



C.R.P.No.3372 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 29.11.2024

CORAM

THE HON'BLE JUSTICE N.SATHISH KUMAR

C.R.P.(NPD) No.3372 of 2024

and

C.M.P.No.18130 of 2024

Major Harbhajan Singh Sandhu (Died)

Gurdeep Singh Sandhu

... Petitioner/Revision Petitioner

-VS-

1. Gowtham Sampath

2. Nirmala Perumal

... Respondents/Respondents

Prayer: Civil Revision Petition filed under Section 115 of CPC to set aside the order and Decretal order dated 08.12.2023 in I.A.No.1 of 2022 in O.S.No.588 of 2007 passed by the learned Principal District Judge, Kancheepuram District at Chengalpattu and consequently, order I.A.No.1 of 2022 in O.S.No.588 of 2007

For Petitioner : Mr.R.Pravesh

For M/s.P.B.Ramanujam Associates

For R1 : Ms.A.Vinupradha

ORDER

A challenge has been made to the impugned order dated 08.12.2023 passed in I.A.No.1 of 2022 in O.S.No.588 of 2007 by the Principal District Judge, Kancheepuram District at Chengalpattu, by which



C.R.P.No.3372 of 2024

the application filed to condone the delay of 1544 days was dismissed.

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Brief background of the case in nutshell

2. The revision petitioner's father, namely, Major Harbhajan Singh Sandhu, who is the defendant in the suit in O.S.No.588 of 2007, had entered into an agreement with one Kathiravan on 14.11.2004 in respect of subject properties for a total sale consideration of Rs.54,00,000/- and received a sum of Rs.15,00,000/-. It was agreed between the parties that the sale process would be completed within three months. Thereafter, it appears that the purchaser Kathiravan had assigned the agreement in favour of the plaintiffs / respondents herein on 09.11.2007 and in this regard, a notice was issued by the plaintiffs on 28.11.2007. Subsequently, a suit in O.S.No.588 of 2007 came to be instituted by the assignees for enforcement of the contract and the said suit was decreed *ex parte* on 17.04.2008.

3. It is the case of the revision petitioner that from the date of agreement till the suit is filed, there was a total silence on the part of the respondents. As the father of the revision petitioner was diagnosed with



C.R.P.No.3372 of 2024

multiple myeloma cancer, he migrated to Muscat, where the revision petitioner is employed. After filing the suit, strangely without serving summons and in the garb of a substituted service in a regional newspaper, the suit came to be decreed *ex parte* and in the meanwhile, the revision petitioner's father passed away on 29.12.2009. It is further case of the revision petitioner that prior to that, on 18.06.2008, a release deed had been executed in favour of the revision petitioner by all other sharers and after the demise of his father, he returned from Muscat to India and visited the property in the year 2012 and only at that point of time, he came to know that a sale deed was executed in favour of the plaintiffs by the Court in E.P.No.28 of 2008. Thereafter, the revision petitioner filed an application to set aside the *ex parte* decree coupled with an application to condone the delay in I.A.Nos.842 to 844 of 2012 through Power Agent to condone the delay, set aside the *ex parte* decree and to substitute the name of the revision petitioner in the place of the Power Agent.

4. It is also the case of the revision petitioner that thereafter, the respondents took out applications in I.A.Nos.1017 and 1019 of 2017, seeking to reject I.A.Nos.530 of 2014 (filed to implead the revision petitioner



C.R.P.No.3372 of 2024

as 2nd defendant in the suit) and also 844 of 2012 and those applications had been dismissed on merits. Challenging the same, Civil Revision Petition Nos.4742 and 4743 of 2017 were filed and this Court, while dismissing C.R.P.No.4742 of 2017 filed against I.A.No.530 of 2024, allowed C.R.P.No.4743 of 2017 on 01.11.2019, granting liberty to the revision petitioner to file afresh application to set aside the *ex parte* decree along with application to condone the delay in filing the petition to set aside the *ex parte* decree. Thereafter, an application to condone the delay of 1544 days was filed, stating that summons have not been served on his father.

5. The case put forth by the plaintiffs/respondents herein is that the actual delay is 3997 days and not 1544 days as averred by the revision petitioner and the delay for filing application had not properly explained. Though several grounds have been raised by the respondents, the core contention is that decree had already been executed and at this stage, delay cannot be condoned.



C.R.P.No.3372 of 2024

6. Learned counsel for the revision petitioner submitted that from the very inception, no summons have been served and the *ex parte* decree has been passed merely on the basis of the substituted service effected in a regional language and the father of the revision petitioner is not conversant with the said language. He further submitted that the defendant was all along residing in Muscat. Further, from the date of agreement in the year 2004 till 2007, there was a complete silence and notice was served for the first time only on 28.11.2007 after filing the suit on 14.11.2007. Hence, it is prayed to allow the revision petition.

7. Per contra, learned counsel for the respondents reiterated that the delay of 3997 days has not been properly explained and in fact, the revision petitioner and others are aware of the agreement executed in favour of the respondents herein. She further contended that since a sale deed had been executed in favour of the respondents, the condonation of delay at this stage may not be proper and sought for dismissal of the petition.

8. I have perused the material documents available on record.



C.R.P.No.3372 of 2024

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9. Insofar as condonation of delay is concerned, it is a well settled law that if the party has shown sufficient cause for non prosecuting the case before the Court of Law, irrespective of the length of the delay, the Court can lean in favour of the party for advancement of the substantial justice, as otherwise, no leniency can be shown to the party merely for the sake of condoning the delay in the guise of extending liberal approach, even if the delay is very meagre. Secondly, while considering the application to set aside the *ex parte* order or to condone the delay, the Court must take into account of the overall conduct of the parties to the *lis* and the nature of the *lis*.

10. It is the specific case of the revision petitioner that his father was residing with him in Muscat from the year 2008 onwards for his cancer treatment and died in the year 2009. It is not disputed that before passing the *ex parte* decree, no summons were duly served and only substituted service had been effected, that too, only in the newspaper published in regional language. When the summons have not been duly served as mandated under law, this Court is of the view that the order passed behind



C.R.P.No.3372 of 2024

the back of a party without providing an opportunity to contest the matter on merits is not valid in the eye of law.

11. It is relevant to point out that in the agreement said to have been executed on 14.11.2004, only three months' time limit was prescribed and except the first notice dated 28.11.2007, in-between, there were no legal notices whatsoever placed on record. Further, an assignment came to be executed in favour of the respondents on 09.11.2007 and immediately thereafter, suit was filed on 14.11.2007 and notice issued on 28.11.2007. The suit was decreed *ex parte* on 17.04.2008.

12. On a scrutiny of the plaint, it could be visualized that assignees filed the suit through a Power Agent and the original purchaser Kathiravan was not made as a party and these facts cannot be ignored, while deciding the application under Section 5 of the Act. It is relevant to note that the Hon'ble Apex Court in the case of **Robin Thapa vs. Rohit Dora** reported in **(2019) 7 SCC 359** held that a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated



C.R.P.No.3372 of 2024

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.

13. It is to be noted that the revision petitioner had filed applications in the year 2012 itself, viz., I.A.Nos.842 to 844 of 2012 immediately after coming to India. It is not in dispute that after the demise of the mother of the revision petitioner in the year 2007, his father moved to Muscat and lived with the revision petitioner. The respondents also took out applications in I.A.Nos.1017 and 1019 of 2017, which were dismissed on 30.08.2017 and the said order was called in question by filing C.R.P.Nos.4742 and 4743 of 2017, out of which, C.R.P.No.4743 of 2017 was allowed on 01.11.2021 on the ground that once the revision petitioner decided to prosecute the matter by himself, the application filed by the Power Agent cannot be entertained and the said C.R.P.No.4743 of 2017 filed by the respondents was allowed taking into account the technical aspects and the defective filing of the application, by granting liberty to the revision petitioner to file fresh applications to condone the delay as also set aside the *ex parte* decree.

14. This Court is of the view that the period of the judicial



C.R.P.No.3372 of 2024

proceedings from 2012 till the disposal of the CRP proceedings in the year

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2021 must be excluded for the purpose of calculation of the days of delay

and therefore, the contention of the respondents that there was a delay of 3997 days cannot be countenanced. Moreover, the revision petitioner clearly established that summons were not served and there was no contra evidence adduced by the respondents to disprove the version. Moreover, substantive right is involved in this case. This Court cannot lose sight of the fact that the suit was filed only by assignees through Power Agent and the original borrower, viz., Kathiravan had not even been made as a party. Hence, in the considered opinion of this Court, an opportunity must be given to the revision petitioner to contest the suit, as the Trial Court has not gone into the factual aspect of the matter as to whether summons were duly served or not, but merely swayed away by the fact that there was a delay of 10 years (as projected by the respondents herein) and the execution of sale deed. Mere execution of a subsequent sale deed alone will not take away the rights of a party to contest the matter and therefore, the order of the Trial Court is liable to be set aside.

15. Accordingly, this Civil Revision Petition is allowed and the



C.R.P.No.3372 of 2024

delay is condoned on payment of costs of Rs.25,000/-. The order dated 08.12.2023 made in I.A.No.1 of 2022 in O.S.No.588 of 2007 by the Principal District Judge, Kancheepuram District at Chengalpattu is hereby quashed. The costs shall be deposited before the Trial Court within one month from today and on such deposit, the Trial Court shall permit the respondents to withdraw the same. The Trial Court shall also proceed with the suit and dispose of the same on its own merits within a period of six months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

29.11.2024

Index: Yes/No
Internet: Yes/No
Speaking Order/Non Speaking Order
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To:

The Principal District Judge,
Kancheepuram District at Chengalpattu

N.SATHISH KUMAR,J.,



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C.R.P.No.3372 of 2024

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C.R.P.(NPD) No.3372 of 2024

29.11.2024