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C.R.P. No. 3787 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2024

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THE HONOURABLE MR. JUSTICE P.DHANABAL

C.R.P. No. 3787 of 2022

1. Rajesh

2. K.Suganthi

... Petitioners / Petitioners /
Defendant 1 & 2

Vs.

1. A.Kumar

... 1st Respondent / 1st Respondent /
Plaintiff

2. The Sub Registrar,
Pallavaram Sub Registration Office,
Chennai - 600 044.

3. The District Registrar,
Saidapet, Saidapet Registration Office,
Saidapet, Chennai - 600 015.

4. The Collector,
Kancheepuram District
Within the limits of District
Court Kancheepuram.

...Respondents 2 to 4/Respondent 2 to 4/
Defendants 3 to 5

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, 1950, to set aside the order and decretal order dated 25.07.2022 made in I.A. No. 4 of 2021 in O.S. No. 453 of 2015 on the file of the Principal District Munsif at Alandur.



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For Petitioners : Mr. M.Senthilkumar
For R1 : Mr. S.Vijayakumar
For R2 to R4 : Mr. C.Sathish
Government Advocate

ORDER

This Civil Revision Petition has been preferred as against the order dated 25.07.2022 made in I.A. No. 4 of 2021 in O.S. No. 453 of 2015 on the file of the Principal District Munsif at Alandur, wherein, these petitioners herein have filed petition under section 5 of the Limitation Act, 1963 to condone the delay of 1094 days in filing the petition to set aside the *exparte* decree dated 23.11.2017 in O.S. No. 453 of 2015 and the same was dismissed. Against which the present Civil Revision Petition is filed.

2. The case of the petitioners is that they are the 1st and 2nd defendants in the main suit. These petitioners already filed their written statement, in the meantime, the 1st petitioner/1st defendant informed the 2nd petitioner/2nd defendant that he is negotiating the issue with the plaintiff. Therefore, they did not give instruction to their counsel to pursue the matter. Thereafter, the matter has not been settled between the parties and an *exparte* decree was passed on 23.11.2017. The petitioners' previous counsel did not inform about the *exparte* decree and only after verification of the records of this court, the



petitioners came to know about the *exparte* decree. Immediately, they filed petition on 09.12.2019 and the same was returned for compliance. The 2nd petitioner/2nd defendant is the *bonafide* purchaser of the suit property for the valuable consideration. The delay in filing the petition is neither wilful nor wanton or intentional, but due to the aforesaid *bonafide* reasons. Therefore, they filed this petition to condone the delay.

3. The case of the respondents is that the petitioners have knowledge about the proceedings and they voluntarily failed to follow the case. The reasons stated by the petitioners that their advocate failed to disclose the proceedings are all false. The petitioners could very well know about the case through online and the e-court proceedings. The suit was filed in the year 2015 and already they were set *exparte* due to non-filing of written statement and thereafter, the suit was decreed on 23.11.2017. Without any valid reasons, the petitioners filed the petition without explaining the huge delay of 1094 days. Therefore, the petition filed by the petitioners is liable to be dismissed.

4. Before the trial court, no oral or documentary evidences adduced on either side. The Trial Court, after hearing both sides, dismissed the petition. Therefore, the present Civil Revision Petition is filed.

5. The learned counsel appearing for the petitioners would contend that



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these petitioners are 1st and 2nd defendants in the main suit. The 2nd petitioner has purchased the property for good and valuable consideration by investing huge money and they entered into appearance through the counsel. They already filed written statement in the main suit, thereafter, the 1st petitioner/1st defendant informed that he is negotiating with the plaintiff. Therefore, they did not give further instruction to the counsel to pursue the suit. Thereafter, the matter was not settled between the parties, in the meantime, an *ex parte* decree dated 23.11.2017 was passed against the petitioners. They have a good case. The Trial Court failed to consider the reasons stated by the petitioners and dismissed the petition. Therefore, the order passed by the Trial Court is liable to be set aside. The Trial Court ought to have taken liberal view considering the nature of the case and issues involved in this case, but failed to consider the same and dismissed the petition. To support his contention, the learned counsel for the petitioners has relied the judgments in ***Sheo Raj Singh (Deceased) Through LRS & Ors. -vs- Union of India & Anr*** in ***Civil Appeal No. 5867 of 2015 dated 09.10.2023*** on the file of the Hon'ble Supreme Court of India and ***Manjula -vs- Lamber Sandou*** in ***C.R.P. No. 408 of 2021 dated 02.02.2022*** on the file of this Court.

6. The learned counsel appearing for the 1st respondent would contend that the petitioners entered into appearance through their counsel and also



filed written statement. Thereafter, they wantonly failed to follow the case and there is no proper explanation for the huge delay of 1094 days. The reason stated by the petitioners that they negotiated with the plaintiff and thereafter, the matter was not settled between the parties, thereby, they unable to instruct their counsel for further proceedings in the case are not correct. The Trial Court, after taking into consideration of the facts and circumstances of the case, correctly dismissed the petition. To support this contention, he relied on the judgments in ***B.Rajendran -vs- D.Bakthavachalu*** reported in **2022 (2) MWN (Civil) 4**, ***D.Anandaraj -vs- K.R.Vengoba Rao*** reported in **2023 (1) MWN (Civil) 522** and ***Vatchala -vs- T.Paari*** reported in **2023 (2) MWN (Civil) 283**.

7. This court heard both sides and perused the materials available on record.

8. In this case, the petitioners herein have filed an application before the Trial Court under section 5 of the Limitation Act, 1963 to condone the delay of 1094 days in filing the petition to set aside the *exparte* decree dated 23.11.2017 in O.S. No. 453 of 2015 and the same was dismissed. The reason stated by the petitioners is that the 1st petitioner/1st defendant informed the 2nd petitioner/2nd defendant that he is negotiating the issue with the plaintiff.



On that scope, the petitioners did not give further instructions to pursue the suit. However, the issue was not sort out between the plaintiff and the 1st defendant. Therefore, an *exparte* decree was passed on 23.11.2017. The previous counsel did not inform the petitioners about the *exparte* decree. The respondents denied the reasons stated by the petitioners. The Trial Court also observed that already the Trial Court had liberally granted several adjournments for filing written statement and they have not stated sufficient reasons for the delay and dismissed the petition.

9. The suit is filed for the relief of declaration in respect of the documents as null and void and for permanent injunction. According to the 2nd petitioner, she has purchased the property for valuable consideration and she is a *bonafide* purchaser. The reason stated by the petitioners in the affidavit that the 1st defendant stated that he is negotiating with the plaintiff and thereafter, there was no settlement between the parties. In the meantime, the suit was decreed as *exparte* and the same was also not informed to them through their counsel is reasonable and acceptable one. However, due to the delay caused by the petitioners, the respondents are entitled for cost. The learned counsel appearing for the petitioners also has relied on the judgments in ***Sheo Raj Singh (Deceased) Through LRS & Ors. -vs- Union of India & Anr*** in ***Civil Appeal No. 5867 of 2015 dated 09.10.2023*** on the file of the



Hon'ble Supreme Court of India and ***Manjula -vs- Lamber Sandou*** in ***C.R.P.***

No. 408 of 2021 dated 02.02.2022 on the file of this Court. On careful perusal of the judgments, it is clear that the Courts have to approach liberally and justice oriented and also unless it is shown that the delay is *malafide*, courts must adopt a liberal approach in the condonation of delay for a person has no vested right in injustice.

10. The learned counsel appearing for the 1st respondent has relied the judgments in ***B.Rajendran -vs- D.Bakthavachalu*** reported in ***2022 (2) MWN (Civil) 4***, ***D.Anandaraj -vs- K.R.Vengoba Rao*** reported in ***2023 (1) MWN (Civil) 522*** and ***Vatchala -vs- T.Paari*** reported in ***2023 (2) MWN (Civil) 283***. On a careful perusal of the judgments, it is clear that in the absence of any acceptable reasons, courts would not condone long delay in a mechanical manner and the delay has to be explained properly. In the case of hand, there is a delay of 1094 days and the reason stated by the petitioners is acceptable one and considering the nature of relief sought for in the suit, a chance has to be given to the petitioners. Hence, the facts of the case are distinguishable and thereby, the said case laws will not be applicable to the facts of the present case. In view of the aforesaid judgments cited supra and discussions, this Court is of the opinion that the order passed by the Trial Court is liable to be set aside by allowing this Civil Revision Petition by imposing cost.



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10. In the result, the Civil Revision Petition is allowed and the order dated 25.07.2022 in I.A. No. 4 of 2021 in O.S. No. 453 of 2015 passed by the Principal District Munsif at Alandur is set aside and the delay of 1094 days in filing the petition to set aside the *ex parte* decree dated 23.11.2017 in O.S. No. 453 of 2015 is condoned, on condition that, the petitioners have to deposit a sum of Rs.10,000/- before the Trial Court within 15 days from the date of receipt of a copy of this order and after deposit of the said amount the Trial Court has to number the application to have the *ex parte* decree set aside. Thereafter, the deposited amount shall be withdrawn by the respondents, before the Trial Court, on filing appropriate application. No costs.

02.08.2024

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No
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To

The Principal District Munsif at Alandur.



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P.DHANABAL, J.,

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