



C.R.P.(MD)No.3289 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.12.2023

Pronounced on : 01.03.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.3289 of 2023

and

C.M.P.(MD)No.16945 of 2023

K.Maruthambal

... Petitioner/
Petitioner/
Defendant

Vs.

R.Ramkumar

... Respondent/
Respondent/
Plaintiff

Prayer : This Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order dated 06.08.2022 passed by the Principal Subordinate Judge, Palani in I.A.No.418 of 2021 in O.S.No.171 of 2009.

For Petitioner : Mr.T.Lenin Kumar

For Respondent : Mr.D.Venkatesh



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ORDER

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The Civil Revision Petition is directed against the order passed in I.A.No.418 of 2021 in O.S.No.171 of 2009 dated 06.08.2022 on the file of the Principal Subordinate Court, Palani, dismissing the application filed under Section 5 of Limitation Act.

2. The respondent as plaintiff has filed the above suit claiming the relief of specific performance of the agreement dated 29.10.2007 and in alternative, relief of refund of advance amount of Rs.3,00,000/- with interest and costs. Since the revision petitioner/defendant has not appeared before the trial Court and as there was no representation for her, she was called absent and set *ex parte* on 12.08.2016 and an *ex parte* judgment and decree came to be passed on 12.08.2016 granting the relief of specific performance as prayed for by the respondent/plaintiff. The revision petitioner/defendant has filed the present application under Section 5 of Limitation Act in I.A.No.418 of 2021 on the file of the Principal Subordinate Court, Palani, to condone the delay of 1855 days in filing an application for setting aside the *ex parte* decree dated 12.08.2016. The respondent/plaintiff has filed a counter statement raising serious



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objections. The learned Subordinate Judge, after enquiry, has passed the impugned order dated 06.08.2022 dismissing the application. Aggrieved by the order of dismissal, the defendant has preferred the present revision.

3. The case of the revision petitioner/defendant is that she entered into appearance through her counsel on 12.11.2009, that thereafter, she was suffering from diabetes, blood pressure and asthma and was bed ridden and as such, she could not contact her counsel, that she came to know about the passing of *ex parte* decree after meeting her counsel, that there occurred delay of 1855 days in filing the application for setting aside the *ex parte* decree, that the delay is neither willful nor wanton, that nobody will be prejudiced in condoning the delay and that she would be put to irreparable loss and hardship, if the delay is not condoned.

4. The defence of the respondent/plaintiff is that the revision petitioner/defendant has not furnished any particulars with regard to the hospital where she was treated and the period of treatment, that the revision petitioner/defendant has not produced any records to prove her ill health, that since the revision petitioner/defendant has failed to file the



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written statement earlier, she was set *ex parte* and the *ex parte* decree came to be passed on 11.08.2010, that the revision petitioner/defendant has filed an application under Section 5 of Limitation Act to condone the delay of 74 days in filing an application for setting aside the *ex parte* decree and another application for setting aside the *ex parte* decree in I.A.Nos.556 and 557 of 2011 and the same were allowed, that when the case was taken up for trial, the revision petitioner/defendant has again remained *ex parte* and decree came to be passed, that the respondent/plaintiff has then filed an execution petition in E.P.No.66 of 2017 and the revision petitioner/defendant has entered into appearance and since she has not filed counter statement, she was set *ex parte*, that subsequently, she has filed an application for setting aside the *ex parte* order and the same was allowed and the execution petition is pending, that the present application has been filed only to drag on the proceedings and thereby prevent the respondent/plaintiff from getting the benefits of the decree and that therefore, the application is liable to be dismissed.

5. Admittedly, the respondent/plaintiff has filed the suit on 13.10.2009. It is not in dispute that the revision petitioner/defendant has entered into appearance through her counsel on 12.11.2009 and that since



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she has not chosen to file the written statement, she was set *ex parte* and the *ex parte* judgment and decree came to be passed on 11.08.2010. It is also not in dispute that the revision petitioner/defendant has filed two applications, one in I.A.No.556 of 2011 under Section 5 of Limitation Act to condone the delay of 74 days in filing the application for setting aside the *ex parte* decree and another application in I.A.No.557 of 2011 for setting aside the *ex parte* decree dated 11.08.2010 and that the said applications came to be allowed. It is also not in dispute that when the suit was pending for trial, the revision petitioner/defendant has again remained *ex parte* and consequently *ex parte* judgment and decree came to be passed on 12.08.2016. It is evident from the records that subsequent to the passing of decree on 12.08.2016, the respondent/plaintiff has laid the execution petition in E.P.No.66 of 2017 for execution of the sale deed, that since the revision petitioner/defendant has not entered into appearance, she was set *ex parte* and the respondent/plaintiff was directed to produce draft sale deed and that thereafter, the revision petitioner/defendant has filed the application for setting aside the *ex parte* order passed in E.P.No. 66 of 2017 and after allowing of the said application, E.P.No.66 of 2017 is now pending.



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6. It is pertinent to note that the application under Section 5 of Limitation Act came to be filed on 08.10.2021. As already pointed out, the revision petitioner/defendant has entered into appearance in the execution petition in the year 2017 itself, but she has not canvassed any other reason or cause for not filing the present application under Section 5 of Limitation Act immediately after entering into appearance in the execution petition. As rightly contended by the learned counsel appearing for the respondent, there is absolutely no explanation for the intervening 4 year period from the execution proceedings till the filing of the present application under Section 5 of Limitation Act. Though the revision petitioner/defendant has alleged that she was suffering from diabetes, blood pressure and asthma and she was taking treatment for the same, she has not produced any iota of evidence to substantiate the same. The revision petitioner/defendant, in the affidavit filed in support of the present application, has nowhere whispered about the hospital where she was given treatment and the medical officer, who has treated her and the period of treatment. The revision petitioner/defendant has also not averred as to when she has recovered from ill health and as to when she met her counsel and came to know about the passing of *ex parte* decree.



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Admittedly, the revision petitioner/defendant has not produced any records or materials to show that she was suffering from those ailments and was taking treatment.

7. At this juncture, it is necessary to refer the decision of this Court in the case of ***T.Natarajan Vs. Srivari Housing and Construction Ltd. and others*** reported in ***2020 SCC OnLine Mad 2355*** and the relevant passages are extracted hereunder;

“4.The law of limitation is substantive law. Condonation of delay is an exception. The Courts are bound to exercise discretionary power judiciously and by recording reasons. The Courts are bound to follow the law of limitation in all circumstances and only on exceptional circumstances, wherever the reasons are found genuine, then only the Courts can condone the delay and not otherwise. Mechanical approach in condonation of huge delay is unacceptable. In such an event, the Courts are diluting the law of limitation, which is impermissible. The power of discretion is to be exercised by recording reasons and it is not as if the Courts can condone the huge delay without any genuine reasons.



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16. The concepts such as “liberal approach”, “justice oriented approach”, “substantial justice” cannot be employed in jettison the substantial law of limitation. The law of limitation is substantial and therefore the principles laid down is to be scrupulously followed while condoning the delay under the law of limitation. The limitation has got a specific purpose and object and more specifically to avoid prejudice to the respective parties. In the event of prolongation or protraction of the litigation, undoubtedly and for an unspecified period when the specific law of limitation has got a specific purpose and object, then the power of discretion is to be exercised cautiously. Power of discretion cannot be exercised in the absence of any valid reason. In other words, powers can be exercised for the purpose of passing orders only by recording reasons which must be candid and convincing and must be passed on certain sound legal principles. Therefore, recording of reasons for exercising discretionary powers is one of the elementary principles of law. In the event of exercising discretionary powers without recording reasons,



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undoubtedly the same would cause not only prejudice and will set a bad principle and therefore, the Courts must be cautious while exercising power of discretion more specifically in such matters where the law of Limitation is substantial.”

8. It is settled law that the word “sufficient cause” in Section 5 of Limitation Act should receive liberal construction to do substantial justice. It is also settled law that the length of delay is no matter, but acceptability of the explanation is the only criterion. In the present case, as already pointed out, the revision petitioner/defendant has not assigned any valid reason or explanation for the delay. It is pertinent to mention that delay condonation petition should not be dealt with in a routine manner and mechanical approach in condonation of huge delay cannot be accepted.

9. Considering the above, the impugned order dismissing the application filed under Section 5 of Limitation Act cannot be found fault with. Hence, this Court concludes that the revision is devoid of merit and the same is liable to be dismissed.



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10. In the result, this Civil Revision Petition is dismissed.

Consequently, connected Miscellaneous Petition is closed. No costs.

01.03.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The Principal Subordinate Court,
Palani.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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**Pre-Delivery Order made in
C.R.P.(MD)No.3289 of 2023
and
C.M.P.(MD)No.16945 of 2023**

Dated : 01.03.2024