



C.R.P.(NPD).Nos.3740 and 3741 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD).Nos.3740 and 3741 of 2018
and C.M.P.No.20859 of 2018

1.S.Chandrasekaran (Died)

2.C.Kavitha

3.C.Subashree

4.C.Muttharasi

5.C.Balavignesh ... Petitioners (in both CRPs)

(Petitioners 2 to 5 brought on record as LR of the deceased sole petitioner viz., B.Chandrasekaran vide Court orders dated 05.03.2021 and 29.04.2021 made in CMP.Nos.1159 and 941/2021 in CRP.Nos.3740 and 3741/2018)

VS

1.T.Palanisamy

2.Papathi ... Respondents (in both CRPs)

(R2 Brought on record as LR of the deceased sole petitioner viz., B.Chandrasekaran vide Court orders dated 05.03.2021 and 29.04.2021 made in CMP.Nos.1160 and 1824/2021 in CRP.Nos.3740 and 3741/2018)



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Common Prayer: Civil Revision Petitions are filed under Section 115 of the Civil Procedure Code, praying to set aside the Fair and Final order dated 03.08.2018 passed by the learned IInd Additional Subordinate Judge, Coimbatore in I.A.Nos.20 and 19 of 2018 in O.S.No.730 of 2006.

For Petitioners : Mr.R.Vasudevan (in both CRPs)

For R1 : Mr.A.Panneer Selvam (in both CRPs)

For R2 : No Appearance (in both CRPs)

COMMON ORDER

These two Civil Revision Petitions are filed challenging the order passed by the Trial Court allowing the application filed by the 1st respondent to condone the delay of 59 days in filing petition to restore the suit, which was dismissed for default on 01.07.2009 and application filed to take the condone delay petition on file.

2. The 1st respondent herein filed a suit for specific performance of the Sale Agreement. The said suit was dismissed for default on 01.07.2009 owing to non-appearance of the 1st respondent. Therefore, he filed an application to restore the suit along with petition to condone the delay in filing restoration application on 30.09.2009.



3. In the affidavit filed in support of the condone delay petition, it was stated by the 1st respondent that his counsel informed him the date of trial by post and the same was misplaced and hence, he could not appear before the Court below on the date of hearing. The restoration application has been filed on 30.09.2009. However, the same was not numbered for long time. Hence, the 1st respondent filed I.A.No.19 of 2018 with a prayer to take the petition filed to condone delay in filing restoration application into file. Both the applications were considered by the Trial Court and allowed the same on payment of cost.

4. The petition to condone delay in filing restoration application was allowed on payment of cost of Rs.2,500/- and the petition to take the condone delay petition into file was allowed on payment of cost of Rs.1,000/-. Aggrieved by the same, the deceased 1st petitioner has come by way of these civil revision petitions.

5. The learned counsel appearing for the petitioners vehemently contended that the suit was dismissed for default on 01.07.2009 and the



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application for restoration of the suit along with condone delay petition appeared to have been filed only in the year 2018. In such circumstances, the delay in filing the restoration application should have been much more and the Trial Court committed an error in calculating the length of delay.

6. In view of the said submission made by the learned counsel for the petitioners, this Court called for original records from the Trial Court.

7. A perusal of the original records relating to I.A.Nos.19 and 20 of 2018 would suggest the petition to restore the suit with condone delay petition was filed before the Trial Court as early as 30.09.2009 and the same was numbered only in the year 2018, after filing of application to number the same in I.A.No.19 of 2018. Therefore, the submission made by the learned counsel appearing for the petitioners with regard to the length of delay is not acceptable to this Court.

8. Having regard to the length of delay and the delay on the part of the 1st respondent in numbering the application, the Trial Court allowed the



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condone delay petition with cost. The suit is for specific performance of the Sale Agreement. Since the substantial rights of the parties are involved, this Court feels an opportunity shall be given to the parties to contest the case on merits. In such circumstances, I do not find any irregularity or illegality in the order passed by the Trial Court and accordingly, both the Civil Revision Petitions are dismissed.

9. Since the suit is of the year 2006, the Trial Court is directed to give top priority to dispose of the same, as expeditiously as possible, preferably within a period of six months from the date of receipt of copy of this order. No costs. Consequently, the connected civil miscellaneous petition is closed.

29.02.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm

Note: Issue order copy on 05.03.2024.

To

The II Additional Subordinate Judge,
Coimbatore.

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S.SOUNTHAR, J.

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