



C.R.P.(NPD) (MD) No.577 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.02.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

C.R.P.(NPD) (MD) No.577 of 2020

and

C.M.P.(MD) No.3608 of 2020

and

C.M.P.(MD) No.16749 of 2023

Muthulakshmi

... Petitioner/Petitioner/
Defendant

Vs.

Ramakrishnan

... Respondent/Respondent/
Plaintiff

Prayer: Petition filed under Section 115 of the Code of Civil Procedure to set aside the order dated 06.02.2020 made in I.A.No.95 of 2017 in O.S.No.42 of 2015 on the file of the Court of the Additional District Judge, Dindigul.

For Petitioner : Mr.S.Sarvagan Prabhu

For Respondent : Mr.M.P.Senthil



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ORDER

The petitioner herein is the defendant in O.S.No.42 of 2015 on the file of the Court of the Additional District Judge, Dindigul. The said suit was filed seeking specific performance of an alleged agreement of a sale executed by the petitioner herein.

2. The said suit was decreed ex-parte on 24.08.2016. The petitioner herein filed an application to set aside the ex-parte decree under Order IX Rule 13 of the Code of Civil Procedure along with an application to condone the delay of 283 days in filing the application to set aside the ex-parte decree. The said condone delay application was dismissed by the learned trial Court on the ground that the petitioner herein has already entered appearance in the execution proceedings initiated by the respondent herein and thus, having full knowledge about the ex-parte decree passed against him, the petitioner has not chosen to file an application under Order IX Rule 13 of Code of Civil Procedure immediately after getting knowledge about the ex-parte decree, but



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the same was filed after a long lapse of 283 days. Thus, the learned trial Court refused to condone the delay of 283 days. Aggrieved by the said order, the petitioner approached this Court by filing the present civil revision petition.

3. This Court, while entertaining the civil revision petition, by an order dated 05.08.2020, granted an order of interim stay.

4. This Court heard the learned counsel for the petitioner and the learned counsel for the respondent and also perused the entire material on record.

5. As already noted above, the suit is filed seeking specific performance of an agreement of sale of a value of Rs.15,00,000/-. The petitioner/defendant, being set ex-parte, the learned trial Court proceeded to pass an order and decree in a mechanical manner without examining the matter on merits.



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6. A suit for specific performance is a discretionary relief and the same can be decreed on satisfying certain mandatory requirements such as readiness and willingness of the plaintiff throughout the proceedings right from the date of the agreement of sale etc. But in the instant case, the learned trial Court on the petitioner herein remaining ex-parte, without looking into the merits of the case, passed an order and decree in a mechanical manner.

7. Considering the above and also the fact that the delay is only 283 days, this Court is of the view that the learned trial Court, instead of dismissing the said application, ought to have put the petitioner herein on terms by imposing appropriate cost duly compensating the respondent/plaintiff. If the learned trial Court adopted such procedure, the suit would have been disposed of on merits long back and the matter would have been settled. Because of the approach of the learned trial Court in rejecting the condone delay application by adopting too technical approach, the proceedings are still pending and the decree holder is also not in a position to have the fruits of the decree. We can understand if the delay is



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abnormal and the same remained unexplained. The petitioner herein immediately on coming to know about the decree, has chosen to enter appearance in the execution proceedings and contested the same. The parties would act as per the advice of their respective counsel and will take steps accordingly. When once the petitioner approached the counsel on receipt of the notice in the execution proceedings, the counsel concerned ought to have first or at least simultaneously taken steps for filing an application to set aside the ex-parte decree and to contest the Execution Proceedings. But unfortunately, the counsel whom the petitioner has engaged has chosen to contest the Execution Proceedings first and thereafter, leisurely has taken steps for filing an application to set aside the ex-parte decree. May be the petitioner herein also responsible to some extent for the delay or for the entire delay. But the rights of the parties cannot be allowed to be frustrated on mere technicalities. In all such cases, the Court should also look into the aspect as to whether the party is acting bona fide or not.

8. In case, if the Court prima facie comes to the conclusion that the petitioner, who is seeking condonation of delay has something substantial to



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submit before the Court on merits of the case, the approach of the Courts should always be liberal in condoning the delay.

9. In the light of the above, this Court is of the considered view that the learned trial Court ought to have condoned the delay of 283 days to pave way for the petitioner herein to contest the suit on merits. No doubt, primarily it is for the petitioner to explain the delay with sufficient cause. But at the same time, it is also the duty of the Court to consider the application filed for seeking condonation of delay by taking over all facts and circumstances of the case on merits as well.

10. Accordingly, the order under revision passed in I.A.No.95 of 2017 is set aside. Consequently, I.A.No.95 of 2017 in O.S.No.45 of 2015 is allowed condoning the delay of 283 days in filing the application under Order IX Rule 13 of Code of Civil Procedure subject to the petitioner paying an amount of Rs.10,000/- (Rupees Ten Thousand only) to the respondent herein towards costs within a period of two weeks from the date of receipt of a copy of this order. The learned trial Court is also directed to take the application



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filed under Order IX Rule 13 of Code of Civil Procedure and pass appropriate orders as expeditiously as possible.

11. Accordingly, this Civil Revision Petition is allowed. No costs.
Consequently, connected miscellaneous petitions are closed.

29.02.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes

ABR

To

The Additional District Judge,
Dindigul.



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MUMMINENI SUDHEER KUMAR, J.

ABR

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