



CRP (MD) No.2016 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	12.07.2023
Pronounced on	08.08.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

CRP (MD) No.2016 of 2022

S.Muthukumar

... Petitioner

Vs.

Paari

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the fair and decretal order dated 09.07.2022 made in I.A.No.33 of 2021 in A.S.No unfiled on the file of the Principal District Judge, Ramanathapuram.

For Petitioner : Mr.PT.S.Narendravasan

For Respondent : Mr.I.Velpradeep

ORDER

This civil revision petition is preferred as against the order passed by the learned District Judge, Ramanathapuram, in I.A.No.33 of 2021 in



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unnumbered Appeal suit, which was filed to condone the delay of 7290 days in filing the appeal as against the *ex parte* decree in O.S.No.183 of 1999, dated 02.09.2002.

2. The respondent herein has filed the suit in O.S.No.183 of 1999 against the petitioner for the relief of specific performance based on an unregistered sale deed, dated 09.02.1996, wherein *ex parte* decree was passed on 02.09.2002. Subsequently, execution proceeding was initiated by the respondent in the year 2010. Thereafter, the petitioner filed an applications in I.A.Nos.114 and 161 of 2011 to set aside the *ex parte* decree with a delay and the applications were dismissed by the trial Court on 08.04.2013, against which, the petitioner filed CRP(MD) Nos.858 and 898 of 2013, which were also dismissed by this Court on 30.06.2015. The SLP preferred by the petitioner herein was also dismissed by the Hon'ble Supreme Court. After delivery was ordered in E.A.No.94 of 2013, the petitioner filed application in I.A.No.33 of 2021 in unnumbered appeal suit to condone the delay of 7290 days in filing the appeal before the Principal District Court, Ramnad, in which the Court directed the petitioner to deposit a sum of Rs.5,00,000/-.



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The petitioner had also deposited the amount on 29.03.2022. However, the trial Court, without considering the payment made by the petitioner dismissed the above petition in I.A.No.33 of 2021, against which the present revision petition is filed.

3. The learned counsel for the revision petitioner would submit that the trial Court failed to consider the observation made in the decision reported in **2020 (1) CTC 343** cited by the learned counsel for the petitioner, in which the Hon'ble Apex Court held that application under Order 9 Rule 13 CPC filed by the defendant, who acts with *bona fides*, the statutory remedy under Section 96(2) not to be denied. In the present case, the petitioner as per the direction of Court below, deposited a sum of Rs.5 lakhs to establish his *bona fideness*. However, the Court below without considering the above facts erroneously dismissed the applications filed by the petitioner/defendant. The learned counsel for the revision petitioner would further submit that all along the petitioner was under *bone fide* impression that the ex parte decree would be set aside based on merits. Only recently, the petitioner was advised to prepare regular appeal as against the *ex parte* decree passed in the main



to heavy loss. Unless, the delay of 7290 days is condoned, the petitioner would be put to heavy loss. The proceedings initiated by the petitioner under Order 9 Rule 13 will not obstruct the petitioner to prepare regular appeal. The petitioner is having a good case on merits and he would prove that the disputed sale agreement is a forged one. Hence, an opportunity must be given to the petitioner to prove his case in the main appeal suit.

4. To support his contention, he has relied upon the decision made in CRP(MD) No.113 of 2023, in a similar situation, in which this Court has held as hereunder:-

"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 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."

5. On the other hand, the learned counsel appearing for the respondent would submit that, the respondent preferred the main suit seeking for specific performance as against the petitioner herein in O.S.No.142 of 2001 in which



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the petitioner herein has failed to file his written statement. Hence, he was called absent and set ex parte and on 02.09.2002, an ex parte decree was passed. Subsequent to the ex parte decree dated 02.09.2002, execution petition in E.P.No.10 of 2010 was preferred by the respondent herein and possession of suit property was handed over to him. To set aside the ex parte decree, the petitioner preferred interlocutory applications in I.A.Nos.114 and 161 of 2011 and both applications were dismissed on 08.04.2013. As against the said order, the petitioner preferred CRP(MD) Nos.858 and 898 of 2013 before this Court, which were dismissed. Further, as against the order of this Court, the petitioner preferred SLP before the Hon'ble Apex Court and the same was also dismissed. Subsequently, the petitioner preferred the review application as against the order passed in CRP(MD) Nos.858 and 898 of 2013, which was withdrawn by the petitioner. It is further submitted that the petitioner has suppressed the order passed in E.A.No.94 of 2013, by which possession of the suit property was handed over to the respondent. The petitioner is in the habit of filing petition after petitions in order to harass the respondent. It is further submitted that since the property was delivered to the respondent, the inordinate delay of 20 years cannot be condoned. The



petitioner/defendant has been lethargic and taken his own time to challenge the decree, which cannot be permitted. To support his contention, he has relied upon the decision made by this Court in CRP NPD(MD)Nos.858 and 898 of 2013, in which it was held as under:-

25. "Reipublicae up sit finis litium" - the law of limitation is founded on public policy. It is for the general welfare that a period be put to litigation. Certainly, the rules of limitation are not meant to destroy the rights of parties. But the dilatory tactics adopted by one party should not put the opposite party to prejudice and peril. The lapse of time that too after more than 8 years should not be light heartedly disturbed.

26. No doubt, discretion vests with the Court if sufficient cause is shown. Even if sufficient cause is shown, the defaulters cannot seek for condonation as a matter of right. The existence of 'sufficient cause' is only a condition precedent for the exercise of discretion.

27. To exercise discretion all relevant factors that are put forth by the defendant have to be considered. While analysing the said factors, the Court is bound to consider the bonafides of the defendant. From the conduct



explained in the foregoing paragraphs, the dilatory tactics adopted by the defendant is ablaze. No doubt, Order 9 Rule 13 of the Code of Civil Procedure is a legal remedy open to the defendant. However, that legal remedy is also available to a party only for a specified period. As the defendant has crossed both the legislatively fixed period as well as the legitimately expected period and there is no acceptable cause or sufficient cause, the trial Court could not exercise the discretion in his favour. Having failed to avail the legal remedy promptly, the defendant has missed his opportunities. "

6. Heard on both sides and records perused.

7. The respondent herein as plaintiff filed the suit in O.S.No.183 of 1999 against the petitioner/defendant for the relief of specific performance based on an unregistered sale deed dated 09.02.1996, wherein ex parte decree was passed on 02.09.2002. In the execution proceedings, delivery of possession was ordered in E.A.No.94 of 2013 and possession was also handed over to the respondent/plaintiff. Thereafter, the petitioner/defendant filed I.A.No.33 of 2021 in unnumbered A.S to condone the delay of 7290 days in filing the appeal before the Principal District Court, Ramnad, in



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which he was directed to deposit a sum of Rs.5,00,000/-. The petitioner/defendant also deposited the said amount on 29.03.2022. However the applications filed by the petitioner/defendant was dismissed by the Court below. Aggrieved by this the above revision has been filed.

8. The only question that has to be decided is whether the delay of 7290 days should be condoned in filing the appeal suit. Admittedly, there is a delay of more than 20 years in filing the application to condone the delay in filing the appeal suit. The reason stated by the petitioner is that since he lost in his business, he had moved to Chennai and Coimbatore for his livelihood. The trial Court disbelieved the version of the petitioner/defendant, dismissed the petition filed by him.

9. The observation made in CRP(MD) Nos.858 and 859 of 2013 squarely applies to the facts and circumstances of the present case. The lapse of time, after more than 20 years should not be taken lightly. No doubt discretion vests with the Court if sufficient cause is shown. In this case, no sufficient or reasonable cause is shown by the petitioner/defendant. The



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factum of depositing the amount alone would not establish the *bona fideness* of the petitioner/defendant. As rightly pointed out in the above case, order 41 Rule 3(A) of the Code of Civil Procedure is a legal remedy open to the defendant, that legal remedy is also available to a party only for a specified period. As the petitioner failed to establish an acceptable cause or sufficient cause, the trial Court has rightly exercised its discretion by dismissing the petition filed by the petitioner/defendant.

10. For the aforesaid reasons, there is no reason to interfere with the order passed by the trial Court and the Civil Revision Petition deserves to be dismissed. Accordingly, this Civil Revision Petition is dismissed. However, the petitioner is at liberty to withdraw the amount of Rs.5,00,000/- deposited in the Principal District Judge, Ramanathapuram, by filing necessary application. No costs.

08.08.2023

NCC : Yes/No
Index : Yes/No
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To
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The Principal District Judge,
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Pre-delivery order made in
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