



C.R.P(MD)No.1113 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.04.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD).No.1113 of 2023

and

CMP(MD)No.5363 of 2023

1.Lingeswaran

2.Tamilarasi

... Petitioners/Petitioners/Appellant

Vs.

Thirunagalingam

... Respondent/Respondent/Respondent

PRAYER:- This Civil Revision Petition has been filed under Article 115 of the Constitution of India, to allow the Civil Revision Petition and set aside the fair and decreetal order dated 08.02.2023 made in I.A.No.1 of 2022 in UN Numbered A.S.No..... of 2022 on the file of Principal District and Sessions Judge, Ramanathapuram.

For Petitioners : Mr.PT.S.Narendravasan

For Respondent : Mr.S.Srinivasa Raghavan

ORDER

This petition has been filed to set aside the fair and decreetal order dated 08.02.2023, made in I.A.No.1 of 2022 in unnumbered A.S.No..... of 2022 on the file of Principal District and Sessions Judge, Ramanathapuram.



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2.The learned Principal District and Sessions Judge, Ramanathapuram, has dismissed the application filed by the petitioners by the impugned order dated 08.02.2023 with the following observations:-

“19.On perusal of the averments contend in the present petition seeking for condone of delay on 1116 days, it reveals that the petitioners have assigned the same reason to condone the delay as averred in I.A.Nos. 462/2018 and 119/2019 which was already dismissed by this Court.

20.Though the learned counsel for the petitioners relied upon three judgments cited supra however the facts and circumstances of the case in hand, and the facts and circumstances of the cases referred by the learned Counsel for the petitioners are different and hence those judgments will not improve the case of the petitioner.”

3.The petitioners are the defendants in O.S.No.110 of 2015 before the Sub Court, Paramakudi. The said suit was filed by the respondent for specific performance based on the sale agreement dated 17.08.2015, entered between the first petitioner and the respondent. Since the first petitioner failed to execute the sale deed pursuant to the sale agreement dated 17.08.2015, the respondent herein filed the said suit before the Sub Court, Paramakudi, on 22.09.2015.



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4. During the pendency of the said suit, even before the suit summons were issued by the Court, the first petitioner executed a sale deed in favour of the second petitioner on 26.11.2015. Thereafter, the petitioners herein also entered appearance and filed their written statement. The respondent witness (P.W.1) was also examined. However, the petitioners failed to cross-examine the respondent witness.

5. Under these circumstances, both the petitioners were set *ex-parte* on 07.02.2017. On the same day, the suit in O.S.No.110 of 2015 was also decreed by the Sub Court, Paramakudi. Pursuant to the *ex-parte* decree passed on 07.02.2017, the respondent also filed E.P.No.10 of 2017 and it was allowed and the sale deed was also executed in favour of the respondent.

6. It appears that on the date of the sale agreement dated 17.08.2015, the first petitioner had received a sum of Rs.40,000/- and thus, the respondent was allowed to pay the differential amount of Rs.2,60,000/- apart from the requisite stamp duty for registering the sale deed. The sale deed was also executed by the Court in favour of the respondent.



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7.The second petitioner/2nd defendant herein had filed I.A.No.462 of 2018 and first petitioner/1st defendant had filed I.A.No.119 of 2019 for condoning the delay of 462 days and 712 days in setting aside the *ex-parte* order passed in O.S.No.110 of 2015, dated 07.02.2017.

8.The learned Sub Judge, Paramakudi, has allowed both the applications filed by the petitioners herein by order dated 19.08.2019. Therefore, the respondent has filed CRP(MD)Nos.1688 & 1689 of 2019 before this Court, which were allowed by this Court, vide order dated 09.11.2021.

9.Aggrieved by the same, the petitioners had also preferred S.L.P.Nos.2054 & 2055 of 2022 before the Hon'ble Supreme Court. The said Special Leave Petitions came to be dismissed by the Hon'ble Supreme Court, by its order dated 25.02.2022. The petitioners, thereafter, filed I.A.No.1 of 2022 to condone the delay of 1116 days in filing the appeal under Section Order XLI Rule 3-A read with Section 151 of C.P.C. before the Principal District and Sessions Judge, Ramanathapuram.



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10.The learned counsel for the petitioners submits that the learned Principal District and Sessions Judge, Ramanathapuram, has committed a grave error in rejecting the application filed for condoning the delay of 1116 days in filing the appeal. It is submitted that the remedy that was available under Order IX Rule 13 of C.P.C. read with Section 5 of the Limitation Act is different from the Appellate remedy under Section 96(2) read with Order XLI Rule 1 of CPC.

11.The learned counsel for the petitioners has relied upon a decision of the Hon'ble Supreme Court in **N.Mohan Vs. R.Nadhu** reported in **2020 1 CTC 343**. It is submitted that the said decision deals with a case under similar circumstances as in the present case. It also deals with second round of litigation as in the present case. In the first round, the Court had declined to condone delay in filing the application under Order IX Rule 13 of C.P.C., as in the present case. In the second round, to condone the delay in filing the appeal, the delay was condoned. It is submitted that the same reasoning has to be applied to the facts of the case.



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12.Per contra, the learned counsel for the respondent, on the other hand, would submit that the order is well reasoned and requires no interference. It is submitted that no clear explanation is forthcoming for the delay that was caused in the first round while filing application under Section 5 of the Limitation Act, to condone the delay under Order IX Rule 13 of C.P.C.

13.It is submitted that the delay caused in filing the appeal under Section 96(2) r/w Order XLI Rule 1 of CPC alone can be excluded by applying the principle in Section 14 of the Limitation Act. The delay of 467 days and 712 days that was caused after the petitioners were set *ex-parte*, has been found to be unsatisfactory by this Court in earlier CRP(MD)Nos.1688 & 1689 of 2019, vide order dated 09.11.2021, which has been affirmed by the Hon'ble Supreme Court while dismissing the Special Leave Petitions of the petitioners in S.L.P.Nos.2054 and 2055 of 2022.

14.It is submitted that the decision of the Hon'ble Supreme Court cannot be applied to the facts of the case. That apart, it is submitted that the Court has not laid down any ratio to be followed in the above case



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relied on by the learned counsel for the petitioners. It is further submitted that the Court has taken note of the *bona fide* conduct of the parties (the defendants therein) and condoned the delay and that the said order was not based on any legal principle. It is further submitted that this Court need not interfere with the impugned order, as the petitioners have been negligent in not filing the appeal in time and the delay has not been properly explained.

15.I have considered the arguments advanced by the learned counsel for the petitioners and the learned counsel for the respondent.

16.The delay in filing application under Order IX Rule 13 of C.P.C. was not sufficiently explained. The delay was condoned by the Trial Court in I.A.No.462 of 2018 and I.A.No.119 of 2019. However, the decision of the Trial Court was reversed by this Court in C.R.P. (MD)Nos.1688 and 1689 of 2019. Therefore, for the period for which the delay was condoned and reversed cannot be condoned in the second round under Section 96 r/w Order XLI Rule 1 of C.P.C. At best, the appeal time taken in pursuing the remedy before a wrong forum alone can be condoned under Section 14 of the Limitation Act. Section 14 of



the Limitation Act, reads as under:-

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14. Exclusion of time of proceeding bona fide in court

without jurisdiction. —

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.— For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.



17.The Hon'ble Supreme Court had intervened under similar circumstances in **N.Mohan Vs. R.Madhu** reported in **2020 (1) CTS 343**.

Paragraphs 17, 18, 19 & 20 from the said decision are extracted below:-

"17.In the present case, the respondent has filed the Money Suit being OS No.76 of 2015 for recovery of Rs. 46,98,500/- together with interest and the said suit was decreed ex-parte on 09.10.2015. Execution petition being EP No.95 of 2016 was also filed for execution of the decree. As pointed out earlier, the appellant has filed application being IA No.327 of 2016 to condone the delay of 276 days in filing the application to set aside the ex-parte decree. In the said application, the appellant has stated that he has been residing at Chennai; whereas the notice was served at Trichy and therefore, he did not have knowledge about the filing of the said suit in OS No.76 of 2015 before the ADJ Court at Tiruchirappalli and the ex-parte decree was passed on 09.10.2015. The appellant has further averred that he came to know about the ex-parte decree and the execution petition only at the time when he appeared in CC No.240 of 2016 at Karur on 29.07.2016. As discussed earlier, the said application filed by the appellant seeking condonation of delay of 276 days in filing the application to set aside the ex-parte decree was dismissed by the order dated 04.01.2017. The revision and the SLP preferred by the appellant also came to be dismissed.

18.Thereafter, the appellant has preferred the first appeal with the application to condone the delay of 546 days in filing the first appeal. As pointed out earlier, there was a delay of 276 days in filing the application to set aside the ex-parte decree. Pursuing the proceedings in the application filed under Order IX Rule 13 CPC has caused further delay of 270 days. Thus, there has been a total delay of about 546 days in filing the first appeal. In the application for condonation of delay, of course, the appellant has raised the very same ground which was taken in the application filed under Section 5 of the Limitation Act to set aside the ex-parte decree which was not accepted in the earlier proceedings.



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19. The learned counsel for the appellant-defendant has submitted that a huge amount of Rs.45,00,000/- is said to have been paid by cash which according to the learned counsel raises serious doubts about the genuineness of such transaction. Per contra, the learned Senior counsel for the respondent-plaintiff has submitted that lending of Rs.45,00,000/- as hand loan is substantiated by issuance of two post-dated cheques in favour of the respondent by the appellant – one for the sum of Rs. 25,00,000/- and another for the sum of Rs.20,00,000/-. We are not inclined to go into the merits of the contention of the parties. All that is to be pointed out is that the appellant would have been well advised that if he had filed the first appeal simultaneously along with the application under Order IX Rule 13 CPC. The appellant has however shown his bona fide by depositing Rs.25,00,000/- in compliance with the orders of this Court dated 13.08.2018. The said amount of Rs.25,00,000/- was permitted to be withdrawn by the respondent-plaintiff. Considering the facts and circumstances of the case and in the interest of justice, in our view, the appellant deserves an opportunity to put forth his defence in the suit for recovery of money. But to avail this opportunity, he must deposit the balance amount of Rs.20,00,000/- as a condition precedent for condonation of delay. In these terms, the impugned judgment is accordingly liable to be set aside.

20. The delay of 546 days in filing the first appeal shall therefore be condoned with condition that the appellant should deposit Rs.20,00,000/- before the trial court-Principal District Judge, Tiruchirappalli, to the credit of OS No.76 of 2015 on or before 28.02.2020, failing which, the application for condonation of delay shall stand dismissed. On such deposit of Rs.20,00,000/- the same shall be invested in a nationalised bank for a period of six months with the provision of auto-renewal. The deposit of Rs.20,00,000/- and also the earlier deposit of Rs. 25,00,000/- would be subject to the outcome of the appeal. On deposit of Rs.20,00,000/-, the impugned judgment passed by the Madurai Bench of Madras High Court in CMP(MD) No.6566 of 2017 in AS(MD) SR No. 27805 of 2017 is set aside and this appeal is allowed. The delay in filing the appeal is condoned. The appeal shall be taken on file and the High Court shall



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proceed with the same in accordance with law. We make it clear that we have not expressed any opinion on the merits of the matter. It is also made clear that the criminal complaints filed under Section 138 of NI Act be proceeded on its own merits without being influenced by any of the views expressed by this Court or by the High Court."

18.I am therefore bound by the approach adopted by the Hon'ble Supreme Court in **N.Mohan Vs. R.Madhu**. In the present case, it appears that a sale agreement dated 17.08.2015 was signed between the first petitioner and the respondent for a sum of Rs.2,60,000/-. The petitioners appear to have received a sum of Rs.40,000/- as advance. Thereafter, the first petitioner has executed a sale deed in favour of the second petitioner in violation of the alleged rights of the respondent under the aforesaid sale agreement dated 17.08.2015. Pursuant to the *ex-parte* decree, the respondent has also deposited the differential amount of Rs.2,40,000/- and invested a further sum of Rs.23,400/- towards stamp duty and registration charges.

19.Considering the fact that the respondent has been put to inconvenience by the petitioners and since the respondent has deposited the balance sale consideration and also invested the balance amount together with the stamp duty, I am inclined to intervene in favour of the



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petitioners by directing the petitioners to pay a sum of Rs.1 lakh to the respondent. This amount shall be paid directly to the respondent on or before 07.06.2023. Subject to such payment, the application filed by the petitioners in I.A.No.1 of 2022 to condone the delay before the Principal District and Sessions Court, Ramanathapuram, shall stand allowed. The learned Principal District and Sessions Judge, Ramanathapuram, shall number the appeal and dispose it on merits as expeditiously as possible, preferably, within a period of nine months in accordance with law. The petitioners shall report compliance by filing a suitable memo before the learned Principal District and Sessions Judge, Ramanathapuram.

20. With the above directions, this Civil Revision Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

25.04.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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Note : Issue order copy on 27.04.2023



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To

The Principal District and Sessions Judge,
Ramanathapuram.



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C.SARAVANAN, J.

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