



WEB COPY



C.R.P.(NPD)No.44 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.(NPD) No.44 of 2023

1. M/s Broom Field Developers Private Limited
rep.by its Power of Attorney Holder S.Krishnan
Apex Towers, II Floor, No.54, Second Main Road
Opp.Kaliappa Hospital, Raja Annamalaipuram
Chennai 600 028

2. M/s Shankoo Builders
rep.by its Authorised Signatory S.Krishnan
Apex Towers, II Floor, No.54, Second Main Road
Opp.Kaliappa Hospital, Raja Annamalaipuram
Chennai 600 028

.. Petitioners

-VS-

1. Mrs.Chellammal
2. Mrs.Govindammal
3. Mrs.Gajalakshmi

.. Respondents

Memorandum of Grounds of Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the order dated 20.06.2022 passed in I.A.No.1032 of 2018 in O.S.No.64 of 2015 on the file of the learned Principal District Judge, Chengalpattu.



WEB COPY



C.R.P.(NPD)No.44 of 2023

For Petitioners :: Mr.K.Balamurali for
M/s Shivakumar and Suresh

For Respondents :: Mr.V.Subramanian

ORDER

Challenge has been made to the impugned order rejecting the application filed by the petitioners to condone the delay of 246 days in filing the petition to set aside the ex parte decree.

2. The revision petitioners are 8th and 9th defendants in the suit. The suit has been laid originally by the respondents/plaintiffs for partition of the suit properties. The revision petitioners have purchased the properties in the year 2006-07 from the 2nd and 4th defendants. The said sale deeds were sought to be challenged in the year 2015 by way of the suit. However, since an ex parte decree has been passed on 14.07.2017, the petitioners took out an application in I.A.No.1032 of 2018 to condone the delay of 246 days in filing the petition to set aside the ex parte decree, on the ground that one of the defendants has informed them that he was not aware of the ex parte decree and therefore sought to condone the delay. The said application has



C.R.P.(NPD)No.44 of 2023

been stoutly opposed by the respondents. The trial Court in the order impugned, dismissed the application mainly on the ground that the petitioners have not disclosed the fact as to how they came to know about the ex parte decree. Further the trial Court has also taken note of the delay on the part of the petitioners for two years. Hence, not satisfied with sufficient cause, dismissed the application. Therefore, this revision.

3. The learned counsel for the revision petitioners would submit that the petitioners were not residing in the address since 2008 and proper summons have not been served upon them in the current place of business. In any event, he submitted that merely because the petitioners have not disclosed the source from whom they got knowledge about the ex parte decree, that cannot be a ground to non-suit them. Hence, sufficient cause has to be given liberal interpretation to advance substantial justice to the parties. Therefore, he prayed for allowing the revision.

4. The learned counsel for the respondents would raise a preliminary objection that the revision itself is not maintainable as against the dismissal



C.R.P.(NPD)No.44 of 2023

of the application filed under Section 5 of the Limitation Act. Even on merits, the learned counsel for respondents would submit that the delay is willful and not being properly explained by the petitioners. That apart, there was no explanation for the delay of more than two years. 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.

WEB COPY

6. So far as the impugned order challenged in this revision is concerned, 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. The petitioners have filed the application to condone the delay in filing the petition to set aside the ex parte decree. The suit filed by the respondents, though appears to be for partition, primarily challenges the sale deeds of the years 1990 and 2006, that too in the year 2015. Though the plea of non-service of summons have not been pleaded in the application, it is the contention of the petitioners that they were not residing in the address to which the summons were sent. Be that as it may. Even assuming that summons have been served, when the petitioners have come to the Court with reasons, considering the nature of lis, which is to annul the documents of the year 1990 & 2006, this Court is



C.R.P.(NPD)No.44 of 2023

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. Considering the length of delay i.e., 246 days in this case, 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 documents pertaining to the years 1990 & 2006. 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 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.No.415 of 2023 is closed. No costs.

Index: yes/no
Neutral citation : yes/no

14.11.2024

SS

6/8



WEB COPY

To

1. The learned Principal District Judge
Chengalpattu



C.R.P.(NPD)No.44 of 2023



WEB COPY



C.R.P.(NPD)No.44 of 2023

N.SATHISH KUMAR, J.

SS

C.R.P.(NPD) No.44 of 2023

14.11.2024