



CMP(MD)Nos.13357 & 13491 of 2023.

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.11.2023

Delivered on: .11.2023

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.M.P.(MD)No.13357 of 2023
in A.S.(MD).No.SR59777 of 2023

and

C.M.P.(MD)No.13491 of 2023
in A.S.(MD).No.SR61583 of 2023

C.M.P.(MD)No.13357 of 2023

1.C.Rajkumar

2.C.Kathirvel

... Petitioners /Appellants

Vs.

1. K.Nagarajan

2.Anniya

3.Harsa Varthini

4.Nithyasri

5.Arunmalaisami

... Respondents / Respondents

Prayer in C.M.P.(MD)No.13357 of 2023:- Civil Miscellaneous Petition filed under Order 41 Rule 3A r/w Order 42 Rule 1 of the Code of Civil Procedure, to condone the delay of 435 days in filing the main First Appeal.



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Prayer in A.S.(MD)No.SR59777 of 2023: - Appeal Suit filed under Section 96 of the Code of Civil Procedure, against the decree and judgment, dated 24.03.2020, passed in O.S.No.102 of 2012, on the file of the Additional District Court (Fast Track Court), Palani.

For Petitioners : Mr.J.Barathan

For Respondents : Mr.V.Ragavachari, Senior Counsel for R1

C.M.P.(MD)No.13491 of 2023

1.Nithyasri

2.Arunmalaisami ... Petitioners /Appellants

Vs.

1. K.Nagarajan

2.C.Rajkumar

3.C.Kathirvel

4Ananya

5.Harsavardhini ... Respondents / Respondents

Prayer in C.M.P.(MD)No.13491 of 2023:- Civil Miscellaneous Petition filed under Order 41 Rule 3A r/w Order 42 Rule 1 of the Code of Civil Procedure, to condone the delay of 442 days in filing the main First Appeal.



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Prayer in A.S.(MD)No.SR61583 of 2023: - Appeal Suit filed under Section 96 of the Code of Civil Procedure, against the decree and judgment, dated 24.03.2020, passed in O.S.No.102 of 2012, on the file of the Additional District Court (Fast Track Court), Palani.

For Petitioners : Mr.V.Ramakrishnan

For Respondents : Mr.V.Ragavachari, Senior Counsel for R1

COMMON ORDER

P.B.BALAJI,J.

These applications have been filed seeking condonation of delay of 435 days and 442 days respectively, in filing the first Appeal, challenging the judgment and decree in O.S.No.102 of 2012, on the file of the Additional District Court (Fast Track Court), Palani.

2. In C.M.P.(MD)No.13357 of 2023, the petitioners / appellants state that they are the defendants 1 & 2 in the suit and the suit was filed by the first respondent for specific performance of an agreement of sale, dated 18.07.2011. The trial Court disbelieved the evidence of the petitioners that the said sale agreement was only in respect of borrowing from the first



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respondent and not intended to be used as a sale agreement. The trial Court decreed the suit on 24.03.2020. Citing the order of Hon'ble Supreme Court dated 23.03.2020 in Suo-Motu Writ Petition (Civil)No.3 of 2020, the petitioners contend that the Hon'ble Supreme Court having excluded the period 15.03.2020 to 28.02.2022, the delay in filing the first Appeal has to be calculated in line with the decision of the Hon'ble Apex Court. After the judgment and decree, dated 24.03.2020, came to be passed it is stated that the petitioners were unable to mobilise funds for filing the Appeal and that copy application made on 26.03.2020 and that the certified copies were made ready on 04.08.2020 and both these dates would not be relevant because of the exclusion of the time permitted by the Hon'ble Supreme Court. But, however, in the interregnum, a delay of 435 days has occasioned and it is stated that the same is neither wilful nor wanton. The delay was sought to be condoned on the strength of such an affidavit filed in support of the application under Section 5 of the Limitation Act.

3. In C.M.P.(MD)No.13491 of 2023, the petitioners are defendants 5 and 6 in the suit. According to the petitioners, both were minors at the time of filing of the suit and their father – third respondent



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viz., second petitioner in CMP(MD)No.13357 of 2023 was representing them as guardians. However, since their father was not protecting their interest properly, the Court appointed one Mr.K.Boopathy as their Court guardian. However, it is stated that the Court guardian also did not protect their interest. It is also further contended that in the written statement filed by their father, it has been stated that the suit property belonged to him and his brother, who is the first petitioner in CMP(MD)No.13357 of 2023, which is totally contrary to truth, because the business being carried on was the family business and only out of the income generated from the said business, several properties were purchased and that their uncle – the first petitioner in CMP(MD)No.13357 of 2023 did not have any independent source of income and that the minors had a share in the suit property and alleging that their father as well as their uncle had acted behind their back and contested the suit and all this came to be known to them, only when they enquired with their father, uncle as well as their cousins, who were children of the first petitioner in CMP(MD)No.13357 of 2023. It is further stated that the Court guardian simply adopted the arguments of the second defendant, viz., their father, and they have taken steps to challenge the decree thereafter. It is also further stated that copy application given to the



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petitioners by their counsel was misplaced and it was traced only on 10.08.2023, which has resulted a delay of 1247 days in preferring the Appeal. However, taking advantage of the judgment of the Hon'ble Supreme Court referred herein supra, the delay has been narrowed down to 442 days.

4. The first respondent / plaintiff has filed a detailed counter affidavit stating that the delay mentioned in both the affidavits was misconceived and the actual delay was more than 1400 days in both the cases and further, the petitioners actively participated before the Executing Court and in such circumstances, they cannot seek to take advantage of the Hon'ble Supreme Court in bringing down the enormous delay of more than 1400 odd days to merely 435 and 442 days respectively. The first respondent has further stated that despite the judgment being delivered on 24.03.2020, copy application itself admittedly was made only on 23.06.2020 in the case of C.M.P.(MD)No.13357 of 2023 and in any event, the judgment and decree was delivered on 12.08.2020 and the petitioners have slept over their rights and have chosen to file the appeal only on 10.08.2023. It is also stated that Execution Petition in E.P.No.12 of 2020



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was filed on 14.07.2020 and also came to be disposed of. List of dates and events has also been set out in the counter affidavit to show that the petitioners were fully aware of the proceedings, who took notice in the execution petition and never chose to prefer an appeal against the judgment and decree in the suit. It is further stated that the Hon'ble Supreme Court extended the period of limitation and not for applications seeking condonation of delay. The reason alleged that the petitioners did not have sufficient funds was stoutly denied and despite the disposal of the E.P and despite the Execution Court directing execution of sale deed as on 14.06.2023, very much in the presence of the petitioners, even then no steps were taken by the petitioners and only the proceedings for taking possession from the petitioners remained.

5. Insofar as CMP(MD)No.13491 of 2023, the first respondent / plaintiff has stated that the petitioners themselves have mentioned the delay as 1247 days in paragraph No.8 of the affidavit, but, for reasons not explained in any manner, in the prayer column as well as the petition, the delay is mentioned as 442 days, which is totally unexplained and also unjustified. It is also stated that the petitioners have been represented



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through independent counsel in the Execution Petitions in E.P.No.12 and 13 of 2020 and in fact, pending the execution petitions, one of the petitioners, viz., the first petitioner also attained the age of majority as early as on 25.02.2020 and a petition to declare the first petitioner as major was allowed on 23.09.2020 and thereafter time was granted to the first petitioner to file counter in the E.P. It is also contended that after attaining the age of majority, the first petitioner had also engaged an independent counsel to file vakalat and sought for time for filing counter. However, on 03.02.2023, the first petitioner filed a memo stating that she was adopting the counter of the respondents 1 and 2, viz., her father and uncle. The said memo was taken on file by the Executing Court and that thereafter, the enquiry was conducted in Execution Petition and the Execution Petition was ordered on 17.03.2023. Therefore, it is highly false and baseless to state that the father of the petitioner and their uncle did not protect the interest of the petitioners and that they colluded with the first respondent. According to the first respondent, delay has not been properly explained and therefore, the petition has to be dismissed.

6. We have heard Mr.J.Bharathan, for the petitioners in C.M.P.



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(MD)No.13357 of 2023 and Mr.V.Ramakrishnan, learned counsel for the petitioners in C.M.P.(MD)No.13491 of 2023, and Mr.V.Raghavachari, learned Senior Counsel appearing for the first respondent / plaintiff in both the C.M.Ps. We have also perused the records.

7. It is an admitted fact that the suit filed for specific performance was decreed on 24.03.2020. The petitioners were also parties / defendants in the suit. Insofar as the petitioners in C.M.P. (MD)No.13357 of 2023, they were signatories to the agreement of sale, which was sought to be specifically enforced. The petitioners in CMP(MD)No.13491 of 2023, are daughter and son respectively of the second petitioner in C.M.P.(MD)No.13357 of 2023. The respondents 2 and 3 in C.M.P.(MD)No.13357 of 2023 and respondents 4 and 5 in CMP(MD)No.13491 of 2023 are the daughters of the first petitioner, V.Rajkumar in CMP(MD)No.13357 of 2023. It is the case projected by the minors that their father and uncle have, behind their back, colluded with the first respondent, attempted to defeat the valuable rights of the petitioners in the suit property. As already stated, the minors were parties to the suit sale agreement. We find from the reading of the plaint that they



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were added only as Co-nominee / parties in the suit by way of abundant caution and not in the capacity of their being signatories to the agreement of sale or on the premise that they were entitled to a share in the suit property.

8. In CMP(MD)No.13357 of 2023, the defendants, who have chosen to challenge the judgment and decree in the suit have attempted to fall back on the judgment of the Hon'ble Supreme Court with regard to extension of time. The petitioners themselves have admitted that the appeal was presented belatedly and not within the extended time by the Hon'ble Supreme Court. The reason assigned by them is that they were not having sufficient funds. In the E.P proceedings, viz., E.P.No.12 of 2020, they have appeared on 12.03.2021 and they have taken time to file counter on 12.03.2021 and finally on 10.12.2021 alone, they have chosen to file a counter in the E.P. Thereafter, the E.P was posted for the counter of the Court Guardian and thereafter, the petitions to declare the minor - 5th respondent (viz.,Nithyasri) was taken out and pursuant to order of the Court, the same was allowed and the E.P. was also amended in November – 2022. Thereafter, the minor, who is the first petitioner in CMP(MD)No.



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13491 of 2023 was served with notice from the Court and she engaged a counsel and sought time to file a counter. The E.P was adjourned to 16.12.2022 and in the meanwhile, the draft sale deed was also called for and the same was filed by the first respondent on 20.01.2023 and on the said date, the first petitioner in CMP(MD)No.13491 of 2023 sought for further time to file counter. A last chance was given to her to file counter by 03.02.2023. On 03.02.2023, the first petitioner in CMP(MD)No.13491 of 2023 filed a memo stating that she will adopt the counter of her father and uncle. The E.P was subsequently enquired and the Executing Court ordered the E.P., directing the execution and registration of the sale deed. It is seen that the sale deed was also registered and reported to the Court on 25.08.2023. Only after the executing Court ordered for registration of the sale deed on 14.06.2023 and E.A.Nos.40 and 41 of 2023 had been filed by the first respondent, seeking to break open and for police aid, the Appeal came to be filed by the petitioners in CMP(MD)No.13357 of 2023. Insofar as the other Appeal by the children of the second petitioner in CMP(MD)No.13357 of 2023, the appeal was filed on 17.08.2023.

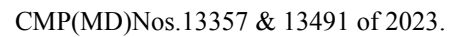
9. It is seen that in both the cases, the petitioners have



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participated before the Executing Court and they had all the opportunity to prefer an appeal and admittedly they did not do so and instead were contesting the execution proceedings. Only when the E.P came to be ordered and the execution and registration of sale deed was directed, the petitioners have chosen to approach this Court, citing COVID as one of the reasons and also want of funds to prefer the appeal as one of the grounds in CMP(MD)No.13357 of 2023.

10. Insofar as CMP(MD)No.13491 of 2023, alleging that their father did not protect their interest and that the Court guardian, did not properly conduct the proceedings, the delay has been sought to be condoned. Unfortunately, as seen from the discussions hereinabove, in the case of the minors, one of them attained the age of majority, pending the E.P and thereafter, she even engaged a counsel independently, who only chose to adopt the counter by the father and uncle of the petitioners. If really the allegation of collusion between the father and uncle of the first respondent on the side side was having any iota of truth, then the first petitioner would not have adopted the counter filed by her father and uncle. Even after attaining the age of majority, the 1st petitioner has not moved even an inch for challenging the judgment and decree, granting



11. We do not find any *bonafide* reasons set out by the petitioners in both the Civil Miscellaneous Petitions, especially, taking account their active participation in the Execution Proceedings and having chosen to file an Appeal after 3 years after the judgment and decree came to be passed in the suit for specific performance.

12. In fine, there are no merits in the applications, seeking condonation of delay. Hence, these Civil Miscellaneous Petitions are dismissed. Consequently, A.S.(MD)Nos. SR59777 & SR61583 of 2023



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are rejected at the SR stage itself.

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(T.K.R.J.) & (P.B.B.J)
.11.2023

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Ls

To

1. The Additional District Court
(Fast Track Court),
Palani.



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RMT.TEEKAA RAMAN, J.,
and
P.B.BALAJI, J

Ls

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery order in

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in A.S.(MD).No.SR59777 of 2023
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