified copies obtained in 2016 were also lost. Therefore, as per the advice of their counsel, the appellants had applied for copies afresh on 16.11.2021 and the copies were made ready on 31.01.2022, with the help of the said copies the Appeal has been filed on 25.03.2022.

4. The delay is accounted for by stating that the refusal by the Legal



**CMP No. 6457 of 2022
in AS SR No.23365 of 2022**

WEB COPY

Aid Service Authority and the inability to pay the Court Fee. It is also stated that during the process, the copies obtained were lost subsequently the copies had to be applied afresh. Onset of covid and the consequent lock down imposed between 24.03.2020 and March 2022 is also cited as a reason. If the period during which complete or partial lockdown was in force is excluded the delay would be only 1459 days.

5. Mr.P.Mani, learned counsel appearing for the petitioners would vehemently contend that the appellants should be given an opportunity to contest the case on merits since they have a very good case on merits. He would also submit that the delay is not willful or wanton, but this only due to the *bona fide* reasons set out in affidavit filed in support of the application.

6. Contending contra, Mr.K.V.Anantharishnan, learned counsel appearing for the plaintiff/decreed holder would submit that the reasons given for the delay are unacceptable. He would point out that the Execution Petition had been pursued by them and it has been stiffly contested by the



*CMP No. 6457 of 2022
in AS SR No.23365 of 2022*

WEB COPY

first appellant herein and a Sale Deed has also been executed by the Court.

He would also submit that he has parted with a sum of Rs.4,00,000/- for registration of the Sale Deed itself. Therefore, according to the learned counsel, the case on hand is not a case fit for condonation of delay.

7. We have considered the rival contentions.

8. The suit in question is a suit for specific performance in which valuable right in immovable property is involved. We cannot be guided solely by technical considerations. The cause of substantial justice should also be looked into. No doubt the delay is large. But the largeness of the delay by itself will not entail dismissal of an application. If the person who approaches the Court with delay is able to justify or explain the delay, the Court has to be necessarily lenient in condoning the delay. We have scanned through the reasons assigned by the appellants for the delay. The supporting documents also show that the appellants have approached the High Court Legal Services Committee and the Legal Services Authority's counsel had opined that it is not a fit case for Appeal. Be that as it may, we



**CMP No. 6457 of 2022
in AS SR No.23365 of 2022**

WEB COPY

find that there is a genuine and *bona fide* attempt by the appellants to explain the delay.

9. No doubt every days delay has to be explained, but the Court should also be alive to the consequences of dismissal of an application for condonation of delay. We are therefore of the considered opinion that in the case on hand on the facts and circumstances, the delay deserves to be condoned. However, the condonation will be subject to payment of costs.

10. Hence this application is allowed on condition the appellants pay a sum of Rs.25,000/- as costs to the respondent on or before 13.10.2023 failing which this application will stand dismissed. The claim of the respondent that he has spent monies on registration of the Sale Deed etc. will be taken into consideration while the application for stay of the execution of the decree is considered by this Court.

11. It is stated at the bar that the Civil Revision Petition in CRP No.968 of 2022 has been filed challenging orders passed in execution of the



***CMP No. 6457 of 2022
in AS SR No.23365 of 2022***

decree. Since now the delay has been condoned on payment of costs, the Registry is directed to number the Appeal and the stay petition and place the papers in the Appeal and CRP before the Hon'ble the Chief Justice for orders as to tagging them for disposal.

(R.S.M., J.) (R.K.M., J.)
19.09.2023

jv



WEB COPY



*CMP No. 6457 of 2022
in AS SR No.23365 of 2022*

R.SUBRAMANIAN, J.
and
R.KALAIMATHI, J.

jv

CMP No. 6457 of 2022
in AS SR No.23365 of 2022

19.09.2023