



C.R.P.No.2221 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2024

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.No.2221 of 2023

1. Chozhan Auto Finance
rep.by its partner A.Vijayan, S/o R.Arjunan
Having office address at
D.No.43, 3rd Floor
Padma Tower, Kovai Road
Karur Town, Karur Taluk & District

2. R.Kathiresan .. Petitioners

-VS-

1. P.Raja @ K.P.Raja
2. P.Chinnadurai
3. P.Mahendran .. Respondents

Memorandum of Grounds of Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair and decretal order dated 29.03.2023 passed in I.A.No.1 of 2019 in O.S.No.181 of 2015 on the file of the learned Subordinate Judge, Tiruchengode.



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For Petitioners	::	Mr.M.Sricharan Rangarajan Senior Counsel for Mr.N.S.Amogh Simha
For Respondents	::	Mr.P.Vetrivel

ORDER

Challenge has been made to the impugned order rejecting the application filed by the petitioners to condone the delay of 1032 days in filing the petition to set aside the ex parte decree dated 05.10.2016.

2. The revision petitioners are the defendants in the suit. The suit has been laid by the respondents/plaintiffs to declare the sale deed dated 04.11.2009 executed by the 2nd defendant as power agent of the plaintiffs in favour of the 1st defendant firm as sham and nominal, on the ground that the sale deed came to be executed on account of the loan transaction. It is their further contention that the amount borrowed from the first petitioner firm has been completely repaid.

3. The learned Senior Counsel appearing for the petitioners would submit that the suit has been filed to annul the document registered in the



year 2009. To be noted, the suit has been filed only in the year 2015 after a period of six years and that suit has been decreed ex parte on 05.10.2016.

Hence the petitioners have filed the application to condone the delay of 1032 days in filing the petition to set aside the ex parte decree, on the ground that one of the partners of the first petitioner firm, namely, Mr.Murugesan, who was monitoring the Court case, suddenly died of cardiac arrest on 13.12.2017 in Arakkonam Railway Station. Immediately, the petitioners, in the month of January, met the lower Court counsel. However, the lower Court counsel informed them that Mr.Murugesan has already received the case bundle. Therefore, in that scenario, the delay of 1032 days has occurred. In any event, when the petitioners have clearly given bona fide reasons for the delay in filing the application, the trial Court has mechanically dismissed the application. Hence he prayed for allowing this revision.

4. The learned counsel for the respondents would raise a preliminary objection that the revision itself is not maintainable as against the dismissal of the application filed under Section 5 of the Limitation Act. Even on



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merits, the learned counsel for respondents would submit that the huge delay has not been properly explained by the petitioners. Hence, the delay cannot be condoned and the trial Court has rightly rejected the application.

5. I have perused the entire materials available on record. So far as the preliminary objection raised by the learned counsel for respondents that the revision itself is not maintainable is concerned, this Court has held in several judgments that the revision is maintainable as against the dismissal of Section 5 application. That apart, in C.R.P.Nos.2088, 2089 & 2090 of 2024 dated 08.11.2024 (M.Saravanan v. N.Ponnurangam), this Court has held that the revision is maintainable as against the dismissal of Section 5 application. This view has been clearly upheld by the Apex Court in the judgment in *State of Uttar Pradesh v. District Judge and others, (1984) 2 SCC 673*, holding that against the dismissal of Section 5 application, revision under Article 227 of the Constitution of India is maintainable. Hence, this Court rejects the preliminary objection raised by the respondents.



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6. So far as the impugned order challenged in this revision is concerned, as rightly contended by the learned Senior Counsel appearing for the petitioners, the suit itself is barred by limitation. No doubt, to condone the delay, the parties should give proper explanation for each and every day's delay. At the same time, the Court, while deciding the application to condone the delay, has to consider the nature of the rejection and its implication. Merely because the parties were shown to be negligent for not approaching the Court within time, that cannot be a ground to take away their substantial right. Though the delay is huge in this case, namely, 1032 days, length of delay is not the matter. Whether the reasons assigned for such delay are convincing and there was sufficient cause to condone such huge delay, have to be considered. The very allegation in the application that one of the partners was following the case with the lower Court counsel, is not disputed by the respondents. Similarly, his sudden death in the year 2017 is also not disputed. No counter has been filed disputing the allegations raised by the petitioners in the application.

7. Be that as it may. Once the facts pleaded in the petition or plaint



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are not disputed by the other side, generally they have to be taken as deemed admission. The petitioners have clearly stated that the delay has occurred only due to the sudden death of one of the partners, who was following the case. That apart, the ex parte decree has been registered in the encumbrance only in the year 2017, that too after the sale of the property by the revision petitioners. When the petitioners have come to the Court with reasons, considering the nature of lis, which is to annul the document of the year 2009, this Court is of the view that reasonable opportunity ought to have been given to the parties to raise their substantial defence in the matter. Though the negligence of the parties is common, when the pleadings are normally made by the counsels, mere lack of pleadings to suit the requirements of law, will not take away the rights of the parties. Therefore, this Court is of the view that liberal approach ought to have been shown by the trial Court, particularly considering the nature of the lis involving the cancellation of the registered document pertaining to the year 2009. Hence, taking a liberal approach, this Court is inclined to set aside the impugned order. Accordingly, the impugned order is set aside. The trial Court shall decide the application filed under Order IX, Rule 13 of the Code of Civil



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Procedure on its own merits and thereafter, in the event the application is allowed, shall dispose of the suit expeditiously without any further delay.

Consequently, C.M.P.Nos.13433 & 13434 of 2023 are closed. No costs.

Index: yes/no

14.11.2024

Neutral citation : yes/no

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To

1. The learned Subordinate Judge
Tiruchengode



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N.SATHISH KUMAR, J.

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