



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.No.1552 of 2024
and C.M.P.No.8358 of 2024

M.Kumaravel

.. Petitioner

Versus

Ilangovai
Respondent

..

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order in C.M.A.No.27 of 2022 dated 21.11.2023 on the file of Additional District Judge (Fast Track Court) Villupuram,, confirming the Fair and Decretal Order in I.A.No.439 of 2017 in O.S.No.170 of 2016 dated 18.11.2022 on the file of IInd Additional Subordinate Judge, Villupuram and thereby allow the Civil Revision Petition.

For Petitioner : Mr.N.Suresh

For Respondents : Mr.V.Raghavachari, Senior Counsel
for Mr.V.G.Natarajan

ORDER

Challenging the order passed in CMA.No.27 of 2022 dated 21.11.2023, the present revision has been filed.

2. Brief facts leading to filing of this revision is as follows:

2.a. The suit in O.S.No.170 of 2016 on the file of IInd Additional Subordinate Judge, Villupuram was filed by the plaintiff/respondent to enforce the contract for



specific performance dated 16.05.2014. It is the specific case of the plaintiff that the defendant has agreed to sell the suit property for a total sale consideration of Rs.4,10,000/- and had received a sum of Rs.4,00,000/- as an advance on the date of agreement. The time for completion of sale is fixed for two years and he was always ready and willing to perform the part of contract. As the defendant/respondent failed to perform his part of contract, the suit came to be filed in O.S.No.170 of 2016 and the suit was decreed exparte on 05.12.2016.

2.b. The petitioner filed an application to condone the delay of 280 days in filing I.A.No.330 of 2017 to set aside the exparte decree, wherein, it is stated by the revision petitioner that he was suffering from jaundice for one year and therefore, the delay occurred. Besides, stand was taken to the effect that suit summons were not served. Such application was allowed by the Trial Court on condition to pay a cost of Rs.2,500/- to the plaintiff. Challenging the said order, the plaintiff/respondent filed CRP(NPD).No.1371 of 2018 before this Court. By order dated 21.09.2020, this Court dismissed the revision petition confirming the order. Thereafter, application has been filed under Order 9 Rule 13 of CPC to set aside the exparte order dated 05.12.2016 on the ground that summons has not been served and he was suffering from jaundice. The said application has been opposed by the respondent herein on the ground that the reasons assigned by the plaintiff is not correct. At the relevant period, the revision petitioner had appeared in C.C.No.849 of 2016 in the same Court complex, that apart summons is also properly served.



WEB COPY

2.c. The Trial Court considering the issue and the allegations raised by the defendant has held that the contention raised by the revision petitioner that he was suffering jaundice, he could not appear before the Court is not correct. The Trial Court relied upon the documents filed by the respondent/defendant to show that the revision petitioner has appeared in C.C.No.849 of 2016 on various dates. Further, summons also properly served. Hence, dismissed the application to set aside the exparte order. On appeal, the Appellate Court also confirmed the order of the Trial Court. Challenging the said order, this revision has been filed.

3. The learned counsel for the petitioner would submit that same reasons have been assigned in application filed under Section 5 of the Limitation Act to condone the delay of filing the application to set aside the exparte order which had been allowed by the Court and reached finality upto this Court in CRP(NPD).No.1371 of 2018. Whereas, the application filed under Order IX Rule 13 of CPC has been dismissed. According to him, when the Court has already accepted the reasons and condoned the delay, application filed under Order IX Rule 13 ought to have been allowed. Further, the suit is for specific performance and exparte decree is also passed without their being an discussion with regard to the readiness and willingness. The very contention of the plaintiff that on the date of agreement, Rs.4 lakhs has been paid and for remaining Rs.10,000/-, two years time has been fixed that itself shows that it is a clear case of loan transaction. Therefore, submitted that the impugned order cannot be



sustained in the eye of law and seeks for allowing this revision.

WEB COPY

4. The learned counsel for the petitioner further submitted that the petitioner/defendant is ready to deposit the entire amount received on the date of agreement along with interest for all these years and prays to set aside the exparte decree and chance may be given to contest the suit.

5. In support of his submissions, he placed reliance upon by the judgment of this Court in the case of *S.Nehru and another vs. S.Sivasankar @ Babu @ Simanbal and others* reported in 2015 (1) CTC 267, wherein, this court has held that when the explanation for the delay and set aside ex parte decree is one and the same, the explanation for the delay already explained in application under Section 5 of the Limitation Act, application under Order IX Rule 13 of CPC should have been allowed. Further, he also placed reliance in the judgment of the Hon'ble Supreme Court in the case of *Robin Thapa vs. Rohit Dora* reported in (2019) 7 SCC 359, wherein, it is held that a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits.

6. Whereas, the learned senior counsel for the respondent submitted that merely because the application to condone the delay has been allowed in earlier occasion, it is not automatic that Order IX Rule 13 of CPC has to be allowed. It is his further



contention that to determine application under Order IX Rule 13 of CPC, it has to be seen whether the defendant honestly and sincerely intended to remain present when the suit was called on for hearing. Sufficient cause has to be shown as to what prevented from appearing before the Court. On facts, Court below found that the reasons assigned in the petition is factually not correct and the petitioner has not approached the Court bonafidely. Hence, opposed the revision. In support of his submissions, he placed reliance on the following judgments:

- i) *Arun Alexander Lakshman vs. A.P.Vedavalli* reported in 2007 (4) CTC 449
- ii) *Parimal vs. Veena Alias Bharti* reported in (2011) 3 SCC 545
- iii) *K.Govindasamy vs. Dhanam Ammal and 5 others* reported in 1994-2-L.W.93

7. Heard both sides and perused the materials placed on record.

8. It is not in dispute that the suit has been filed for enforcement of contract of the year 2014. It is averred in the plaint that 4 lakhs out of the total sale consideration of Rs.4,10,000/- has been paid to the defendant on the date of sale agreement itself. For remaining payment of Rs.10,000/-, two years time has been fixed. Be that as it may, the fact remains that the earlier application filed by the petitioner to condone the delay of 280 days is allowed by the Court and the same is confirmed by this Court in CRP(NPD).No.1371 of 2018. The reasons assigned for condonation of delay is that the petitioner was suffering from jaundice and summons were not served. The same reasons are averred in the application filed under Order IX Rule 13 of CPC. However,



while deciding the application under Order IX Rule 13, the Court factually found that the contentions that summons has not been served is not correct. Further, the petitioner was suffering from jaundice has also not been established. The Trial Court also taken note of the appearance of the petitioner in criminal court at the relevant point of time and rejected his contention. This Court is also in agreement with the Trial Court reasoning for dismissing the application on merits. The fact remains that the same reasons have also been accepted by the Court in earlier occasion and this Court has also approved it in CRP(NPD).No.1371 of 2018.

9. What is required under Order 9 Rule 13 of CPC is sufficient cause which prevented the defendant from appearing before the Court when the suit was called on for hearing. Therefore, it is imperative that sufficient cause has been shown by the party. Though this Court is of the agreement with the learned Senior Counsel for the respondent that the reasons has not been established and sufficient cause has not been shown. The fact remains that same reasons is already accepted by this Court while condoning the delay of 280 days. It is relevant to note that though the party has not established sufficient cause while deciding whether there is sufficient cause or not, the Court must also bear in mind the object of doing substantive justice. The conduct of the party in the present case though is not appealing to the satisfaction of this Court, the same cannot be a ground to take away the substantive right.



WEB COPY

10. Mere negligent or mistake on the party is the order of the day. However, making false affidavit has become routine affairs of the irresponsible counsel, therefore, the substantive right of the party cannot be taken away. The Hon'ble Apex Court in the *Robin Thapa's case* (cited supra). On facts finding that the appellant contention that he came to know about the passing of decree only on 17.11.2015 cannot be acted upon and disbelieved the contention, still considering the fact that the suit was filed for specific performance, in the interests of justice allowed the application on terms, by holding so, the Hon'ble Apex Court has held that Ordinarily, a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits.

11. Further, a Division Bench of this Court in Arun Alexander Lakshman's case (cited supra) has held that while considering the application under Section 5 of the Limitation Act, Court can also examine whether the petitioners have arguable points on facts and law. Failure to be extra vigilant by the party cannot be a ground to deny the opportunity to contest the suit and allowed the application with a cost of Rs.50,000/- and to deposit Rs.3,50,000/- to the credit of the suit.

12. Considering the above dictum and the nature of the suit which is filed for



specific performance and ex parte decree is also passed without discussing as to readiness and willingness on the part of the respondent and substantial sale consideration is said to have been paid on the date of agreement and two years period is agreed for payment of the balance Rs.10,000/-, this Court is of the view that the suit being filed for specific performance to enforce the agreement is inclined to grant one more opportunity to the revision petitioner/defendant subject to payment of costs of Rs.25,000/- payable to the respondent/plaintiff within a period of one month from the date of receipt of a copy of this Order. Besides, the petitioner shall also deposit Rs.4 lakhs of principal amount along with interests for all these years totalling to 8 lakhs to credit of the suit. This direction is passed in view of the submissions made by the learned counsel for the revision petitioner.

13. Accordingly, the impugned order dated 21.11.2023 passed by the Appellate Court stands set aside and this revision petition stands allowed. The Trial Court shall decide the suit on merits and dispose within a period of six months from the date of receipt of a copy of this Order. No costs. Consequently, connected miscellaneous petition stands closed.

20.11.2024

dhk

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No



To,

1. Additional District Judge
Additional District Court (Fast Track Court)
Villupuram

2. The II Additional Subordinate Judge,
II Additional Subordinate Court
Villupuram



CRP No.1552 of 2024

N.SATHISH KUMAR, J.

This Civil Revision Petition has been listed today under the caption 'for being mentioned.'

2. This Court had allowed the revision petition in CRP.No.1552 of 2024 on 20.11.2024 subject to the payment of Rs.25000/- and that apart, this Court also directed the petitioner to deposit the principal amount of Rs.4 laks with interest totalling to Rs.8 lakhs to the credit of the suit. In fact the revision petitioner had volunteered to deposit the above amount. Only in that context, the Order has been passed. The cost has been Ordered to be deposited within the time. As far as deposit of the principal along with interest is concerned, no time limit is mentioned. Hence, the petitioner is directed to deposit both the amounts within a period of six weeks from today. Failing which the Order allowing the revision petition shall stand recalled.

3. The matter is clarified accordingly.

vrc

09.07.2025



WEB COPY



N.SATHISH KUMAR, J.,

dhk

C.R.P.No.1552 of 2024

20.11.2024