



C.R.P.(MD)No.107 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2023

WEB COPY

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.107 of 2021

and

C.M.P.(MD)No.686 of 2021

S.Uthirapathy

.. Petitioner

Versus

Ravichandran

.. Respondent

Prayer :- Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 04.03.2020, passed in I.A.No.137 of 2019 in unfiled A.S., on the file of the Principal District Court, Thanjavur.

For Petitioner : Mr.R.Rajaraman

For Respondents : Mr.R.Grireedharan

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 04.03.2020, passed in I.A.No.137 of 2019 in unfiled A.S., on the file of the Principal District Court, Thanjavur.

2.The petitioner is the unsuccessful defendant in O.S.No.143 of 1998. The said suit was filed by the respondent for specific performance to direct the petitioner



to execute a sale deed pursuant to a sale agreement dated 16.12.1997. In the suit, the petitioner had filed written statement and originally, the said suit was decreed in favour of the respondent on 22.07.2004.

3.The case of the respondent/plaintiff is that he had paid a sum of Rs.41,000/- to the petitioner before institution of the suit on various dates. On the other hand, the case of the petitioner is that the respondent had paid only a sum of Rs.36,000/- and had not paid the balance sale consideration and therefore, the sale deed was not executed by the petitioner.

4.After the suit was decreed in favour of the respondent, the petitioner filed an Appeal Suit before the Principal District Court, Thanjavur, with the delay of 914 days. The delay was subsequently condoned in I.A.No.164 of 2009, pursuant to which, the first appeal was numbered as A.S.No.50 of 2010. Meanwhile, during the interregnum, the respondent filed E.P.No.162 of 2006 in O.S.No.143 of 1998. The said E.P. came to be allowed on 16.07.2007 and a sale deed was executed by the learned Principal Subordinate Judge, Thanjavur, in favour of the respondent and the respondent has also been put in possession of the suit schedule property, which was subject matter of sale agreement, dated 16.12.1997.



WEB COPY

5.The Appeal Suit filed by the petitioner was partly allowed on 17.03.2015 by the learned Principal District Judge, Thanjavur, Thus, O.S.No.143 of 1998 stood restored to the file of the Additional Subordinate Court, Thanjavur. In the second round of litigation also, the petitioner suffered an adverse judgment and decree on 24.10.2016. Aggrieved over the said judgment and decree, dated 24.10.2016, passed by the learned Additional Subordinate Judge, Thanjavur, decreeing the suit in favour of the respondent pursuant to the remand order of the learned Principal District Judge, Thanjavur, the petitioner has filed another appeal suit with the delay of 177 days before the Principal District Court, Thanjavur.

6.By the impugned fair and decreetal order dated 04.03.2020, the learned Principal District Judge, Thanjavur, has declined to condone the delay of 177 days in filing the appeal with the following observations:-

"6.On perusal of the records, it is found that the respondent/plaintiff filed a suit for specific performance of contract against the petitioner/defendant in O.S.No.143/1998 on the file of the Additional Sub Court, Thanjavur and after full trial, the trial court decreed the suit in favour of the respondent/ plaintiff on 24.10.2016 and aggrieved over the same the petitioner/defendant filed an appeal with a delay of 177 days, since he was suffered from jaundice, he was not able to contact his counsel and hence the delay of 177 days was caused.

7.The learned counsel for the respondent objected the petition on the ground that in order to drag on the proceedings the petitioner/ defendant filed this petition and the petitioner had not stated and explained the reason for the delay of 177 days in preferring the appeal.

8.The reason stated by the petitioner/defendant in the delay condone affidavit is that he was suffering from jaundice from 05.01.2017 and he had



*stated that he took native medicines. Apart from this, the petitioner had not adduced any valid reason for non-filing the appeal in time. Admitted the case is pending from the year 1998 onwards. The suit was decreed on 22.07.2004. On filing of E.P.No.162/2006 in O.S.No.143/1998 the sale deed was executed in favour of the respondent/plaintiff. Thereafter, the petitioner/defendant filed an appeal with a delay of 914 days and the delay condone petition was allowed and the appeal was numbered as A.S.No. 50/2010 and after trial, the appeal A.S.No.50/2010 was remanded to the trial court with a direction to receive the original sale agreement and decide the case on merits and thereafter, the suit was decreed on 24.10.2016 and thereafter, the petitioner/defendant filed POP 152/2017 to file appeal as Pauper and the said petition was dismissed. In so far as the delay condone petition in I.A.No.137/2019 to condone the delay of 177 days in preferring the appeal is concerned, there is no valid reason for condoning the delay by the petitioner/defendant except the pleading that he was suffering jaundice from 05.01.2017 and he took native medicines. **This contention is not supported by any medical evidence. Further considering the long period of pending of case and the attitude of the petitioner in filing the appeal with a delay of huge days previously even after remanding the appeal, the trial court decreed the suit. Thereafter also the petitioner/defendant filed an appeal with a delay of 177 days. I find no bonafide on the part of the petitioner and I find no merits in this petition and hence, it is liable to be dismissed. Thus, this point is answered accordingly.***

9.In the result, this Interlocutory Application is dismissed. There is no order as to costs."

7.The learned counsel for the petitioner submits that the respondent was originally required to deposit the balance amount of Rs.60,000/- pursuant to the judgment and decree, dated 22.07.2004, within a period of two months. However, the amount was deposited at the end of 27th month. Thus, it is evident that the respondent was never ready and willing to pay the amount and therefore, the suit for specific performance ought not to have been decreed by the Trial Court in the remand proceedings.



8.The learned counsel for the petitioner draws the attention of this Court to the admission of the respondent, which was also recorded in the judgment and decree, dated 24.10.2016, wherein, the respondent in Ex.B.3, has stated as follows:-

"என் தலையை அடகு வைத்தாவது பத்திரம் பண்ணி விடுகிறேன்."

9.Per contra, the learned counsel for the respondent submits that the impugned order is well reasoned and requires no interference. That apart, it is submitted that the respondent is in possession of the suit schedule property for the past 25 years. It is further submitted that the intention of the respondent was to execute the sale deed, pursuant to the sale agreement dated 16.12.1997 and out of the total sale consideration of Rs.1,01,000/-, a sum of Rs.41,000/- was paid by the respondent to the petitioner on various dates and the balance amount has also been paid by him.

10.It is submitted that though the judgment and decree dated 22.07.2004 was in favour of the respondent, the period of limitation prescribed therein is no longer relevant, as the said judgment and decree was set aside in A.S.No.50 of 2010 by the learned Principal District Judge, Thanjavur, on 17.03.2015. That apart, the fact remains that a sale deed has also been executed by the learned Principal Subordinate Judge, Thanjavur, on 16.07.2007 in E.P.No.162 of 2006 and therefore, on this count also, the impugned order does not call for any interference.



11.I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent.

WEB COPY

12.No doubt, the petitioner has given a vague reason that he was suffering from jaundice before the learned Principal District Judge, Thanjavur, which has resulted in dismissal of I.A.No.137 of 2019 filed by the petitioner to condone the delay of 177 days in preferring an appeal against the judgment and decree, dated 24.10.2016, passed by the learned Additional Subordinate Judge, Thanjavur, in O.S.No.143 of 1998. However, the parties have been litigating since 1998 and the delay was only 177 days in filing the appeal and therefore, no prejudice or harmful would be caused, if the delay of 177 days in filing the appeal is condoned, as the respondent is admittedly in possession of the suit schedule property.

13.The correctness of the decision of the learned Additional Subordinate Judge, Thanjavur, passed in the remand proceedings on 24.10.2016 is to be tested as to whether the respondent satisfied the requirements of ready and willingness to pay the amount and whether the petitioner was willing to execute the sale deed.

14.The relief under the Specific Relief Act being a discretionary relief is required to be exercised by considering the convenience of the parties. Therefore, I do not find any harm in allowing the petitioner to agitate his rights in the appeal



C.R.P.(MD)No.107 of 2021

proceedings. Accordingly, this Civil Revision Petition stands allowed on terms. The petitioner shall deposit a sum of Rs.3,500/- [Rupees Three Thousand and Five Hundred only] towards costs to the credit of O.S.No.143 of 1998, on the file of the Additional Subordinate Court, Thanjavur, within a period of four weeks from the date of receipt of a copy of this order and the said cost shall be payable to the respondent by the learned Additional Subordinate Judge, Thanjavur. On proof of production of payment of the aforesaid cost, the learned Principal District Judge, Thanjavur, shall number the appeal suit and dispose the same on merits and in accordance with law, within a period of six months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
smn2

27.04.2023

To

- 1.The Principal District Judge,
Thanjavur.
- 2.The Additional Subordinate Judge,
Thanjavur.



WEB COPY



C.R.P.(MD)No.107 of 2021

C.SARAVANAN, J.

smn2

Order made in
C.R.P.(MD)No.107 of 2021

27.04.2023