



CRP (MD) No.1852 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	04.08.2023
Pronounced on	15.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

CRP (MD) No.1852 of 2022

and

CMP(MD)No.8305 of 2022

Pon Marimuthu @ Pon Mariappan
S/o.Ponnusamy

... Petitioner

Vs.

Santhanam

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decretal order dated 02.08.2022 made in I.A.No.27 of 2021 in O.S.No.124 of 2016, on the file of the Sub Judge, Uthamapalayam.

For Petitioner : Mr.K.Guhan

For Respondent : Mr.D.Shanmugaraja Sethupathy

ORDER

The above civil revision petition is preferred as against the order passed in I.A.No.27 of 2021 in O.S.No.124 of 2016, on the file of the Sub



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Court, Uthamapalayam.

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2. The suit in O.S.No.124 of 2016 was filed for the relief of specific performance based on the sale agreement dated 17.06.2014, against the revision petitioner/defendant, in which, an ex parte decree was passed on 09.11.2016. Thereafter, the revision petitioner/defendant filed I.A.No.27 of 2021 in O.S.No.124 of 2016 on the file of Sub Court, Uthamapalayam, under Section 5 of Limitation Act r/w Section 151 of CPC to condone the delay of 1166 days to set aside the ex parte decree passed in O.S.No.124 of 2016. The said application was dismissed by the trial Court, against which, the present civil revision petition is preferred.

3. The learned counsel appearing for the revision petitioner would submit that revision petitioner/defendant is an agricultural coolie and working in the Cardamom Estate in Kerala State and he was affected by jaundice and therefore, he was unable to contact his counsel. Due to his non-appearance, he was set ex parte on 09.11.2016 and an ex parte decree was passed against him. The trial Court, without considering the merits of



the case and the averments made in the written statement, decreed the suit against the defendant. He would further submit that the alleged sale agreement was forcibly obtained by the plaintiff from the defendant and to find out the genuinity of the sale agreement, the trial should be conducted. He would further submit that the rights of the parties should be decided on merits and law of limitation has not been enacted for destroying the rights of parties. Therefore, in the interest of justice, an opportunity must be given to the revision petitioner to putforth his defence. Further, the said agreement was executed only for loan transaction and the same can be established only when the revision petitioner/defendant is given sufficient opportunity to conduct the trial. He would further contend that the application for condoning the delay filed under Section 5 of the Limitation Act, is to be dealt with liberally and leniently in order to do substantial justice to the parties. Therefore, the length of delay is not a material factor for deciding an application. He would further submit that the cause of justice requires that as far as possible, the adjudication is to be done on merits. When there is no element of fraud to the delay, the trial Court ought to have allowed the application filed by the petitioner. To support his contentions, he has relied



upon the decisions reported in **2009 (6) CTC 301, (2019) 7 SCC 359, (2009) 13 SCC 192, (2010) 6 SCC 786, 2016(5) CTC 117 and 2015 (1) CTC 811.**

4. On the other hand, the learned counsel appearing for the respondent would submit that on 17.09.2010, the revision petitioner/defendant executed the sale agreement, in which, the sale consideration was fixed at Rs.6,75,000/- and the defendant received a sum of Rs.6,00,000/- as advance and agreed to complete the sale on 16.12.2014 by paying the balance amount of Rs.75,000/-. The said sale agreement was registered at the instance of both parties. In spite of several demands, the defendant failed to come forward to complete the sale transaction. Hence, the plaintiff was constrained to file the above suit for specific performance. Due to non-appearance of the defendant, an ex parte decree was passed in favour of the plaintiff. Thereafter, the respondent/plaintiff preferred E.P.No.28 of 2017 on the file of the Sub Court, Uthamapalayam to execute the decree, in which, the revision petitioner/defendant appeared through his counsel and for filing counter statement, the execution proceedings was adjourned on several dates and



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thereafter, the Execution Petition was adjourned for respondent's side enquiry from 19.12.2018 till 18.11.2020 and protracted the execution proceedings for more than four years. Thereafter, the revision petitioner filed the above application to condone the delay of 1166 days in filing an application under Order 9, Rule 13 of CPC to set aside the ex parte decree with *mala fide* intention. It is a suit based on a registered agreement to sell and therefore, the contention of the defendant that it is only a loan transaction, is not substantiated by evidence. The trial Court has rightly passed a decree for specific performance in favour of the plaintiff. He would further submit that while considering the matter that falls under Section 5 of the Limitation Act, discretion has to be exercised consciously. In the present case, even a plausible explanation is not given by the defendant to condone the delay of 1166 days. Therefore, in the absence of sufficient cause, the trial Court has rightly dismissed the application filed by the revision petitioner. To support his contention, he has relied upon the decisions reported in 1998(3) CTC 170, (2001) 2 MLJ 734 and the orders passed in CRP.No.1586 of 2020 and CRP(MD) No.1147 of 2023.



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5. Heard on both sides and records perused.

6. It is a suit for specific performance, in which, an ex parte decree was passed on 11.09.2016. Thereafter, the plaintiff has filed E.P.No.28 of 2017 for execution of the decree, in which, notice was served on the revision petitioner. The petitioner/defendant appeared through his counsel in the above execution proceedings. Thereafter, only on 22.02.2022, the petitioner came up with the application to condone the delay of 1166 days in filing the application to set aside the ex parte decree. The explanation given by the revision petitioner is that at the time of passing the ex parte decree, he went to Kerala for his avocation and was also suffering from jaundice and therefore, he was unable to contact his counsel, for which, no iota of evidence was produced on the side of the revision petitioner. It is settled position that unless a party seeking for condonation of the delay shows sufficient cause for condoning the delay, the delay cannot be condoned. In the case on hand, in the absence of any acceptable reason shown by the defendant to condone the inordinate delay of 1166 days, the same cannot be condoned. Moreover, the petitioner had participated in the execution proceedings through his



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counsel in the year 2017 itself. Thereafter, only in the year 2020, he had filed the present application to condone the delay in filing the application to set aside the *ex parte* decree, which itself shows that the intention of the revision petitioner is only to drag on the proceedings endlessly and see that the fruits of the decree is not enjoyed by the respondent/plaintiff. When the delay is not properly explained and no sufficient materials are placed on records, the delay cannot be condoned. Therefore, there is no merit in challenging the impugned order passed by the trial Court and the present civil revision petition is liable to be set aside.

7. In the result, this Civil Revision Petition is dismissed and the order passed in I.A.No.27 of 2021 in O.S.No.124 of 2016, dated 02.08.2022 on the file of the Sub Court, Uthamapalayam, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes/No
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K.GOVINDARAJAN THILAKAVADI

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To

The Sub Judge,
Uthamapalayam.

order made in
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