



C.R.P.NPD.No.657 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22/6/2023

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Civil Revision Petition NPD No.657 of 2023

a n d

C.M.P.No.5135 of 2023

1. G. Jayakodi
2. G. Suresh
3. G. Ramesh ... Petitioners

Vs

1. Chinnusami
2. Bakkiyam
3. Sellam
4. Vijayalakshmi ... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 28/10/2022 made in I.A.No.29 of 2016 in O.S.No.338 of 2011 passed by II Additional Subordinate Judge, Salem.

For Petitioners ... Mr.K.A.Vimalkumar

For respondents ... Mr.N.Manoharan
for R.R.2 and 3.

For R.R.1 and 4 - unclaimed

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ORDER

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This revision is filed aggrieved by the orders of allowing I.A.No.29 of 2016 in O.S.No.338 of 2011 on the file of the II Additional Sub-Judge, Salem by condoning the delay of 1363 days in filing a petition under Order 9 Rule 13 of the Code of Civil Procedure, seeking to set aside the ex parte decree passed on 16/3/2012.

2. The facts in brief are that the petitioners father has filed O.S.No.338 of 2011 against the respondents/defendants, seeking for a direction to the respondents/defendants to execute a registered sale deed in respect of schedule of property by receiving the balance consideration of Rs.30,000/- in pursuance of the agreement of sale, dated 22/11/1988, is registered as Document No.2619 of 1998. The plaintiff has also sought for an alternative relief of return of Rs.1,10,580/- with subsequent interest of Rs.90,000/-. The respondents/defendants have appeared before the Court, filed written statement, however, remained ex parte, on 16/3/2012 and ex parte decree is passed on 16.03.2022.



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3. On a perusal of the affidavit filed by the respondents/defendants in support of I.A.No.29 of 2016, seeking to condone the delay it is mentioned that the plaintiff who filed the suit was a money lender and the defendants who were in need of money have borrowed money from plaintiff and executed registered agreement of sale dated 22/11/1998 as if the respondents/defendants have agreed to sell the immovable property to the plaintiff. It is submitted that said documents were nominally executed as a security for the loan amount which was advanced by the plaintiffs in favour of the respondents/defendants and the respondents/defendants were never intending to sell the schedule of property.

4. It is further mentioned in the affidavit that Panchayat was held between the parties in respect of return of money borrowed by the respondents/defendants and in the said Panchayat, it was decided that schedule of property be sold for a consideration of Rs.3,60,000/- to one Sekar and the said Sekar would pay the sale consideration of Rs.3,60,000/- not to the defendants, who are the owners but directly to the plaintiff, towards discharge of the loan amount borrowed by the respondents/defendants to the plaintiffs.



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5. It is further case of the respondents/defendants that in pursuance of the said arrangement, an agreement of sale was executed on 12/10/2012 by the respondents/defendants in favour of the said Sekar and on the very same day the said Sekar has received an amount of Rs.1,60,000/- as an advance to the plaintiffs which was received as a part of the money to be paid by the defendants to the plaintiffs.

6. Further, it is also mentioned in the agreement that as per the settlement the plaintiff has approached the defendants and took the entire case records stating that they they would prepare a compromise petition and filed it in the Court and get the suit dismissed and that the plaintiff has also taken the signatures of the defendants on a vakalat. Subsequently, the plaintiff has committed delay in receiving the balance consideration of Rs.2 lakhs offered by the said Sekar and in the meanwhile on 17/5/2023, the plaintiff who the father of the petitioners died.

7. Subsequent to the death of the plaintiff, the petitioners were requested to honour the arrangement entered into between the petitioners'



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father and the respondents/defendants and requested to receive the balance of Rs.2 lakhs but they refused. The petitioners have filed E.P.No.400 of 2014 on the file of the First Additional Subordinate Judge, Salem for execution of ex parte decree dated 16/3/2012 on which the respondents went to the petitioners home and demanded to return the case records, but they refused.

8. The respondents/defendants have filed a petition under Order 9 Rule 13 of the Code of Civil Procedure for setting aside the ex parte decree dated 16/3/2012 in O.S.No.338 of 2011 along with I.A.No.29 of 2016 to condone the delay of 1363 days in filing the petition, under Order 9 Rule 13 of the Code of Civil Procedure for setting aside the ex parte decree dated 16/3/2012. The petitioners as respondents have filed a detailed counter. The trial Court has allowed IA.No.29 of 2016 by imposing certain costs of Rs.2,500/-. Aggrieved by the same, the present Civil Revision Petition is filed.

9. Heard Mr.K.A.Vimalkumar, learned counsel for the petitioners and Mr.N.Manoharan, learned counsel for the respondents 2 and 3.



10. Learned counsel appearing for the respondents has cited the following judgments.

(i). In S.GANESHARAJU (DEAD) THROUGH LRS AND ANOTHER Vs. NARASAMMA (DEAD) THROUGH LRS AND OTHERS, (2013) 11 SUPREME COURT CASES – 341, wherein the Hon'ble Supreme Court has held as follows:-

12. The expression “sufficient cause” as appearing in Section 5 of the Limitation Act, 1963, has to be given a liberal construction so as to advance substantial justice. Unless the respondents are able to show mala fides in not approaching the court within the period of limitation, generally as a normal rule, delay should be condoned. The trend of the courts while dealing with the matter with regard to condonation of delay has tilted more towards condoning delay and directing the parties to contest the matter on merits, meaning thereby that such technicalities have been given a go-by.

13. The rules of limitation are not meant to destroy or foreclose the right of parties. They are



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meant to see that parties do not resort to dilatory tactics but seek their remedy promptly.

14. We are aware of the fact that refusal to condone delay would result in foreclosing the suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. In fact, it is always just, fair and appropriate that matters should be heard on merits rather than shutting the doors of justice at the threshold. Since sufficient cause has not been defined, thus, the courts are left to exercise a discretion to come to the conclusion whether circumstances exist establishing sufficient cause. The only guiding principle to be seen is whether a party has acted with reasonable diligence and had not been negligent and callous in the prosecution of the matter. In the instant case, we find that the appellants have shown sufficient cause seeking condonation of delay and the same has been explained satisfactorily.”

11. In M.K.PRASAD Vs. P. ARUMUGAM (2001) 6 SUPREME COURT CASES – 176, the Hon'ble Supreme Court has held thus:-



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“10. In the instant case, the appellant tried to explain the delay in filing the application for setting aside the ex parte decree as is evident from his application filed under Section 5 of the Limitation Act accompanied by his own affidavit. Even though the appellant appears not to be as vigilant as he ought to have been, yet his conduct does not, on the whole, warrant to castigate him as an irresponsible litigant. He should have been more vigilant but his failure to adopt such extra vigilance should not have been made aground for ousting him from the litigation with respect to the property, concededly to be valuable. While deciding the application for setting aside the ex parte decree, the court should have kept in mind the judgment impugned, the extent of the property involved and the stake of the parties. We are of the opinion that the inconvenience caused to the respondent for the delay on account of the appellant being absent from the court in this case can be compensated by awarding appropriate and exemplary costs. In the interests of justice and under the peculiar circumstances of the case, we set aside the order impugned and condone the delay in filing the application for



setting aside ex parte decree. To avoid further delay, we have examined the merits of the main application and feel that sufficient grounds exist for setting aside the ex parte decree as well.”

12. Considering the above law laid down by the Hon'ble Apex Court and also considering the scope and limitations for condoning the delay, under Section 5 of the Limitation Act, it is clear that though liberal interpretation has to be given whenever an application for condonation of delay is filed. It is also equally required to see that merely because the liberal approach has to be taken by the Courts in condoning the delay, such liberal approach shall not frustrate the very object of enactment of controlling the litigation where under an aggrieved party required to approach the Courts within a specific period of time. The facts before the Court in respect of considering the application for condoning the delay required to be analysed in the light of the above settled legal position.

13. The petitioners as defendants have filed written statement denying the allegations made in O.S.No.338 of 2011 filed by the father of the petitioners in respect of the relief sought for. This shows that the



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respondents/defendants were seriously contesting the case filed by the father of the petitioners. However, suddenly, the respondents have failed to contest the suit on which they were set ex parte. It is required to be understood as to the reason why the respondents/defendants who were keen to contest the suit have suddenly decided not to defend further.

14. In I.A.No.29 of 2016, third respondent/third defendant was examined as P.W.1 and also examined one R.Sekar, who stated to have paid Rs.1,60,000/- to the plaintiffs. P.W.1 has narrated the story of the respondents/defendants as described above. Similarly, R.Sekar also stated about the arrangements that was held in the Panchayat and the payment of Rs.1,60,000/- was made to the father of the petitioners and also spoke about the delay committed by the father of the petitioners in receiving Rs.2 lakhs.

15. The petitioners/plaintiffs did not examine any person on either side. Apart from examining P.Ws.1 and 2, the petitioners have filed unregistered agreement of sale dated 12/10/2012 executed by the defendants in favour of R.Sekar, as Ex.P.7 and also complaint given by the respondents to the Police against the father of the petitioners for not



returning the case records. It is observed in the order under challenge that evidence in the form of P.Ws.1 and 2 and Exs.P.1 to 7 would show that there was an arrangement between the respondents and the father of the petitioners wherein father of the petitioners stated to have agreed to withdraw the suit by receiving a sum of Rs.3,60,000/-, of which he has already received Rs.1,60,000/-, keeping a balance of Rs.2 lakhs which subsequently not taken. It is also evidence of P.W.1 that case records were taken by the father of the petitioners from the respondents including no objection vakalat.

16. These aspects would demonstrate that the respondents, who are defending the case have stopped attending the case on account of the settlement arrived at between the respondents/defendants and the father of the plaintiff believing the petitioners father version that we will withdraw the suit. Therefore, though the respondents were conscious about the pending of the suit, deliberately stopped attending the Court, on account of settlement and the respondents/defendants have realised about the passing of ex parte decree on receipt of notices in the Execution Petition.



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17. Considering all the above, there are plenty of grounds and reasons for the respondents/defendants not to defend the case they were cornered to a situation where neither allowed to defend on account of not having the papers and nor the case was withdrawn and that the fact of not withdrawing the case and passing of ex parte decree was kept in dark, after allegedly taken Rs.1,60,000/-. Further according to the respondents/defendants, an agreement of sale was executed not as a sale agreement but as only a security, thereby, the issues involved in this case are also serious in nature, which will have to be tried and decided by the Court after full fledged trial.

18. Considering the circumstances, respondents have made out a case for condoning the delay of 1363 days in filing a petition under Order 9 Rule 13 of the Code of Civil Procedure. Therefore, the trial Court order does not suffer from any infirmity and hence, the same is liable to be dismissed. The trial Court is directed not to be carried away by the comment and observations made by this Court on merits of the case, and decide the suit uninfluenced by the order of this Court as per law.



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19. In the result, this Civil Revision Petition is dismissed. No costs.

Consequently, the connected Civil Miscellaneous Petition is closed.

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mvs.

Index: Yes/No

Neutral Citation: Yes/No

To

II Additional Subordinate Judge, Salem.

Dr.D.NAGARJUN,J



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