



C.R.P.No.1500 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 20.11.2023

CORAM :

**THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI**

**C.R.P.No.1500 of 2023 and**  
**C.M.P.No.9915 of 2023**

Ramasamy (Deceased)

1.R.Nallammal

2.R.Manoharan

... Petitioners

Versus

1.K.Ramasamy

2.P.Thangavel

...Respondents

**PRAYER :** Civil Revision Petition filed Under Article 227 of Constitution of India, against the order dated 14.02.2023 passed in I.A.No.51 of 2020 in O.S.No.15 of 2015 on the file of II Additional District and Sessions Judge, Tiruppur.

For Petitioner : Mr.E.Sampath Kumar  
for Mr.S.Venkatesh

For Respondent : Mr.N.Manokaran  
M.Guruprasad



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## **ORDER**

Challenging the impugned order passed by the Court below in I.A.No.51 of 2020 in O.S.No.15 of 2015 dated 14.02.2023 on the file of II Additional District and Sessions Judge, Tiruppur, the petitioners preferred the present revision petition.

2. Before the Trial Court, the plaintiff/1<sup>st</sup> respondent herein filed a suit for specific performance of contract in O.S.No.15 of 2015 against the 1<sup>st</sup> defendant/deceased Ramasamy and 2<sup>nd</sup> defendant/power agent. In that suit, the 1<sup>st</sup> defendant/deceased Ramasamy had entered appearance through counsel. The 1<sup>st</sup> defendant remained exparte for non filing of the written statement on 26.08.2015 and exparte decree was passed on 13.04.2016. Subsequently, he died on 22.02.2017. Based on the exparte decree, the plaintiff/1<sup>st</sup> respondent herein filed an application in E.P.No.73 of 2017 for execution of sale deed against the legal heirs of the deceased Ramaswamy and the 2<sup>nd</sup> defendant. On receipt of the summons, the petitioners 2 and 3 have appeared on 20.08.2018 and 17.07.2018 in the E.P proceedings but they have not taken any steps to file

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the petition to set aside the exparte decree. On 16.12.2019, they have filed an application to condone the delay of 1312 days in filing application to set aside the exparte decree stating reason that they were not aware of the original suit proceedings during the lifetime of his father and only after receiving notice in Execution proceedings, they approached his father's counsel who informed them that his father was set exparte due to non filing of written statement and he handed over the bundles only on 16.12.2019. Thereafter, they filed an application on the same day and the delay is neither willful nor wanton. As the Will was executed in favour of elder daughter of the 3<sup>rd</sup> petitioner by her grandfather, they want to set aside the exparte decree stating that their absence is neither willful nor wanton. That application was strongly resisted by the plaintiff stating without proper reason, these petitioners filed the application in order to drag on the proceedings. It is further averred that they are not following the procedures and the reason assigned by them are also not correct since because earlier counsel alone filed the present affidavit. Furthermore, immediately after receipt of the summon in EP, they have appeared on 17.07.2018 but they have not taken any steps to set aside the exparte order. They have filed the application only on 16.12.2019. Even, the delay has not



been properly explained and the reason assigned has also not been acceptable.

Hence, the respondents prayed for dismissal of the petition.

3. Considering the submissions on both sides, the learned Trial Judge held that originally, the 1<sup>st</sup> defendant appeared through counsel but he had not filed written statement and remained exparte on 26.08.2015. Thereafter, exparte decree was passed on 13.04.2016. On receipt of the summons in EP, the petitioners herein entered appearance in 2018 itself but they have not taken any steps to set aside the exparte order as legal heirs of the deceased Ramaswamy/1<sup>st</sup> defendant. The reason assigned by the petitioners for get back the bundle was also not acceptable one and non-filing of the written statement along with application clearly shows the lethargic attitude in filing the petition to set aside the exparte decree. Hence, the Trial Court dismissed the petition. Challenging the same, the present civil revision petition has been preferred by the petitioners.



4. The learned counsel for the revision petitioner submits that the legal heirs of the deceased Ramaswamy were not aware of the exparte decree passed against the 1<sup>st</sup> defendant. After receipt of summons in the execution proceedings, the 2<sup>nd</sup> petitioner had approached his father's counsel and he had not handed over the bundle till 16.12.2019 and after receipt of the bundle, they have filed a petition on 16.12.2019 praying to condone the delay of 1312 days but the same was not appreciated by the Trial Judge. The learned Counsel for the Revision Petitioners has placed reliance on the rulings in Paragraph 4 reported in **2023 INSC 651** in the case of ***Raheem Shah and another Vs Govind Singh and others*** which is extracted hereunder:-

*“4. This Court in the case of Collector, Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors. reported in (1987) 2 SCC 107 has held as hereunder:*

*“The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial 2 justice to parties by disposing of matters on ‘merits’. The expression ‘sufficient cause’ employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice-that being the life-purpose for the existence of the institution of courts. It is common knowledge that*



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*this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:*

*1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*

*2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*

*3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay ? The doctrine must be applied in a rational common sense pragmatic manner.*

*4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*

*5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*

*6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical*



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*grounds but because it is capable of removing injustice and is expected to do so. Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal.”*

5. The learned counsel for the plaintiff/1<sup>st</sup> respondent raised objection stating that the reasons for the delay is not properly mentioned. In fact, they stated that the counsel handed over the papers on 16.12.2019 and they filed the application on the very same day. The reason assigned by them was not acceptable and the same was rightly appreciated by the learned Trial Judge. In support of his contentions, the learned counsel for the plaintiff relied on the judgment of Hon'ble Apex Court reported in **(2015) 1 SCC 680** wherein it was held that in the absence of valid explanation and if there is negligence on the side of parties, the delay cannot be condoned. The relevant observations read as follows:-

*19. Having considered the respective submissions, on this question, we find that the submissions made on behalf of the Appellant(s) are forceful. It is true that the delay in filing the appeals was only 9 days and that the longer delay was only relating to the refiling of the appeal papers. But even*



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*if it is related to refiling of the appeals, the net result is that the appeals could be taken into records only when such a delay in refiling is condoned. Therefore, if the refiling had been made within the time granted by the Registry of the High Court, no fault can be found with anyone much less with the concerned party or whomsoever was entrusted with the filing of the papers into the Registry. But when an enormous delay of nearly five years occurred in the matter of refiling, it definitely calls for a closer scrutiny as to what was the cause which prevented the concerned party from refiling the papers in time to enable the Registry to process the papers and ascertain whether the papers were in order for the purpose of numbering the appeals.*

*20. In the case on hand, the delay in refiling was 1727 days. As rightly pointed out by the learned Senior Counsel for the Appellant(s), the Respondents paid the scrutiny charges on 11.04.2008 as disclosed in the Receipt No.73 issued by the High Court of that date. When the appeal papers were filed on 06.09.2007 and the scrutiny charges were paid on 11.04.2008, it was quite apparent that the processing*



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*of papers of the appeals for its registration did commence in the month of April 2008. Thereafter, if rectification of whatever defects were not carried out by the Respondents or its counsel between April 2008 and May 2012, it is the bounden duty of the Respondents to have satisfactorily explained such a long delay in refiling. When we refer to the applications filed on behalf of the Appellant(s), we find that there was no convincing explanation as to how the Respondents were disabled from rectifying the defects pointed out by the Registry and refiling the appeal papers within time. The Respondents only attempted to throw the blame on the previous counsel to whom appeal papers were entrusted for filing in September 2007. As pointed out by the learned Senior Counsel for the Appellant(s), there were no details as to whom it was entrusted and what were the steps taken to ensure that the appeals filed were duly registered for pursuing further remedy as against the said judgment of the trial Court. As a matter of fact the appeal papers were filed without payment of any Court fee. This only affirms the stand of the Appellant(s) that there was*



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*no bona fide in the Respondents' claim and that they were seriously interested in challenging the judgment of the trial Court as against the non-grant of relief of specific performance. We also fail to see as to how the Respondent No.1 which is a limited company involved in the business of exports, which would certainly have its own legal department, can plead that after entrusting the papers to some counsel whose name was not disclosed even before this Court did not even bother to take any follow-up action to ensure that its appeals were duly registered in the High Court. In this context the maxim Vigilantibus Non Dormientibus Jura Subveniunt (Law assists those who are vigilant and not those who sleep over their rights) aptly applies to the case on hand. The Respondents simply by throwing the blame on the previous counsel whose identity was not disclosed claimed that irrespective of the enormous delay of 1727 days in refiling the same should be condoned as a matter of course as there was only 9 days delay involved in filing the appeals.*

*21. We express our total disinclination to countenance such a stand made on behalf of the*



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*Respondents. In this respect, the claim of the Appellant(s) that serious prejudice would be caused to the Appellant(s) merits acceptance. In the rejoinder filed by the Appellant(s) to the Respondents' counter, the Appellant(s) has explained as to how they had to spend a huge amount to upkeep the property by approaching the authorities of the Delhi Municipal Corporation, the enormous amount spent to the tune of Rs.28,00,000/- by way of house tax from the year 2004 up to this date and various other improvements made in the property during the period wherein the delay in the matter of filing of the appeals and refiling was made by the Respondents. Therefore, the principle that the law of limitation is based on sound public policy and therefore in the absence of bona fide reasons the applications for condonation of delay should be strictly construed assumes significance.*

*24. When we apply those principles of Bhattacharjee Case to the case on hand, it has to be stated that the failure of the Respondents in not showing due diligence in filing of the appeals and*



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*the enormous time taken in the refiling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bonafides as displayed on the part of the Respondents. Further, when the Respondents have not come forward with proper details as regards the date when the papers were returned for refiling, the non-furnishing of satisfactory reasons for not refiling of papers in time and the failure to pay the Court fee at the time of the filing of appeal papers on 06.09.2007, the reasons which prevented the Respondents from not paying the Court fee along with the appeal papers and the failure to furnish the details as to who was their counsel who was previously entrusted with the filing of the appeals cumulatively considered, disclose that there was total lack of bonafides in its approach. It also requires to be stated that in the case on hand, not refiling the appeal papers within the time prescribed and by allowing the delay to the extent of nearly 1727 days, definitely calls for a stringent scrutiny and cannot be accepted as having been explained without proper reasons. As has been laid down by this Court, Courts are required to weigh the*



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*scale of balance of justice in respect of both parties and the same principle cannot be given a go-by under the guise of liberal approach even if it pertains to refiling. The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the Respondents not deserving any indulgence by the Court in the matter of condonation of delay. The Respondents had filed the suit for specific performance and when the trial Court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the Respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered.*

6. Coming to the facts of the present case, the petitioners herein are coming into the picture only after the death of original 1<sup>st</sup> defendant



Ramaswamy. Admittedly, the said Ramaswamy had not filed the written statement for the reasons best known to him. The revision petitioners also entered appearance through counsel and they have filed a petition to condone the delay in filing application to set aside the exparte decree nearly 7 or 8 months after entering appearance in the execution proceedings. They submit that their counsel agreed to return the bundle. So there was a delay on their side but it is normally agreeable. Before the lower Court, there is lack of communication to the counsel. So there is a delay on the side of revision petitioners. Admittedly, the 1<sup>st</sup> petitioner is the wife of deceased 1<sup>st</sup> defendant, who is aged about 69 years and due opportunity must be given to them to prove their claim in respect of property.

7. Therefore, this Court is inclined to condone the delay in filing the application to set aside the exparte order passed by the Trial Judge. As rightly pointed out by the learned counsel for the plaintiff that the plaintiff has approached the Court for the relief in 2015 and also deposited Rs.15 lakhs as part of the sale consideration.



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8. Considering the above, this Court is inclined to condone the delay by setting aside the order passed in I.A.No.51 of 2020 in O.S.No.15 of 2015 on the file of II Additional District and Sessions Judge, Tiruppur and the petitioners are directed to pay a cost of Rs.1 lakh to the plaintiff and to file a written statement before the Trial Court within a period of four weeks from the date of receipt of a copy of this order. On production of proof of payment, the Trial Court is directed to try the suit by giving opportunity to both the parties and dispose of the same within a period of three months from the date of receipt of a copy of this order.

9. With the above directions, this civil revision petition is disposed of.

**20.11.2023**

Index : Yes/No  
Speaking/Non Speaking order  
Neutral Citation: Yes/No  
nr

To

1. The learned II Additional District and Sessions Judge, Tiruppur.

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2.The Section Officer,  
VR-Section, High Court of Madras.

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**T.V.THAMILSELVI, J.**

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