



C.R.P. (PD) .No.4997 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.4997 of 2024
and C.M.P.No.28096 of 2024

Ramalingam

.. Petitioner

Vs.

Thiyagarajan (died)

1.Sornam

2.Thamilarasi

3.Ilavarasi

4.Arunvaratharaj

5.Arunraj

.. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 05.02.2024 passed by the learned Subordinate Judge, Perambalur, passed in I.A.No.86 of 2016 in O.S.No.49 of 2012.

For Petitioner : Mr.N.Kesavaraj



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ORDER

This civil revision petition challenges the order of the learned Subordinate Judge, Perambalur, in I.A.No.86 of 2016 in O.S.No.49 of 2012 dated 05.02.2024.

2.The civil revision petitioner is the plaintiff in the suit. O.S.No.49 of 2012 is a suit for specific performance of an agreement of sale said to have been entered into between the plaintiff and one Thiyagarajan, the sole defendant, on 25.04.2012.

3.Summons was served to the sole defendant. He entered appearance through a counsel on 23.08.2012. As the written statement was not filed, he was set *exparte* on 14.03.2013. Finally, an *exparte* decree was passed on 04.04.2014.

4.In order to set aside the *exparte* decree, the defendants filed an application together with an application to condone the delay in filing the



said petition. The delay was condoned and the application was numbered as

I.A.No.86 of 2016.

5.Pending the application, the defendant passed away. His legal heirs were impleaded as petitioners 2 to 6. The plea of the deceased sole defendant was that he was taking medical treatment during the relevant point of time. He came to know about the *exparte* decree only when he was served with summons in the Execution Proceedings. Along with the condone delay petition, he has also filed written statement.

6.This application was opposed by the plaintiff / civil revision petitioner that the 1st petitioner was hale and healthy and no medical records was produced to substantiate his case.

7.The learned Trial Judge by the impugned order had held that since the 1st petitioner was suffering from some medical illness, the delay may be condoned on some condition. He had imposed a condition that the legal heirs of the deceased sole defendant to deposit a sum of Rs.1,50,000/- together



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with interest at the rate of 7.5% within one month from the date of allowing the application. Challenging the same, the plaintiff is on revision.

8.I heard Mr.N.Kesavaraj for the civil revision petitioner.

9.Mr.N.Kesavaraj point out no medical certificate has been produced by the deceased 1st respondent to substantiate his plea of sickness. He states that pursuant to the decree, he has also deposited the amount and has also presented an Execution Petition. Therefore, the Court erred in allowing the application.

10.I have carefully considered the submissions of Mr.N.Kesavaraj.

11.Here is a case where a suit for specific performance had been presented in the year 2012. The suit ended in a decree in the year 2014. The deceased sole defendant had filed an application with delay. He pleaded that he is suffering from eye sight issues and was taking treatment travelling from Trichy to Madurai. He also pleaded that he had underwent a surgery.



Mr.N.Kesavaraj has pointed out that no medical certificates have been produced to substantiate this plea.

12.However, I can take note of two facts, one is the deceased sole defendant along with the condone delay application had filed a written statement. In the said written statement, the defendant had taken a plea that the intention in entering into the document was not to sell the property. He pleaded he had received an amount of Rs.1,50,000/- as loan and the agreement was executed only as a security.

13.The second fact is vital rights over an immovable property is involved in the suit. The learned Trial Judge has taken into consideration the interest of the civil revision petitioner and has imposed a heavy condition that the respondents must deposit a sum of Rs.1,50,000/- together with interest at 7.5% from 25.04.2012 to March, 2024. The interest of the plaintiff has been taken care of by this order. In the event the suit is dismissed, the plaintiff is protected as his money has been secured. In the event the suit is decreed, the plaintiff can any way proceed with the execution. It is unfortunate a condone



delay petition had been kept pending for eight long years.

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14.Furthermore, the Supreme Court in *N.Balakrishnan Vs. M.Krishnamurthy, (1998) 7 SCC 123*, held where the delay has been condoned by the Trial Court, the Revisional Court should not normally interfere with the said order. The learned Trial Judge is requested to take up the application under Order IX Rule 13 of the Code and allow the same. Noticing the heavy condition that has been imposed, I am sure that the learned Sub Judge will expedite the proceedings in the suit.

15.The suit has been pending for 12 years and that should be a sufficient trigger for the learned Judge to dispose of the suit as expeditiously as possible. He may take a cue from this order and dispose of the suit within six (6) months from the date of receipt of a copy of this order.

16.Mr.N.Kesavaraj submits that there is possibility of settlement by mediation. The learned Trial Judge is requested to enquire with the plaintiff and the legal heirs of the defendant if they are willing for mediation. If they



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are, he shall refer the parties to mediation. In case the mediation fails, the time granted by this Court should be strictly adhered to.

17. With the above observation, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

13.12.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

The Sub Court,
Perambalur.



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V.LAKSHMINARAYANAN, J.

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