



C.R.P.(MD)No.3377 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 21/03/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD)No.3377 of 2023

and

CMP (MD)No.17468 of 2023

1.K.Pandian

2.P.Muniyammal

: Petitioners/Petitioners/
Defendants

Vs.

R.Selvam

: Respondent/Respondent/
Plaintiff

PRAYER:-Civil Revision Petition has been filed under section 115 of the Civil Procedure Code to set aside the fair and decreetal order, dated 06/04/2023 made in IA No.1 of 2022 in OS No.129 of 2016 on the file of the Sub Court, Uthamapalayam.

For Petitioners : Mr.K.Guhan

For Respondent : Mr.M.Kannan

O R D E R

This civil revision petition has been filed seeking an order to set aside the fair and decreetal order, dated 06/04/2023 made in IA No.1 of 2022 in OS No.129 of 2016 on the file of the Sub Court, Uthamapalayam.



2. The facts in brief:-

Suit in OS No.129 of 2016 was filed by the respondent herein as plaintiff seeking the relief of specific performance and for recovery of possession and for costs. The defendants failed to appear before the trial court. So, they were set *ex-parte*, on 21/09/2017. They filed IA No.1 of 2022 under section 5 of the Limitation Act to condone the delay of 1616 days in filing the application to set aside the *ex-parte* decree. That came to be dismissed by the trial court by the impugned order.

3. Against which, this civil revision petition is preferred.

4. The petitioners filed a petition before the trial court with the following averments:-

On the date of passing the *ex-parte* order, they were living in Kerala. So, they could not contact their Advocate immediately. They received the notice in the execution petition. Only at that time, they came to know about the *ex-parte* decree and judgment. So, there is a delay of 1616 days.



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5.That was resisted by the respondent by filing counter stating that he entered appearance through his Advocate, on 22/06/2014 and the case was posted for filing the written statement. In spite of repeated adjournments, the defendants did not appear. So, the decree was passed. To execute the decree, he filed EP No.26 of 2018 and appeared through Advocate, on 16/06/2018. The defendants did not file the counter in spite of repeated adjournments. So, they were set *ex-parte*, on 07/12/2018 and posted for filing the draft sale deed. Document was also registered, on 22/04/2019. So, the decree was terminated. EA No.46 of 2019 was filed seeking delivery of possession. Now, it is stated to be pending. Apart from that, it is also stated that no proper reason has been assigned for the delay.

6.After hearing both sides, the trial court dismissed the petition considering the fact that no proper reason was assigned by the petitioners for condoning the delay.

7.The correctness of the finding is now called in question.

8.Heard both sides.



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9.The learned counsel appearing for the petitioners submitted the very same reasons mentioned before the trial court. He would submit that a chance may be given to the petitioners to contest the matter, since the suit is a residential house. He would rely upon the following judgments in support of his contention viz., **(i)State of Karnatana Vs. Y.Moideen Kunhi (Dead) by Lrs and others; and (ii)Robin Thapa Vs. Rohit Dora [(2019) 7 SCC 359].**

10.Per contra, the learned counsel appearing for the respondent would submit that no proper reason is assigned by the petitioners. Now the EP is terminated and posted for delivery.

11.From the facts narrated in the preamble portion of the order, it is seen that the petitioners did not properly pursue the matter. There is no reason assigned at the time of trial process. Even at the time of execution proceedings also.

12.The lethargic attitude exhibited by the petitioners, even after receiving the notice in the execution proceedings shows that they want the matter to be dragged on endlessly. Even in the execution proceedings, they did not file any counter. Since proper



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reason has not assigned and also considering the conduct of the petitioners, I am of the considered view that the order passed by the trial court is perfectly valid in law.

13.Consideration for considering this sort of petition is now more or less well settled. In **Esha Battacharjee's** case, the following principles have been dedicated.

"15.From the aforesaid authorities the principles that can broadly be culled out are:

(i)There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii)The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii)Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.



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(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant



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factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.



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16.To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

(a)An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

(b)An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(c)Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(d)The increasing tendency to perceive delay as a non- serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters."



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14. Testing the present case, the conduct of the petitioners as indicted above does not inspire any confidence at all. The matter cannot be viewed leniently in view of the above said conduct.

15. In the result, these civil revision petition stands **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

21/03/2024

Index: Yes/No
Internet: Yes/No
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To,

1. The Sub Court,
Uthamapalayam,
Theni District.

2. The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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C.R.P (MD) No. 3377 of 2023

21/03/2024