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C.R.P.(PD).No.1120 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.1120 of 2020
and CMP.No.6098 of 2020

- 1.Easwaran (died)
- 2.T.E.Jayasri
- 3.S.Kumar
- 4.E.Bavisha
- 5.Aarthi

(1st petitioner died. Petitioners 4 and 5 are brought on record as
Lrs of the deceased petitioner -1 viz., Easwaran vide Court Order
dated 21.11.2023 made in CMP.Nos.6016, 6018 and 6020 of 2023
in CRP.Nos.1120 of 2020)

... Petitioners

vs.

- 1.S.P.S.Balashanmugam
- 2.S.Gnanalakshmi

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the order made in I.A.No.1 of 2019 in Un O.S, dated 16.10.2019 on the file of the Principal District Judge, Namakkal and allow the Civil Revision Petition.

For Petitioners

: Mr.R.Marudhachalamurthy



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For Respondents : M/s.K.Akshya

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ORDER

The Civil Revision Petition is filed challenging the order passed by the trial Court dismissing an application filed to condone the delay of 2525 days in representing the plaint.

2. The petitioners herein filed a suit seeking specific performance of the sale agreement dated 17.11.2008. The plaint was presented on 04.06.2012 before the District Court, Namakkal and the same was returned on 06.06.2012 pointing out certain defects. Thereafter, the plaint was represented with a delay of 2525 days. The petitioners 1 to 3 herein filed a petition seeking to condone the delay of 2525 days and the same was dismissed by the trial Court. Aggrieved by the same, the petitioners are before this Court.

3. In the affidavit filed in support of the condone delay petition that was sworn by the Advocate who presented the plaint originally, it was



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stated that he was practising in Tiruchengode and he entrusted the case papers to one R.Gobikumar, who was practising at Namakkal for the purpose of filing. It was further stated though the suit was filed before the District Court on 04.06.2012, the above said counsel viz., R.Gobikumar died on 11.03.2017 due to heart attack and thereafter he tried several times to find out the stage of the case by contacting his father on 04.06.2019. After getting returned plaint papers from father of deceased Advocate, the steps have been taken to represent the same with the delay. The father of the deceased counsel also filed a supporting affidavit.

4. Not satisfied with the reasons assigned by the petitioners to explain the huge delay of 2525 days, the trial Court dismissed the application.

5. The learned counsel appearing for the petitioners submitted that by taking into consideration the death of the counsel who was in charge of the case at Namakkal, the Court should have taken a liberal approach, while considering the petition for condonation of delay in representation. The learned counsel also submitted that the petitioners paid a Court fee of



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Rs.5,62,500/- and by taking into consideration the heavy Court fee paid by the petitioners an opportunity may be given to get along with the case on merits.

6. The learned counsel appearing for the respondents vehemently opposed the application on the ground that the petitioners who entrusted the papers to the counsel in the year 2012 have not taken any steps to contact the counsel and know about numbering status of the case. Therefore, there is a gross negligence on the part of the petitioners in following the case filed by them. In such circumstances, absolutely, there is no sufficient cause to condone the delay of 2525 days.

7. It is seen from the typed set of papers that the plaint was presented on 04.06.2012 before the District Court, Namakkal. Though it is stated in the affidavit filed in support of the condone delay petition that the plaint was presented before the District Court, Namakkal through one R.Gobikumar, Advocate, a perusal of plaint would suggest the name of Mr.D.Murugadoss who had sworn the affidavit had been shown as the



counsel on record and the name of Mr.Gobikumar is not at all mentioned as the counsel for the petitioners in the original plaint presented before the Court. The plaint was returned as early as 06.06.2012 pointing out various defects.

8. Perusal of the returned plaint which is included in the typed set of papers would further indicate that the returned plaint was represented on 06.06.2016 and it appears that the same had been returned again and finally it was represented on 07.06.2019. In fact representation endorsement made by the petitioners/plaintiff's counsel dated 06.06.2016 is marked as Ex.C1. One of the main reasons given in the affidavit filed in support of the condoned delay petition is that Mr.R.Gobikumar who was in charge of the case died on 11.03.2017 and hence there was a delay in representing the matter. However, a perusal of the returned plaint would suggest the plaint which was returned on 06.06.2012 was represented on 06.06.2016 and thereafter, only in the year 2017 said R.Gobikumar died. Absolutely, there is no explanation as to why the plaint returned on 06.06.2012 was represented only on 06.06.2016. Even, thereafter, the petitioners failed to follow up the



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case and it was represented finally in the year 2019. The petitioners are not in a position to explain the delay between original date of return namely 06.06.2012 and the date of first representation on 06.06.2016. Ex.C1, representation endorsement dated 06.06.2016 has been suppressed by the petitioners in the affidavit filed in support of condone delay petition. This Court is unable to accept the reason given in the affidavit filed in support of the condone delay petition. First of all, the name of R.Gobikumar is not mentioned as a counsel on record. Secondly, he died in the year 2017. When the petitioners failed to take any steps to number the suit till 2017, which was returned as early as 06.06.2012, the reasons assigned by the petitioners as if the delay occurred due to death of the counsel is not acceptable. The trial Court rightly appreciated the same and dismissed the condone delay petition.

9. Though at the time of dismissing the condone delay petition, the trial Court observed that the affidavit filed by the Advocate cannot be taken into consideration in the absence of affidavit by the petitioners, this Court feels in the facts and circumstances of the case, the Advocate is competent to sworn affidavit explaining the delay. However, no reason is



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given in the affidavit filed in support of the condone delay petition explaining the delay from 2012 to date of first representation in the year 2016. While considering petition to condone delay in representation Courts may take liberal approach. However, the suit is for specific performance of sale agreement dated 17.11.2008. The petitioners not even prayed for return of advance amount. The failure of petitioners to follow up their case from 2012 to 2016 demonstrates negligence on the part of the petitioners. The petitioners not even cared to know whether their case is numbered or not for four years. When there is no explanation in the affidavit filed in support of condone delay petition for the period from 06.06.2012 to 06.06.2016, this Court is unable to exercise the discretion in favour of the petitioners.

10. In such circumstances, I do not find any error in the order passed by the Court below dismissing the condone delay petition. Accordingly, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

20.02.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No



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S.SOUNTHAR, J.

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To

The Principal District Judge,
Namakkal.

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