
(2009) 08 MAD CK 0365

In the Madras High Court

Case No : C.R.P. (PD) No. 1578 of 2008 and M.P. No. 1 of 2008

Vellaithai, K. Thangavadivel and K. Valarmathi

APPELLANT

Vs

V. Duraisami

RESPONDENT

Date of Decision : 27-08-2009

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2009) 5 LW 880 : (2010) 1 MLJ 1092

Hon'ble Judges : Aruna Jagadeesan, J

Bench : Single Bench

Advocate : G. Prabhu Rajadurai, for the Appellant; V. Venkkatasamy, for the Respondent

Final Decision : Allowed

Judgement

Aruna Jagadeesan, J.—This Civil Revision Petition is filed against the fair and decretal order dated 18.12.2007 passed in IA. No. 349/2006 in unnumbered OS. NO. Of 2006 by the learned Sub Judge, Palani, condoning the delay of 961 days in re-presenting the suit for specific performance.

2. The learned Counsel for the petitioners would contend that the reason assigned by the respondent for condoning such an inordinate delay of 961 days in re-presenting the suit is vague and unacceptable and in the facts and circumstances, the court below ought not to have exercised its discretion in favour of the respondent, especially when its attention was drawn to the fact that the plaint was presented without sufficient court fee, indicating clearly that the respondent had no sources to meet the demand and to establish his readiness and willingness, which is the main criteria in a suit for specific performance.

3. The learned Counsel for the petitioners would further submit that the respondent has taken a document from the husband of the 1st petitioner on 9.11.1998, styled as an agreement of sale and in the year 2004, the petitioners filed a suit in OS. No. 710/2004 on the file of the District Munsif, Palani for

declaration that the said agreement was unenforceable and barred by limitation and though the respondent entered appearance, but failed to file a written statement and the suit was decreed *ex parte* and became final. He would contend that the respondent having filed the present suit for specific performance without paying sufficient court fee and kept quiet for about three years without representing the papers, merely stating that the bundles have been mixed up with other bundles in his lawyer's office, cannot be considered as just, proper and satisfactory explanation. He would submit that this Court should not show any leniency, as the length of delay is a relevant matter to be taken into account in this case while considering whether the delay should be condoned or not.

4. In dealing with the question of condoning the delay u/s 5 of the Limitation Act, a party seeking relief, has to satisfy the court that he had sufficient cause for not making an application within the prescribed time and this has always been understood to mean that the explanation has to cover the whole period. This apply to the delay in re-presentation also. The delay should not be attributable to negligence, inaction or want of bona fide on the part of the defaulting party. In other words, if there is material to indicate the party's negligence in not taking necessary steps, which he would have or should have taken, the rule of liberal approach to such a party cannot be extended.

5. In the decision of the Division Bench of this Court rendered in the case of Tamil Nadu Mercantile Bank Ltd, Tuticorin v. The Appellate Authority under the Tamil Nadu Shops and Establishments Act 1990 1 LLN 457 the principles relating to rule of liberal approach have been discussed and the legal position has been stated as under:

17...Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long time, it cannot be presumed to be non deliberate delay, and in such circumstances of the case he cannot be heard to plead that substantial justice deserved to be preferred as against technical considerations. We are of the view that the question of limitation is not merely a technical consideration. Rules of limitation are based on principles of sound public policy and principles of equity. Is a litigant liable to have a Damocles' sword hanging over his head indefinitely for a period to be determined at the whims and fancies of the opponent?

6. On a reading of the above said principle set out, it is well settled that the rule of liberal approach should be extended while considering the application for condonation of delay only when sufficient cause has been shown and there is no lack of bona fide or an attempt to hoodwink the court by the party concerned, who has come forward with an application for condonation of delay. In such cases, no indulgence could be shown by condoning the delay.

7. In the instant case, on considering the relevant facts and circumstances, admittedly, the respondent has not affixed requisite court fee in the plaint filed for specific performance of the agreement and the plaint has been returned for

deficit court fee and for three years, no steps have been taken to represent the plaint after complying with the returns.

8. The explanation given by the respondent is that the papers have been mixed up with other bundles in their lawyer's office and was traced out after three years cannot at any stretch of imagination be considered to be a sufficient cause. In examining the request for condoning the delay in re-presentation, the relevant facts that requires to be taken into consideration is that a decree has been passed against the respondent, declaring that the agreement of sale is unenforceable and barred by limitation and in the said view of the matter, the conduct of the respondent clearly shows that there has been a deliberate inaction and gross negligence on the part of the petitioners which has not been taken note of by the court below and the discretion of the court ought not to have been exercised in his favour.

9. Therefore, I am of the considered view that the reasons shown by the respondent for such an inordinate delay in representing the papers are not just, proper and satisfactory and the rule of liberal approach formula cannot be adopted in matters relating to condonation of such an inordinate delay.

10. In view of the reasons stated above, the impugned order of the court below does not stand to legal scrutiny and it warrants interference by this Court and hence, the impugned order is liable to be set aside and accordingly, it is set aside.

11. In the result, this Civil Revision Petition is allowed. No costs. Consequently, the connected MP is closed.