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C.R.P.(PD).Nos.3233 & 3235 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD).Nos.3233 & 3235 of 2023

D.Sugunasundari

... Petitioner in both C.R.Ps.

-Versus-

1.S.Govindarajulu

2.G.Prabhakaran

3.G.Hemachandran

... Respondents in both C.R.Ps.

Revisions filed under Article 227 of the Constitution of India to set aside the Fair Order dated 02.02.2022 passed in I.A.No.1 of 2020 & I.A.No.2 of 2020 in O.S.No.1530 of 2019 by the learned XX Additional District and Sessions Judge, City Civil Court, Allikulam, Chennai.

*For Petitioner in : Mr.L.N.Prakasam
both C.R.Ps.*

*For Respondents 2 & 3 : Mr.S.Parthasarathy
in both C.R.Ps.*

For Respondent 1 : No appearance

COMMON ORDER

These two civil revision petitions arise against the common order passed by the learned XX Additional District and Sessions Judge, City Civil Court,



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Allikulam, Chennai.

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2. O.S.No.1530 of 2019 is a suit presented by the civil revision petitioner as the plaintiff seeking

(a) relief of declaration that the unilateral revocation of the settlement deed dated 05.06.2014 executed by the first defendant is null and void;

(b) to declare the sale deed executed by the first defendant in favour of the second defendant on 03.12.2014 is null and void;

(c) for recovery of possession of the suit schedule mentioned property; and

(d) for mesne profits.

3. This suit was originally taken on file before this court as C.S.No.279 of 2017. Due to enhancement of pecuniary jurisdiction, the suit has been transferred to the file of the City Civil Court at Madras and renumbered as O.S.No.1530 of 2019.

4. Pending the suit, an application was taken out by the plaintiff seeking a direction mandating the defendants 2 and 3 to pay a sum of Rs.25,000/- per



month from the date of occupation till the date of handing over of possession.

This application was numbered as Application No.2287 of 2017. The application came to be allowed, exparte, on 09.06.2017.

5. The civil revision petitioner would state that against the order passed in application No.2287 of 2017 dated 09.06.2017, an Original Side Appeal was preferred before the Division Bench of this Court. The appeal was preferred with a delay of 182 days. The delay application was numbered as CMP.No.3108 of 2018. On 25.07.2018, the original side appeal came to be dismissed as not maintainable directing the defendants herein, who are the appellants therein, to file an application to set aside the exparte order dated 09.06.2017. Taking cue from the order, two applications were presented before the trial court in I.A.No.1 of 2020 and I.A.No.2 of 2020 to condone the delay of 387 days to set aside the exparte order dated 09.06.2017 and for setting aside the exparte order itself. The learned XX Additional District and Sessions Judge allowed both the applications by a common order dated 02.02.2023. This order is put in revision before me.

6. Notice was ordered in the revision and Mr.S.Parthasarathy entered



appearance for the respondents 2 & 3.

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7. Mr.L.N.Prakasam would submit that having remained exparte before this Court and being aware of the order passed by this Court, as would be clear since it is the defendants who had preferred an appeal as against the exparte order, the delay is more than 900 days. However, giving a paltry number of 387 days, an application to condone the delay was moved before the XX Additional City Civil Court which had been allowed irregularly. He would state that respondents having uttered falsehood, they are not entitled for any relief at all. He would further state that his client is currently residing in United States and she is visiting Chennai. On account of the pendency of this revision, the suit is being adjourned for a long period. He would state that his client is coming to chennai and would be in India till 31.07.2024 and would seek appropriate directions.

8. Mr.S.Parthasarathy, the learned counsel appearing for the respondents 2 & 3 would state that the submission of Mr.L.N.Prakasam that the delay is 941 days and not 387 days is erroneous. He would state that he calculated the number of days from the date of dismissal of the Original Side Appeal on



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24.07.2018 and therefore, the delay would only be around 387 days. He would state that the defendants are ready for trial and are willing to cooperate with the court for early disposal of the suit.

9. In reply, Mr.L.N.Prakasam would bring to my notice an order passed by this Court in W.P.No.3275 of 2024 dated 27.03.2024. He would point out that as per the directions given by this Court in the said order, the suit would have to be disposed of within a period of four months from March 2024. He would state that the period granted under this order has nearly expired, but the suit is languishing at the stage as it was.

10. I have carefully considered the arguments on either side.

11. At the outset, I have to state that where the trial court has exercised the discretion to condone the delay, this court should seldom interfere with the order in exercise of the revisional jurisdiction. This proposition has been laid down by the Supreme Court in **N.Balakrishnan vs. Krishnamoorthy, (1998) 7 SCC 123**. Therefore, the scope of interference is limited.



12. I have to see whether the discretion that has been exercised by the learned Judge is either arbitrary or capricious.

13. The relationship between the parties is not in dispute. The first defendant was the owner of the property. Having obtained the same by way of allotment from the then Slum Clearance Board, he had settled the property in favour of the plaintiff who is his daughter. The defendants 2 and 3 are the siblings of the plaintiff.

14. According to the plaint, the first defendant, when the plaintiff was away in United States, cancelled the settlement deed executed in her favour unilaterally. The plaintiff pleads that this fact has affected her title over the property and therefore, she has presented a suit for declaration that the unilateral cancellation is null and void. Not stopping with the cancellation of the settlement deed, the first defendant seems to have proceeded further and has executed a sale deed in favour of the second defendant.

15. The plaintiff values the possession of the property at Rs.25,000/- per month. Whether the property fetches the value of Rs.25,000/- per month or otherwise would require evidence. The learned trial judge has rightly come to



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the conclusion that whether the plaintiff is entitled to the relief sought in the
plaint can be decided only after fulfilled trial.

16. Insofar as the suit is concerned, there is no dispute that the defendants have filed their written statement and now it is listed for trial (not in the list). The parties have been agitating about the peripherals of the suit from 2017 till date. Precious time of seven years has gone by in this litigation instead of the parties getting into the meat of the matter. The entire litigation from 2017 till date has been around an interim order that has been passed by this Court in a pending litigation. The defendants have preferred appeals, applications and now the matter is before me in revision. Yet the suit unfortunately is languishing in the same state.

17. Having said these preliminaries, I am not in agreement with Mr.S.Parthasarathy that the delay must be calculated from the date on which appeal had been disposed of. No such observation had been given in the order of the Appellate Court. The bench had only directed the parties to approach the learned Single Judge in order to set aside the exparte order.



18. I have to agree with Mr.L.N.Prakasam that the *terminus ad quem* for the purpose of calculating the limitation would be the date of the order passed by the learned Single Judge i.e., 09.06.2017 and not the date of the order of the Appellate Court. In fact, the date of the order of the Appellate Court cannot be taken into consideration because the appellate court had dismissed the appeal as not maintainable. Therefore, the delay would only have to be calculated from 09.07.2017 and not from the date of disposal of the appeal namely 24.07.2018.

19. Yet taking into consideration the fact that if I were to allow these revisions, it might result in an order which is capable of being passed only after the trial being restored. Therefore, in the interest of justice and taking into consideration the order passed by this Court in W.P.No.3275 of 2024 dated 27.03.2024, I am passing the following time bound orders:

(a) While confirming the order of the learned XX Additional District and Sessions Judge, Allikulam Chennai in I.A.No.1 of 2020 and I.A.No.2 of 2020 in O.S.No.1530 of 2019, I am enhancing the cost in the applications from Rs.2,000/- to Rs.25,000/- each. The amount of Rs.50,000/- shall be paid to the learned counsel for the civil revision petitioner within two weeks from today ie. on or before 03.07.2024;



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(b) The learned trial judge is requested to commence the trial in the proceedings from 01.07.2024;

(c) Mr.L.N.Prakasam undertakes to file a proof affidavit of the plaintiff on 01.07.2024;

(d) PW1 shall be cross-examined preferably on day to day basis commencing from 02.07.2024 till 12.07.2024;

(e) The attesting witness, if any, that the plaintiff wants to examine shall be examined on or before 15.07.2024 and the evidence to be completed on or before 24.07.2024. In other words, the evidence on the plaintiff's side is completed on or before 24.07.2024;

(f) The learned XX Additional District and Sessions Judge, Chennai shall submit a report to this Court on or before 31.07.2024 stating that he has complied with the direction for recording the evidence of the plaintiff side; and

(g) The suit itself should be disposed of within a period of two months thereafter.

20. With the above modifications in the cost and directions given for disposal of the suit, these civil revision petitions stands disposed of. No costs.



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Index : yes / no

Neutral Citation : yes / no

Speaking / Non Speaking Order

To

1.The XX Additional District and Sessions Judge, City Civil Court, Allikulam,
Chennai



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V.LAKSHMINARAYANAN, J.

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