



C.R.P.(MD)No.989 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 04.12.2023

PRONOUNCED ON:26.02.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.989 of 2021

and

C.M.P.(MD)No.5629 of 2021

P.Murugesan : Petitioner/Appellant

Vs.

M.Nainar Mohammed : Respondent/Respondent

PRAYER:- Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure against the fair order and executable order dated 03.03.2021, made in I.A.No.1 of 2020, in unnumbered A.S.No...../2020 on the file of the Principal District Court, Theni.

For Petitioner : Mr.S.Saravana Kumar

For Respondent : Mr.A.Arumugam
for M/s Ajmal Associates



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3. The respondent/plaintiff has filed a counter statement raising serious objections and the learned Subordinate Judge, Uthamapalayam, after enquiry, dismissed the said petition in I.A.No.125 of 2007, vide order dated 25.10.2007.

4. The defendant, aggrieved by the dismissal of the petition in I.A.No.125 of 2007, filed a revision before this Court in C.R.P.(MD)No. 2435 of 2011 and the same was also ordered to be dismissed by this Court on 01.02.2011. The defendant has then filed a review application in Rev.Aplc.(MD)No.26 of 2011 against the order passed in C.R.P. (MD)No.2435 of 2011. Meanwhile, the plaintiff has filed an application in E.A.No.23 of 2010 seeking delivery of the property, in pursuance of the sale deed executed by the Court. Pending the above execution application in E.A.NO.23 of 2010, the daughters of the defendant have filed a claim petition in E.A.NO.107 of 2013, under Section 47 C.P.C., to quash the entire proceedings between the plaintiff and the defendant and to dismiss the application in E.A.No.23 of 2010 and the main execution petition in E.P.No.46 of 2005. The plaintiff has filed a counter statement raising objections and the Executing Court, after enquiry, has passed an



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order dated 26.08.2009 dismissing the claim petition. After dismissal of the claim petition, the defendant has filed an appeal challenging the judgment and decree dated 21.06.2002, along with an application under Order 41 Rule 3(A) C.P.C., to condone the delay of 2765 days in filing the appeal.

5. The respondent has entered into appearance and filed his counter statement. The plaintiff and the defendant have adduced neither oral nor documentary evidence. The learned Principal District Judge, Theni, after conducting an enquiry, has passed the impugned order dated 03.03.2021, dismissing the petition with costs of Rs.10,000/- payable to the respondent/plaintiff. Aggrieved by the order of dismissal, the present Civil Revision Petition came to be filed.

6. The case of the defendant in the affidavit filed in support of the delay condonation petition is that he has already filed an application in I.A.No.125 of 2007 for condoning the delay in filing the petition for setting aside the ex parte decree, but the same was dismissed, that the plaintiff at every stage by suggesting that the matter can be compromised, has prevented the defendant from defending the suit, that since the



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revision in C.R.P.(MD)No.2435 of 2011 is pending before the High Court, there occurred a delay in filing the appeal, that the delay occurred is neither wilful nor wanton, that the plaintiff will not have any objection and no prejudice would be caused to him, if the delay is condoned and that therefore, it has become just and necessary to condone the delay of 2765 days in filing the appeal.

7. The respondent/plaintiff has filed a counter statement raising serious objections stating that the main appeal was preferred by the appellant, after a period of 7000 days, that the plaintiff has already filed E.P.No.46 of 2005, on the file of the Subordinate Court, Uthamapalayam and the sale deed was executed in favour of the plaintiff on 29.03.2007 by the Court, that the daughters of the defendant in order to drag the main issue, have filed a claim petition in E.A.No.107 of 2013 at the instigation of the defendant, that the claim petition was also dismissed on 26.08.2009 and that when the plaintiff was about to take possession of the property covered by the sale deed executed by the Court after 19 years, the present petition is filed by the petitioner/defendant and that since there is no merit in the petition, the same is liable to be dismissed.



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8. As rightly contended by the learned Counsel for the respondent, the revision petitioner/defendant while challenging the order passed in I.A.No.125 of 2007, has filed the revision petition along with an application to condone the delay of 295 days in preferring the appeal in M.P.(MD)No.2 of 2010 and the same was ordered to be allowed and consequently, the Civil Revision Petition was taken on file.

9. As rightly pointed out by the learned Counsel for the respondent, the present Civil Revision Petition, as there was no representation for the defendant, the revision petition was ordered to be dismissed for default on 08.08.2023 and subsequently, at the instance of the defendant, the revision was ordered to be restored as per the order passed in C.M.P.(MD)No.15896 of 2023, dated 27.11.2023. Considering the above, as rightly contended by the learned Counsel for the respondent, the revision petitioner/defendant has been filing the delay condonation petitions at every stage of the proceedings.

10. The learned Counsel for the revision petitioner has relied on the Full Bench decision of the Hon'ble Supreme Court in *N.Mohan Vs.*



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R.Madhu reported in **2020-3-L.W. 385** and wherein the Hon'ble Apex Court has clarified the legal position that since an appeal under Section 96(2) C.P.C., is a statutory right viz., merely on the ground that earlier, the application filed under Order IX Rule 13 C.P.C., was dismissed, the defendant cannot be deprived of the statutory right.

11. The learned Counsel for the respondent has also relied on the same decision in **N.Mohan's case** above referred and submitted that the Hon'ble Apex Court has held that in case if the Court is satisfied that the defendant has adopted dilatory tactics or where there is a lack of bonafide, the Court can decline to condone the delay in filing the first appeal under Section 96(2) C.P.C., and the relevant passage is extracted hereunder:

“15. An appeal under [Section 96\(2\) CPC](#) is a statutory right, the defendant cannot be deprived of the statutory right merely on the ground that earlier, the application filed under [Order IX Rule 13 CPC](#) was dismissed. Whether the defendant has adopted dilatory tactics or where there is a lack of bona fide in pursuing the remedy of appeal under Section 96(2) of the Code, has to be considered *depending upon the facts and circumstances of each case. In case the court is satisfied that the defendant has adopted dilatory tactics or where there is*



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lack of bona fide, the court may decline to condone the delay in filing the first appeal under [Section 96\(2\) CPC](#). But where the defendant has been pursuing the remedy bona fide under [Order IX Rule 13 CPC](#), if the court refuses to condone the delay in the time spent in pursuing the remedy under [Order IX Rule 13 CPC](#), the defendant would be deprived of the statutory right of appeal. Whether the defendant has adopted dilatory tactics or where there is lack of bona fide in pursuing the remedy of appeal under [Section 96\(2\) of the code](#) after the dismissal of the application under [Order IX Rule 13 CPC](#), is a question of fact and the same has to be considered depending upon the facts and circumstances of each case.”

12. The learned Counsel for the revision petitioner has also relied on the judgment of this Court in ***Brahmand Farm Lands Ltd., represented by its Director Vs. K.Venkatesan*** reported in ***2021-3-L.W. 120***, wherein the defendant in a suit for specific performance was set exparte and exparte judgment came to be passed and a learned Judge of this Court, by observing that since the judgment is not in line of Order 20 Rule 4(1)(2) C.P.C., the judgment cannot be considered as a judgment in the eye of law and that the suit for specific performance cannot be allowed by default of the defendant and it should be adjudicated on



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merits, allowed the revision and set aside the order of dismissal of the petition under Section 5 of the Limitation Act.

13. In the case on hand, as already pointed out, the petition filed under Section 5 of the Limitation Act to condone the delay in filing the petition for setting aside the exparte decree was already dismissed and the revision and the review petition were also dismissed. As already pointed out, the defendant, except alleging that the plaintiff by suggesting settlement, has prevented him from defending the suit, has not raised any other reason or explanation for the delay, which is inordinate.

15. It is pertinent to note that the review application was dismissed as early as on 12.10.2011 and the appeal along with the petition under Order 41 Rule 3(A) C.P.C., to condone the delay in filing the appeal came to be filed on 08.01.2020 after the lapse of nearly 9 years since the dismissal of the review application and after the lapse of nearly 18 years from the date of judgment and decree. Though the plaintiff had obtained decree for specific performance on 21.06.2002 and got the sale deed executed by the Court itself on 29.03.2007, is still unable to get possession of the suit property and that the defendant by initiating



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proceedings after proceedings by himself and through his daughters, has prevented the decree holder from realising the fruits of the decree.

16. Considering the entire facts and circumstances, as rightly contended by the learned Counsel for the plaintiff, this Court has no hesitation to hold that the defendant has been adopting dilatory tactics and there is total lack of bonafide in pursuing the remedy of appeal and that therefore, the impugned order dismissing the petition with costs of Rs.10,000/- cannot be found fault with. Consequently, this Court concludes that the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.

17. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is also dismissed.

26.02.2024

NCC : Yes : No
Index : Yes : No
Internet : Yes : No
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To

1. The Principal District Court, Theni.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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