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C.R.P(MD)No.2448 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.07.2023**

CORAM

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

C.R.P(MD)No.2448 of 2018
and
C.M.P(MD)No.10892 of 2018

Thowdan

...Revision Petitioner/
Respondent/Plaintiff

Vs.

Machukkaruppan @ Karuppanan (Dead)

Pappathi Ammal (Dead)

1.Muthupechi

2.Marnadu

...Respondents/
Petitioners 3 and 4/
Lrs of deceased sole Defendant

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the fair order and decretal order of the learned Principal District Munsif, Aruppukottai passed in I.A.No.403 of 2012 in O.S.No. 178 of 2010 on its file dated 03.08.2018 and dismiss the same.

For Petitioner : Mr.S.Parthasarathy

For Respondents : Mr.J.Barathan



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ORDER

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This civil revision petition has been filed against the order passed by the Principal District Munsif Court, Aruppukottai in I.A.No.403 of 2012 in O.S.No.178 of 2010, dated 03.08.2018.

2. The revision petitioner is the respondent/plaintiff before the Trial Court. It appears that the plaintiff has filed a suit for specific performance based upon the sale agreement, dated 15.12.1997. According to the plaint averments, entire sale consideration was paid and possession was also handed over to the defendant. When the defendant refused to execute a sale deed, the suit for specific performance came to be filed.

3. It appears from the record that, in the suit, on account of non appearance by the defendant, an *ex parte* decree was passed on 20.09.2010. Against the *ex parte* decree, the defendant had filed an application to set aside an *ex parte* decree with a delay of 603 days. To condone the delay, the defendant has pleaded that he was aged about 70 years and that he was suffering from Blood Pressure, heart ailments and jaundice, and also would submit that he has good defence in this case.

Hence, he prayed to condone the delay.



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4. The said application was strongly objected by the respondent/plaintiff contending that the very averment in the affidavit is misleading one, and that they also disputed the ailment of the defendant. It is also contended by the learned counsel for the respondent/plaintiff that the defendant has been residing in the very same address, where the notice was issued. Hence, prayed to dismiss the application.

5. However, the learned Trial Judge after considering either side submission has allowed the application on the ground that after the demise of defendant, now that the suit is being prosecuted by the legal heirs of the defendant, hence, to give an opportunity to the legal heirs of the defendant, has allowed the application.

6. Aggrieved with the order of the learned Trial Judge, the petitioner has come up with this civil revision petition.

7. The learned counsel for the petitioner would submit that the learned Trial Judge has shown undue judicial generosity to the defendant, and that as per the Indian Post Office Act, 1898, any endorsement made on the postal cover is the *prima facie* evidence. Here



is the case, when the postal notice was served on the defendant, it was endorsed with an endorsement "refused", and only as per the direction of this Court, the Court notice affixed on the defendant's residence, and substituted service was effected. Therefore, the decree passed against the defendant is as per the procedure and further more reasons assigned by the defendant for condonation of delay also is not acceptable one.

8. The learned counsel for the petitioner has also relied on the following two judgments:

(a) *Pandiarajan and others Vs R.Rajammal and others* reported in **2013 (1) MWN (Civil) 278**. The relevant portion of the order is extracted hereunder:

14. The learned Counsel for the respondent placed reliance upon a decision of the Supreme Court in N.Balakrishnan Vs M.Krishnamurthy, AIR 1998 SCC 3222. This decision has also been referred to in the case of Lanka Venkateswarlu (D) by LR. V.State of A.P. and others, AIR 2011 SC 1199.

15. The facts available in the present case on hand are not distinguishable. In this case also the learned District Judge has recorded that the petitioner has not shown any valid reason but he has proceeded to condone the delay and this attitude, in view of the Supreme Court, is not sustainable and judicial generosity cannot be extended in this way. There is no other reason for the Court below to condone the delay while recording the reason of absence of sufficient cause. Following the ratio and principles laid down in the case of Lanka Venkateswarlu (D) by LR. V.State of A.P. and others, AIR 2011 SC 1199, I am of the considered opinion that the order



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passed by the Court below allowing the application is not legally sustainable which has to be reversed and it is accordingly set aside. The Civil Revision Petition deserves to be allowed.

(b) *A.M.Ramakrishnan Vs Madurai Virudhunagar Nadargal*

Uravinmurai Paribalana Sabai represented by its Secretary reported in ***2003-3-L.W.416***. The relevant portion of the order is extracted hereunder:

"9.As far as this case is concerned, the petitioners/defendants have contended that the contentions of the respondent/plaintiff is that his transfer is mala fide and the revision petitioners have contemplated disciplinary action against the respondent/plaintiff. Item No.7 of the Fifth Schedule of the Act deals with transfer of a workman due to mala fide reasons, which is said to be an unfair labour practice. Any violation of the Standing Orders or Victimization is an industrial dispute as defined under Section 2 (k) of the Act. A dispute which can be agitated only in a forum created under the Industrial Disputes Act, cannot be adjudicated for resolving any such grievance before Civil Court, which will have no jurisdiction to entertain a suit much less grant an interim order. the position as on date is an affected employee/workman need not wait for a reference to be made by the Government, but he can directly approach the appropriate forum created under the Act. As held by the Hon'ble Supreme Court and this Court, the Civil Court has no jurisdiction to entertain disputes concerning the workmen and the employer with regard to the service condition of the workmen. Hence, the order of the learned Principal District Munsif, Ambasamudram, in I.A.No.720 of 2002 in O.S.No.109 of 2002 is set aside, since the suit itself is not maintainable in Civil Court. This civil revision petition is allowed. Consequently, C.M.P.No.17704 of 2002 is closed. No costs."



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9. The learned counsel for the petitioner would urge before this Court by referring Paragraph No.14 of the above judgment, and that judicial generosity cannot be extended to the undeserving litigants.

10. I have given my anxious consideration to either side submissions.

11. No doubt, the Trial Court though disbelieved the evidence of the defendant in respect of the ailments of the deceased defendant, still has found sufficient cause in Paragraph No.9 of the impugned order. Wherein, the learned Trial Judge has found that since the defendant has already died, and that the suit is now prosecuted by his legal heirs, thought fit to give an opportunity to contest the case and eventually on that ground, the learned Trial Judge has condoned the delay of 603 days.

12. This Court would also find from the records that at the time of filing the application for condonation of delay, the defendant was aged about 70 years. Therefore, the discretion exercised by the trial Judge and also reason assigned in his order that an opportunity to be given to the legal heirs of the deceased defendant appears to be within the contours of



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sufficient cause to condone the delay of 603 days. At this juncture, it is pertinent to mention here that, in the case of *N.Balakrishnan Vs M.Krishnamurthy*, reported in *AIR 1998 SCC 3222*, the Hon'ble Supreme Court held that, if the trial Court positively exercised its jurisdiction in condonation of delay then the revisional Court should be slow in interfering with the order, unless the order is perverse. But this Court could not find any perversity in the order of the Court below.

13. As indicated herein above, though the Trial Court did not believe the ailment of the petitioner, has found the another sufficient reason being the death of the defendant to condone the delay. This Court could not find any manifest error in such findings of the Trial Court. Therefore, this Court is not inclined to interfere with the order of the learned Trial Judge.

14. In the result, this Civil Revision Petition stands dismissed. Considering the nature of the suit being filed for specific performance, and the year of initiation being the year 2010, both the parties are directed to co-operate with the trial Court for early disposal. Further, the learned trial Judge is directed to dispose of the suit as expeditiously as possible preferably within a period of 6 months from the date of receipt



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of the copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

21.07.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The District Munsif Court,
Sivagiri.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN,J.

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