

(2011) 04 MAD CK 0213

In the Madras High Court

Case No : Civil Revision Petition (NPD) No. 156 of 2008 and M.P. No. 1 of 2008

A. Ekambaram and C. Padmavathi

APPELLANT

Vs

Radhamani, R. Thirunavukkarasu and R. Sivakumar

RESPONDENT

Date of Decision : 12-04-2011

Acts Referred:

Citation : (2011) 04 MAD CK 0213

Hon'ble Judges : K. Mohan Ram, J

Bench : Single Bench

Advocate : R. Sadasharam, for the Appellant; T.M. Hariharan, for the Respondent

Judgement

K. Mohan Ram, J.—Defendants 2 and 3 in O.S. No. 65 of 2004 on the file of the Principal District Munsif Court, Ambur, Vellore District, are the Petitioners in the above Civil Revision Petition. The Respondents herein have filed the said suit seeking a decree for specific performance of an agreement of sale, dated 03.12.1993, said to have been executed by the first Defendant. Since the Defendants have not filed their written statement in time, they have been set ex-party, on 28.12.2005. The Petitioners have filed I.A. No. 244 of 2007 to condone the delay of 119 days in filing the petition to set-aside the ex-party decree. In the affidavit filed in support of the said petition, it has been stated that since the Petitioners had not received any communication from their counsel, the written statement could not be filed in time and it is further stated that there was no intentional default on the part of the Petitioners in filing the written statement. The petition was opposed by the Respondents herein contending that only with an intention to drag on the proceedings, they have not filed the written statement and now they have filed the present petition only to further drag on the proceedings. The Court below, on a consideration of the rival contentions, dismissed the petition and being aggrieved by that, the Petitioners are before this Court.

2. Heard the learned Counsel on either side.

3. Learned Counsel for the Petitioners submitted that only because the Petitioners had not received the communication from their counsel, they could not meet their counsel and give instructions to file the written statement. The delay of 119 days is neither willful nor wanton. He further submitted that in the suit for specific performance, the Petitioners have got a valid defense and unless the delay is condoned the valuable rights of the Petitioners will be defeated. He further submitted that the Court below ought to have accepted the explanation submitted by the Petitioners and allowed the petition at least on terms.

4. Countering the said submissions, the learned Counsel for the Respondents submitted that as pointed out by the Court below, though the petition to condone the delay had been filed on 26.04.2006, since the petition contained several mistakes, the same was returned several times and only on 11.04.2007, the petition was taken on file which will show that the intention of the Petitioner was to drag on the proceedings; only taking those aspects into consideration, the Court below has rejected the petition. He further submitted that the order passed by the Court below need not be interfered with.

5. I have considered the rival submissions made by the learned Counsel on either side and perused the materials available on record.

6. It is no doubt true that, as pointed out by the Court below, though the petition has been filed on 26.04.2006, the same had been filed with several defects and hence it was returned and thereafter also, it was returned several times and only on 11.04.2007, the petition has been taken on file. But the defects in the petition cannot be attributed to the Petitioners, since the petition will be filed only by the counsel. Therefore, the mistakes committed by the advocate should not affect the valuable rights of the Petitioners.

7. At this juncture, it will be useful to refer to a decision of the Apex Court reported in 2002 (1) CTC 769 (Ram Nath Sao @ Ram Nath Sahu v. Gobardhan Sao). In the said decision, in paragraph 12, it has been laid down as follows:

12. Thus it becomes plain that the expression "sufficient cause" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependant upon facts of each case. There cannot be a straitjacket formula or accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal an exception more so when no negligence or inaction or want of bona fide can be imputed to the defaulting party. On the other hand, while considering the matter the Courts should not lose sight of the fact that by not taking steps within the

time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine like manner. However, by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes are high and / or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lies terminates either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effects of the order it is going to pass upon the parties either way.

8. In yet another decision of a Division Bench of this Court reported in 2008 (1) CTC 785 (Ravi Enterprises v. Indian Bank), the decision of the Apex Court reported in 2002 (1) CTC 769 (referred to supra) has been referred to and relied upon. In the said decision, in paragraph 14, the Division Bench has laid down as follows:

14. We are of the view that refusal to condone delay can result in a meritorious matter being thrown at the early stage and cause of justice being defeated. Moreover, the law Courts should not prefer to adopt a pedantic approach and on the other hand a pragmatic approach has to be made to deliver substantial justice overriding technical considerations....

9. Therefore, this Court is of the considered view that the refusal to condone the delay will result in a meritorious matter being thrown out at an early stage and cause of justice will be defeated. The Court below has adopted a pedantic approach and has not made a pragmatic approach.

10 .As has been laid down by the Apex Court in the decision reported in 2002 (1) CTC 769 (referred to supra) that in every case of delay, there can be some lapse on the part of the litigant concerned and that alone is not enough to turn down his plea and to shut the door against him. Therefore, the Court should have taken a pragmatic view of the matter and should have also considered the merits of the case and should have condoned the delay on terms.

11. Therefore, this Court is unable to concur with the reasoning of the Court below. Since the suit is for specific performance and the valuable rights of the parties are at stake, the Petitioners should be given an opportunity to contest the suit, but, however, the rights of the Respondents should also be taken into consideration. Hence, the above Civil Revision Petition is allowed and the order of the Court below is set-aside on condition of the Petitioners paying a sum of Rs. 5,000/- as cost, by way of the demand draft drawn on a Nationalised Bank in favor of the learned Counsel for the Plaintiffs in O.S. No. 65 of 2004 on the file of the Principal District Munsif Court, Ambur, Vellore District, within a period of two weeks from the date of receipt of a copy of this order, failing which, the above Civil Revision Petition shall stand automatically dismissed without any further reference to this Court. Once the ex-party decree is set-aside, the Court below shall dispose of the suit within a period of three months there from. No costs.

Consequently, the connected MP is closed.