



C.R.P.Nos.31 & 32 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Reserved on: 26.04.2023

Delivered on: 22.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA

KURUP

C.R.P.Nos.31 & 32 of 2021

S.Parameswaran

...Petitioner/Petitioner/Plaintiff
in both C.R.Ps

-Vs-

1.P.P.Praveen

2.T.Chinnarasu

3.N.C.Saravanan

4.K.L.Minnusamy

5.K.Murugesan

...Respondents/Respondents/Defendants
in both C.R.Ps

Prayer in C.R.P.No.31 of 2021 :- Civil Revision Petition filed under Section 115 of CPC, against the fair and decreetal order dated 03.01.2020 made in I.A.No.410 of 2015 in O.S.No.65 of 2010 on the file of the learned Sub-Judge, Gobichettipalayam.

Prayer in C.R.P.No.32 of 2021 :- Civil Revision Petition filed under Section 115 of CPC, against the fair and decreetal order dated 03.01.2020 made in I.A.No.411 of 2016 in O.S.No.65 of 2010 on the file of the learned Sub-Judge, Gobichettipalayam.



C.R.P.Nos.31 & 32 of 2021

C.R.P.Nos.31 & 32 of 2021

WEB COPY

For Petitioner : Mr.V.Anandhamoorthy
For R2 to R4 : Mr.V.P.K.Gowtham
For R1 & R5 : No appearance

COMMON ORDER

These Civil Revision Petitions had been filed to set aside the order dated 03.01.2020 made in I.A.No.410 of 2015 in O.S.No.65 of 2010 and I.A.No.411 of 2016 in O.S.No.65 of 2010 on the file of the learned Sub-Judge, Gobichettipalayam.

2.Mr.V.Anandhamoorthy, learned Counsel for the Revision Petitioner submitted that the Revision Petitioner herein is the Plaintiff before the learned Sub-Judge, Gobichettipalayam, Erode District.

3.The Revision Petitioner as Plaintiff, had filed the suit in O.S.No.65 of 2010 for the relief of specific performance of contract for sale against the Defendants. While so, the suit was dismissed for default on 03.10.2012. The Plaintiff had filed a Petition to restore the suit. The period for filing the restoration Petition had also expired. Therefore, the Plaintiff had filed



C.R.P.Nos.31 & 32 of 2021

WEB COPY
suit.

Petition to condone the delay of 83 days in filing the Petition to restore the

4.I.A.No.411 of 2016 was filed by the Plaintiff as Petitioner to condone the delay of 83 days in filing the restoration Petition. I.A.No.412 of 2016 was filed under Order IX Rule 9 of CPC to restore the suit. Both of these Petitions were returned as 'Defective' several times. The same was complied with and re-presented several times. Finally, it was numbered in the year 2016 as I.A.Nos.411 & 412 of 2016.

5.I.A.No.410 of 2015 was filed to condone the delay of 351 days in re-presenting the restoration Petition under Order IX Rule 9 of CPC. I.A.No.409 of 2015 was filed to condone the delay of 101 days in re-presenting the Petition in I.A.No.410 of 2015. Both these Petitions in I.A.Nos.409 & 410 of 2015 were allowed on payment of costs. A memo of cost was filed on 26.08.2016.

6.After numbering the Petition in I.A.No.411 of 2016 filed under Section 5 of the Limitation Act to condone the delay of 83 days in filing the



C.R.P.Nos.31 & 32 of 2021

WEB COPY

restoration Petition and I.A.No.412 of 2016 filed under Order IX Rule 9 of CPC to restore the suit, both these Petitions were referred to the Lok Adalat so that the parties to the suit in O.S.No.65 of 2010 could settle the dispute amicably. Therefore, the matter was referred to the Lok Adalat at the request of the Petitioner and Respondents on 28.06.2017. On 01.12.2018, the parties were directed to appear for pre-negotiation talks on 04.12.2018. On 11.07.2019, it was referred to the Lok Adalat by 13.07.2019. On 13.07.2019, the Lok Adalat recorded that the case was settled and closed. Subsequently, it was deleted and recorded that the case was not settled and returned since one of the Defendants had not signed.

7.On 03.01.2020, after due enquiry, both I.A.Nos.411 & 412 of 2016 were also dismissed. Aggrieved by the same, the Plaintiff had approached this Court by filing C.R.P.No.31 of 2021 against I.A.No.410 of 2015 and C.R.P.No.32 of 2021 against I.A.No.411 of 2016.

8.I.A.No.411 of 2016 is the Petition filed to condone the delay of 83 days in filing the Petition under Order IX Rule 9 of CPC, in which the Plaintiff had stated that he was suffering from viral fever on the date of



WEB COPY

03.10.2012. When the suit was posted for trial and he was unable to attend Court due to viral fever and he was bedridden. After his recovery from his illness, he contacted his Counsel that he came to know that the period to file a Petition to restore the suit had also expired. Therefore, he had filed Petition to condone the delay of 83 days in filing the Petition to restore the suit. These Petitions were returned as defective to represent this Petition and to comply with the returns. The learned Counsel for the Plaintiff before the Trial Court had not filed the Petition in time and had repeatedly filed the Petition without complying the order, and finally, in an affidavit along with the Petition, the Advocate for the Plaintiff condoned the delay of representation in which only he had stated that the records were mixed up with other case bundles in his office. Whereas the affidavit contained a delay in filing the Petition, it was restored by the Plaintiff himself, giving reasons for condoning the delay of 83 days. Whereas in the counter, the Respondents had objected, stating in all the affidavits that the learned Counsel for the Plaintiff alone had filed an affidavit where all the reasons had been stated as to why the case records had been mixed up and they were unable to trace them on time and represent them on time.



WEB COPY

9.The learned Counsel for the Revision Petitioner submitted that the Court had already allowed I.A.No.410 of 2015 on payment of costs. After reference from the Lok Adalat, by inadvertence, the Petition in I.A.No.410 of 2015 was dismissed. Based on that, I.A.Nos.411 & 412 of 2016 were also dismissed. The learned Counsel for the Revision Petitioner contended that without discussing the merits of the case, the learned Sub-Judge, Gobichettipalayam, had dismissed the Petition in I.A.Nos.411 & 412 of 2016. The learned Counsel for the Revision Petitioner contended that the learned Counsel for the Plaintiff had filed an affidavit giving out the reasons that after the defective Petitions were taken out from the Registry of the Court concerned by the Advocate Clerk attached to the office of the Advocate on record for the Plaintiff, the records got mixed up in the Advocate's office of the learned Counsel for the Plaintiff. Therefore, after tracing out the missing record, the Petition to condone the delay in representation was filed in I.A.No.409 & 410 of 2015, which were allowed on costs of Rs.1,000/- each payable to the legal aid board and the Respondents' Counsel vide order dated 26.08.2016. However due to inadvertence no orders were passed in I.A.No.410 of 2015, despite costs paid and memo filed for compliance of the order.



WEB COPY

10. By inadvertence, the learned Sub-Judge, Gobichettipalayam, in dismissing the Petition in I.A.Nos.411 & 412 of 2016, had observed that in all the Petitions, the same reason had been assigned, which is the bona fide reason. Since the papers were mixed up and the conduct of the learned Counsel on record shall not cause miscarriage of justice to the Plaintiff. The learned Counsel for the Plaintiff before the Trial Court had filed affidavit giving out the reasons for his filing such Petitions. Therefore, it has caused prejudice to the Plaintiff. Once the suit is restored, the Plaintiff is ready to proceed with the trial. After the Petition is dismissed, the valuable right of the Plaintiff is lost on technicalities. Therefore, the learned counsel for the Revision Petitioner prayed this Court to allow the Petition in condoning the delay of 83 days in filing the restoration Petition along with the Petition to restore the suit. The learned Counsel for the Revision Petitioner submitted that the subject matter involves the Plaintiff's right to file the suit for specific performance which is dismissed for non-prosecution and not on merits. Therefore, the suit is to be restored, the suit is to be disposed of on merits and the Plaintiff should be given a chance to put forth his case.



WEB COPY

11.The learned Counsel for the Petitioner also submitted that the learned Counsel for the Plaintiff before the Trial Court had furnished rulings in support of his case. The learned Sub-Judge, Gobichettipalayam, had not considered the same and dismissed the Petition, thereby denying the Plaintiff's valuable right to agitate his rights before the Court during trial in the suit.

12.In support of his contention, the learned Counsel for the Revision Petitioner relied on the reported ruling of the Hon'ble Supreme Court reported in **2019 (6) CTC 344 [Robin Thapa Vs. Rohit Dora]** wherein it is held as follows:-

“Code of Civil Procedure, 1908 (5 of 1908), Order 9, Rule 13 – Ex parte Decree – Suit for Specific Performance – Suit transferred from one Court to another Court – Suit decreed by setting Defendant ex parte – Defendant raised substantial defense – Suit warrants adjudication of triable issues – Trial Court allowed Application to set aside ex parte Decree – High Court set aside Trial Court Order – Litigation should not be terminated by default either by Plaintiff or by Defendant – Cause of Justice requires that adjudication to be done on merits – Discretionary relief of Specific Performance – Sale Deed executed in favour of Decree-holder in execution of ex parte Decree – Balance of Convenience – Interest of Justice demands Defendant should be provided an opportunity to contest case – Ex parte Decree set aside with condition to deposit expenses of Registration of Deed and Cost.”



WEB COPY

13.The learned Counsel for the Respondents 2 to 4 by way of reply, submitted that when the suit was posted for trial, the Plaintiff had not prosecuted the case diligently. Therefore, the suit was dismissed for non-prosecution. It is to be noted that the Plaintiff had not filed the Petition to restore the suit in time. He had filed a Petition to condone the delay of 83 days and filed the Petition under Order IX Rule 9 of CPC to restore the suit. Both these Petitions were filed in the year 2012. By the conduct of the Plaintiff, the Petitions were returned as defective, which were taken up but were not complied with within the time as directed by the learned Sub-Judge, Gobichettipalayam. It was repeatedly returned for compliance and re-presented and thereby the Plaintiff had protracted the proceedings for three years, and only after imposing cost was the Petition to condone the delay in re-representation of the Petition and delay in filing the Petition to restore the suit allowed on payment of cost on 06.08.2016, thereby the Plaintiff had succeeded in protracting the proceedings. It is to be noted that I.A.No.411 of 2016 filed under Section 5 of the Limitation Act to condone the delay and I.A.No.412 of 2016 filed under Order IX Rule 9 of CPC is to restore the suit. I.A.No.410 of 2015 was allowed on payment of cost on



WEB COPY

26.08.2018. As the Petitions were allowed and the parties were directed to appear before the Lok Adalat, the matter could not be settled in the Lok Adalat. Therefore, the Petition in I.A.Nos.411 & 412 of 2016 was proceeded with enquiry, and on the basis of, the vehement objection of the learned Counsel for the Defendants before the Trial Court, the learned Sub-Judge, Gobichettipalayam, dismissed the I.A's. It is to be noted that in all these Petitions, the affidavit is filed by the Advocate for the Plaintiff himself, which is against the professional ethics and technicalities of law. The reason stated by the learned Counsel for the Plaintiff that the Petition to condone the delay in re-presentation and the Petition to restore the suit were returned as defective and taken up for compliance, but in the office of the Counsel on record for the Plaintiff, the case records were mixed up with other records. Therefore, they are unable to place it on trial, and it was objected to by the learned Counsel for the Defendants stating that invariably in all cases, similar reasons are stated and it cannot be rejected. Therefore, to trace out those papers, delay was caused. That itself shows the lack of interest by the Plaintiff in prosecuting the case, as the Plaintiff is not at all interested in prosecuting the case. Therefore, the learned Sub-Judge, Gobichettipalayam, had dismissed the Petition on merits, does not



WEB COPY

warrant any interference by this Court. Therefore, the Petition lacks merit and is to be dismissed with costs.

14. In support of his contention, the learned Counsel for the Respondents 2 to 4 relied on the reported ruling of this Court in **2023 (1) MWN (Civil) 464 [G.Maruthachalam and Others Vs. N.Jothimani and Others]** wherein it is held as follows:-

“CODE OF CIVIL PROCEDURE, 1908 (5 of 1908), Order 41, Rule 3-A & Section 96 – LIMITATION ACT, 1963 (36 of 1963), Section 5 – Condonation of delay – Delay of 880 days in filing First Appeal – Suit for Partition, decreed – Defendants filed Appeal with a delay of 880 days – Contention of Defendants that parties are negotiating for Settlement and one of Defendants went abroad, not tenable – Records show that Second Petitioner has authorised other Petitioners and they were pursuing Suit – Delay cannot be condoned in a routine manner – Rule is to file Appeal in time adhering to Law of Limitation – Condonation of delay is an exception – Petitioner has not made out any acceptable ground to condone delay – Appeal dismissed at SR stage itself.”

Point for consideration:

Whether the Petition in I.A.No.411 of 2016, Petition to condone the delay in filing the Petition to restore the suit; I.A.No.412 of 2016, Petition to restore the suit filed under Order IX Rule 9 of CPC is to be allowed; the order in dismissing I.A.Nos.411 & 412 of 2016 passed by the learned Sub-Judge, Gobichettipalayam, dated 03.01.2020, is to be set aside?



WEB COPY

15.Heard Thiru.V.Anandhamoorthy, learned Counsel for the Revision Petitioner and Thiru.V.P.K.Gowtham, learned Counsel for Respondents 2 and 4. Perused the typed set filed along with the memorandum of Civil Revision Petition.

16.Considering the rival submissions and the rulings relied on by the respective parties, the order passed by the learned Sub-Judge, Gobichettipalayam, by imposing cost by allowing the Petition in I.A.No.409 of 2015, to condone the delay of 101 days in re-presenting an unnumbered I.A, subsequently numbered as I.A.No.410 of 2015, which was filed to condone the delay of 351 days in re-presenting the restoration Petition.

17.I.A.Nos.409 & 410 of 2015 were allowed by imposing cost on 16.08.2015, as per order dated 06.08.2016. Subsequently, on 28.06.2017, at the request of both the Plaintiff and Defendants, the case was referred to the Lok Adalat because as it involved stakes. It was returned to the Court on 13.07.2019, as the subject matter of the dispute was not settled in the Lok Adalat.



WEB COPY

18.In the light of the fact that the suit for specific performance of contract for sale has not been settled, the Lok Adalat gives a presumption to the Court that there are valuable rights of the Plaintiff and Defendants involved. Therefore, it is the subject matter to be agitated in Court by adducing evidence by both parties. Therefore, the suit for specific performance is to be heard on merits when the Lok Adalat has failed. Instead, the learned Sub-Judge, Gobichettipalayam, had ignored the valuable rights of the parties to the suit, particularly the valuable rights of the Plaintiff, who filed the suit for specific performance of contract.

19.In the light of the vehement objection raised by the learned Counsel for the Defendants, who had pointed out that in all the Petitions in I.A.Nos.409 & 410 of 2015 and I.A.Nos.411 & 412 of 2016, the affidavit of the learned Counsel for the Plaintiff before the Trial Court contained the reasons stating that the records were mixed up with the records of other cases in the office of the learned Counsel for the Plaintiff. The objection of the learned Counsel for the Respondents 2 to 4 even though found reasonable and justified, cannot be held against the Plaintiff for the lapses, either on the part of the Counsel on record for the Plaintiff or the staff of



WEB COPY

the Counsel for the Plaintiff. The case records got mixed up and therefore, the reasons stated in all the Petitions give a presumption that the parties were not indulgent, which cannot be held against the litigant. Therefore, the ruling cited by the learned Counsel for Respondents 2 to 4 is not applicable to the facts of the case.

20. In the reported ruling in the case of ***G.Maruthachalam and Others Vs. N.Jothimani and Others [2023 (1) MWN (Civil) 464]***, it is a case of partition between members of the family where a preliminary decree was passed in favour of the Plaintiffs before the Trial Court. The Defendants in the suit had filed Petition to condone the delay of 880 days in filing the Appeal Suit. Where the learned Judge of this Court held that the delay cannot be condoned in a routine manner. The rule is to file Appeal in time, adhering to the Law of Limitation; Condonation of delay is an exception. In the reported ruling, one of the parties went abroad, and authorised parties pursued the suit either to file Appeal or to settle amicably. Under those circumstances, the parties had not settled it, and the Petition to condone the delay of 880 days in filing the Appeal stated that there was no acceptable reason. Considering the fact that the preliminary



WEB COPY

decree has been passed in favour of the parties, the learned Judge dismissed the Petition, in condoning the delay of 880 days. Here, the suit instituted by the Plaintiff was dismissed for default on 03.10.2012. By the time the Petition to restore the suit was filed, the Petition to restore the suit was filed only after the expiry of the prescribed time. Therefore, there was a delay of 83 days in filing a Petition to restore the suit. Accordingly, the Petition under Section 5 of the Limitation Act, to condone the delay of 83 days in filing the Petition along with the Petition under Order IX Rule 9 of CPC. Both the Petitions were returned as 'Defective', and it had been complied with and returned repeatedly shows the attitude of the Counsel and it cannot be blamed on the party concerned. By the time it was ordered by imposing cost, it was contended that by imposing cost, the Petition in I.A.No.411 of 2016 for condonation of delay was ordered after imposing cost for the Petition to condone the delay in representation, which gives a presumption to the litigant that this case will be heard on merits. Instead, the Petition to condone the delay and the Petition to restore the suit were both dismissed, thereby denying the valuable right of the Plaintiff to agitate his right for specific performance of contract for sale to its logical end.

21.Under those circumstances, the rulings relied on by the learned



WEB COPY

Counsel for the Plaintiff will not hold good to the facts of this case. If the Petition is dismissed, in the light of the reported rulings, it amounts to miscarriage of justice by preventing the Plaintiff from stage one by not allowing him to proceed with trial for the lapses on the part of his Counsel without going into the merits of the case. Therefore, the submission of the learned Counsel for Respondents 2 to 4 placing reliance on the rulings in the case of ***G.Maruthachalam and Others Vs. N.Jothimani and Others*** reported in ***2023 (1) MWN (Civil) 464*** is rejected.

22.On the other hand, the reported ruling of the Hon'ble Supreme Court in the case of ***Robin Thapa Vs. Rohit Dora*** reported in ***2019 (6) CTC 344*** holds good in the ratio laid down by the Hon'ble Supreme Court that the suit warrants adjudication of triable issues; the litigant should not be terminated by default either by the Plaintiff or by Defendant; cause of justice requires that adjudication be done on merits; and discretionary relief of specific performance should be considered on the basis of the trial and on merits.

23.In the light of the above ruling and in continuation of the order



passed by the learned Sub-Judge, Gobichettipalayam, Erode District, allowing the I.A.Nos.409 & 410 of 2015 on payment of cost, automatically these Petitions also ought to have been allowed, thereby affording opportunity to the Plaintiff to participate in the trial proceedings and agitate his valuable right to the suit for specific performance of contract. Instead, he was prevented from appearing before the Court, which will surely result in miscarriage of justice. Therefore, in the light of the reported ruling of the Hon'ble Supreme Court, the valuable right of the Plaintiff as well as the Defendants is to be agitated before the Trial Court in the trial by affording both parties the opportunity to adduce evidence and to decide the case on merits on appreciation of the evidence.

24.In the light of the above discussion, the Petition in I.A.No.411 of 2016, Petition to condone the delay in filing the Petition to restore the suit; I.A.No.412 of 2016, Petition to restore the suit filed under Order IX Rule 9 of CPC is to be allowed; the order in dismissing I.A.Nos.411 & 412 of 2016 passed by the learned Sub-Judge, Gobichettipalayam, dated 03.01.2020, are to be set aside.

25.In the light of the above, the point for consideration is answered



C.R.P.Nos.31 & 32 of 2021

in favour of the Revision Petitioner and against the Respondents.

WEB COPY

In the result, the above **Civil Revisions Petitions are allowed** thereby setting aside the orders passed by the learned Sub-Judge, Gobichettipalayam, made in I.A.No.410 of 2015 in O.S.No.65 of 2010 and I.A.No.411 of 2016 in O.S.No.65 of 2010 dated 03.01.2020.

22.12.2023

cda

Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No



C.R.P.Nos.31 & 32 of 2021

To

WEB COPY

1. The Sub-Judge, Gobichettipalayam.
2. The Section Officer, VR Records,
High Court, Chennai.

SATHI KUMAR SUKUMARA KURUP, J.,



WEB COPY



C.R.P.Nos.31 & 32 of 2021

cda

**Order in
C.R.P.Nos.31 & 32 of 2021**

22.12.2023