

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.01.2017

Pronounced on : 24.05.2017

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

C.M.A.(SR) No.98100 of 2015
C.M.P.(SR) No.25430 of 2015
and C.M.P.No.6409 of 2016

A.P.Subramanian (died)

Meenathal (died)

1. Sulochana

2. Thiru.Aravind Krishnan

3. Minor. Sivapriya

... Appellants / LR's of D.H. /
petitioners 3 to 5

..VS..

1. Thiru. R.Sivasamy

2. The Manager,

Canara Bank, Avanashi

... Respondents / Respondents /
Defendants

(R-2 exonerated before the Executing Court,
therefore, R-2 is given up in this CMA)

Appeal filed under Order 43 Rule 1 (I) of the CPC, against the fair and final order, dated 10.07.2014 in E.P.No.274 of 2008 in O.S.No.374 of 2006 on the file of the II Additional District and Sessions Court at Tiruppur.

For Appellant : Mr. Ma. Pa.Thangavel

For Respondents : Mr. S.S.Swaminathan, for R-1.

J U D G M E N T

*It is a long journey between human being and being human.
Let us travel at least one step daily to cover the distance.*

Brief facts:-

2. On 28.04.2005, the first defendant, R.Sivasamy, the owner of the property executed a sale agreement in favour of the plaintiff, A.P.Subramaniam, for a total sale consideration of Rs.7,50,000/- in S.F.No.58, Patta No.17 of ChinariPalayam Village, an extent of 3.75 acres, out of a total extent of 7.50 acres of punja. An advance amount of Rs.1,00,000/- had been paid under the said sale agreement and the last date for payment of balance sale consideration of Rs.6,50,000/- was fixed as 15.07.2005. Since the first defendant mortgaged the suit property and other properties to the second defendant / Bank, on 03.04.2006, a legal notice was issued by the plaintiff, A.P.Subramaniam, to the first defendant, R.Sivasamy and the second defendant / Bank, stating that the first defendant had to clear the encumbrance existed in favour of the second defendant / Bank.

2.1. On 12.04.2006, a reply notice was given by the first

defendant, wherein he admitted the sale agreement, but disputed the liability to execute the sale deed, as there was delay in payment of balance sale consideration. Thereafter, the plaintiff filed a suit for specific performance and pending suit, on 10.08.2007, a compromise was entered into between the parties and the terms of the compromise are as follows:-

1. That the plaintiff is hereby directed to pay the entire dues due to the second defendant / Bank within two months from today as per compromise memo dated 10.08.2007.
2. That the plaintiff is hereby directed to handover the documents, except the suit property document, to the first defendant, as per compromise memo, dated 10.08.2007.
3. That the plaintiff is hereby directed to pay a sum of Rs.4,75,000/- to the first defendant, within two months from today, as per the compromise memo, dated 10.08.2007.
4. That the first defendant is hereby directed to execute the sale deed in favour of the plaintiff, after receiving the above said amount, at the expenses of the plaintiff, as per the compromise decree, dated 10.08.2007.
5. That the first defendant failing to comply with the clause No.4, above, the plaintiff is entitled to file Execution Proceedings against the first defendant, as per compromise decree dated 10.08.2007.
6. That both the parties do bear their respective costs and
7. That the compromise petition in I.A.No.995 of 2007 and the

compromise memo, dated 10.08.2007 shall part and parcel of this compromise decree.

2.2. Pursuant to the compromise decree dated 10.08.2007, the plaintiff paid the entire due to the second defendant / Bank on 28.09.2007 and discharged the loan, by paying a sum of Rs.5,85,168/-, as per clause (1) of the compromise decree and the second defendant / Bank also cancelled the mortgage and issued the receipt dated 04.10.2007 for the amount of Rs.5,80,000/-.

2.3. On 04.10.2007, the second defendant / Bank handed over all the parent documents, which were mortgaged by the first defendant and as per clause (2) of the compromise decree, dated 10.08.2007, the plaintiff retained the parent documents with regard to the suit property and returned the remaining documents to the first defendant.

2.4. As per clause 3 of the compromise memo, dated 10.08.2007, the balance sale consideration of Rs.4,75,000/- was also ready to be paid by the plaintiff, but the first defendant failed to come to the Office of the Sub Registrar, to receive the above said

amount and failed to execute the sale deed in favour of the plaintiff till the last date i.e., 10.10.2007.

2.5. Hence, on 10.10.2007, the plaintiff has issued legal notice to the first defendant, calling upon to receive the balance consideration of Rs.4,75,000/- and to execute the sale deed, as per clause 3 of the compromise decree, dated 10.08.2007, failing which, the first defendant will deposit the said amount in the Court Deposit and will file the Execution Petition. The said notice was duly acknowledged by the first defendant on 12.10.2007.

2.6. On 11.10.2007, the plaintiff has filed a lodgment schedule before the trial court, in order to show his bonafides. But, however, the trial court had returned the said lodgment, stating that the stipulated time had expired. The plaintiff deposited the balance amount of Rs.4,75,000/- in the State Bank of India, Avinashi Branch, in the name of his counsel, to prove his bonafides.

2.7. On 12.10.2007, the notice was received by the first defendant, for which, a reply has been sent by the plaintiff, by two different counsels, dated 11.10.2007 and 12.10.2007, stating that he was not ready to execute the sale deed. On 07.11.2007, the

said lodgment was re-presented with explanation. On 27.11.2007, the trial court returned the same giving the same reason, viz., stating that the stipulated time had already expired. Again the same was explained and re-presented and finally an order was passed dated 05.12.2012 in un-numbered I.A.(SR) No.7951 of 2007 in O.S.No.374 of 2006 on the file of the Additional District Court, Fast Track Court No.V, Tiruppur.

2.8. The said order came to be challenged before this Court and after considering the matter on merits, this Court allowed the Civil Revision Petition, by an order, dated 04.08.2008. Pursuant to the same, on 11.08.2008, the lodgment was issued by the lower court, as per the order of this Court, dated 04.08.2008 and the balance sale consideration of Rs.4,75,000/- which was already deposited in the counsel's names, in SBI, Avinashi Branch, was withdrawn and deposited in the Court, through the lodgment schedule, dated 11.08.2008.

2.9. Against the order of the Civil Revision Petition, the first defendant / first respondent herein filed a Review, before this Court and the same was dismissed, by order dated 18.12.2008, by

confirming the earlier order, dated 04.08.2008, passed in CRP No.1759 of 2008. Against which, the first defendant filed SLPs before the Supreme Court and the same were remanded back to this Court, to hear the CRP, afresh.

2.10. On 16.09.2010, said CRP, was once again heard and this Court was pleased to direct the trial court to issue judgment and to proceed with the case, after giving opportunity to both parties and to decide the case, on merits.

2.11. E.P.No.274 of 2008 filed by the plaintiff / Decree Holder seeking execution of sale deed and stamp papers were called for and accordingly, the petitioner filed the same for a sum of Rs.60,000/-, on 01.06.2009. By the order dated 10.07.2014, the Executing Court gave a finding that the petitioner did not pay the balance of sale consideration within the time prescribed in the compromise decree and therefore, the prayer in the Execution Petition cannot be granted; at the same time, it was held that the petitioner is entitled to the return of Rs.1,00,000/- as well as Rs.5,85,188/- to the Canara Bank. Challenging the same, the present Civil Miscellaneous Appeal has been filed by the Decree Holders / Appellants herein.

3. When the matter was taken up for hearing, the learned counsel for the appellants has taken out an application in CMP No.6409 of 2016, seeking to condone the delay of 408 days in filing the above Civil Miscellaneous Appeal. The learned counsel appearing for the respondents has filed a counter affidavit, opposing the application to condone the delay. Hence, the Application to condone the delay was directed to be heard along with this Civil Miscellaneous Appeal.

4. Heard the learned counsel appearing for both sides.

5. The learned counsel appearing for the appellants would submit that the Execution Court ought to have considered that, in the Revision as well as the Review filed before this Court, favourable findings have been rendered by this Court, giving a finding that the decree holder has made bonafide efforts to comply with the terms of compromise entered into between the parties; in fact, it is the reason, based on which this Court has directed the trial court to accept the lodgment schedule in CRP No.1759 of 2008 and the same has become final; hence, the findings of the Executing Court

is not correct and it is liable to be set-aside. The learned counsel further submitted that the appellants properly explained the situation and despite showing all bonafides on the part of the decree holder, the Executing Court has dismissed the Execution Petition, without looking into the readiness and willingness shown by the decree holder.

5.1. The learned counsel for the appellants further submitted that the Executing Court miserably failed to consider that the time is not the essence of the contract and the decree holder is willing to comply with the terms of the compromise entered into between the parties, at all times, hence, the findings rendered by the Executing Court, as otherwise, is unwarranted and liable to be set-aside. In support of the contentions, the learned counsel for the Appellants relied upon the decision reported in **(2014) 14 SCC 133 (Imrat Lal and Others v. Land Acquisition Collector and others)** whereunder it has been held as follows:-

“12. We can take judicial notice of the fact that villagers in our country are by and large illiterate and are not conversant with the intricacies of law. They are usually guided by their co-villagers, who are familiar with the proceedings in the Courts or the advocates with whom they get in touch for redressal

of their grievance. Affidavits filed in support of the applications for condonation of delay are usually drafted by the advocates on the basis of half baked information made available by the affected persons. Therefore, in the acquisition matters involving claim for award of just compensation, ***the Court should adopt a liberal approach*** and either grant time to the party to file better affidavit to explain delay or suo motu take cognizance of the fact that large number of other similarly situated persons who were affected by the determination of compensation by the Land Acquisition Officer or the Reference Court have been granted relief.”

5.2. Per contra, the learned counsel appearing for the first respondent would rely upon the judgment reported in **CDJ 2015 SC 287 (P.R.Yelumalai & another v. N.M.Ravi and another)** whereunder it has been held as under:-

“13. The Trial Court rightly held that the decree-holder did not make the deposit within the time stipulated by the Court nor the deposit of the balance consideration was made through the mode as stipulated by the Court, and that being the case, the suit will have to be deemed as dismissed. The Trial Court further held that the decree-holder is not entitled to seek execution of decree, which does not exist in the eye of law and consequently the Trial Court dismissed

the execution petition. Further, we have already discussed the order of the Trial Court in the application for extension of time and we do not take the contention of the Plaintiff-Buyer that the application was dismissed solely on the technical ground and that the application was filed after a delay of 3 weeks. The Trial Court has discussed full merits of the application and given a finding that there is no evidence to show that the Plaintiff had made any effort to deposit the amount on the 28.05.2007. The application was dismissed on its merits and not merely on the technical grounds. Further, we accept the submission of the learned Counsel for the Defendant-Seller that the Plaintiff-Buyer had even failed to make the deposit through the mode of payment as required by the decree."

This decision is not applicable to the facts of this case, as in the reported case, the decree holder did not deposit the amount within one month from the date of decree, but wanted extension of time and even after the grant of two month's time by way of extension, the plaintiff / buyer did not deposit the amount either on the due date which fell during summer vacation nor on the reopening day; under the circumstances, it had been held that, for non-compliance of the condition in the decree, the suit had to be dismissed.

So far as this case is concerned, the decree holder has chosen to issue the notice on the date on

which he is expected to make payment, indicating in clear terms that he is willing to pay the amount and that the judgment-debtor is not willing to receive the amount.

5.3. The reasons stated in the Application to condone the delay needs elaboration.

1. The Execution Petition was dismissed on 10.07.2014.
2. The Copy Application has been filed on 23.06.2015.
3. Copies were made ready on 02.07.2015.
4. Copies issued on 02.07.2015 itself.
5. Revision was filed on 23.11.2015.
6. Thereafter, the Revision was converted into Appeal and the delay, after 23.11.2015, must be taken only as delay in representation.

5.4. So far as the appellants are concerned, it is stated that pending Execution petition, the original plaintiff / appellant died leaving behind the mother, wife, son and minor daughter, as the legal heirs; that the mother also died during the pendency of the Execution Petition. The Revision Petition was filed even on 23.11.2015.

5.5. It is pointed out that the death of the original decree-holder and his mother had taken place even during the pendency of the Execution Petition and that cannot be the reason for belatedly filing the appeal. The fact that the original decree-holder and subsequently his mother died is an admitted fact. The only thing is, whether the death was the reason for not filing the appeal in time.

5.6. Just because the death was even before the disposal of the Execution Petition, it cannot be concluded that it cannot be the reason for the belated filing of the Civil Miscellaneous Appeal. Admittedly, after impleadment, the parties would not have appeared before the Court, because the impleadment itself was in the execution stage. The presence of parties is not required during the hearing of the Execution Petition, like the requirement of the party during trial. Therefore, the impleaded wife, son and Minor daughter would not have got sufficient knowledge or information to find out the stage of the case and to proceed with further steps immediately.

5.7. As pointed out in the decision reported in **2014 (14) SCC 133 (referred to supra)** as illiterate persons, they would not

have pursued the matter further. Therefore, the Court had to be liberal in condoning the delay, especially when the decree is a compromise decree. Even assuming that the delay has caused inconvenience to the judgment-debtor, it can be compensated by imposing the costs.

5.8. Therefore, the delay is condoned, subject to the payment of Rs.5,000/-, to be payable by the appellants to the respondents, within a period of two weeks from the date of receipt of a copy of this order.

6. Coming back to the merits of the matter, the question to be considered is, whether the finding of the Executing Court that the decree holder did not comply with the terms of the compromise decree, in not paying the amount within a period of two months, is justified or not.

7. The finding of the Executing Court is merely on technical grounds. The Executing Court ought to have taken into account that the decree to be executed is a compromise decree, which stipulated several conditions to be complied with. The payment of Rs.4,75,000/- within two months from the date of compromise

memo, i.e., on 10.08.2007, is not the only condition to be complied with. If that is so, in a way, it can be said that the finding of the Executing Court is justified. But, in this case, the decree holder / plaintiff / appellant has complied with some of the conditions in the compromise decree which are detailed as follows:-

(i) Pursuant to the compromise decree dated 10.08.2007, the plaintiff paid the entire due to the second defendant / Bank on 28.09.2007 and discharged the loan, as per clause (1) of the compromise decree; the second defendant / Bank also cancelled the mortgage and issued the receipt dated 04.10.2007 for the amount of Rs.5,80,000/-.

(ii) On 04.10.2007, the second defendant / Bank handed over all the parent documents, which was mortgaged by the first defendant and as per clause (2) of the compromise decree, dated 10.08.2007, the plaintiff retained the parent documents with regard to the suit property and returned the remaining documents to the first defendant.

8. Even with regard to the clause (3) of the compromise decree, the conduct of the plaintiff cannot be said to be procrastinating. At the most, it can be said that, there is a delay of

only one day. The decree holder, having complied with some of the conditions in the compromise decree, would have expected the judgment debtor to come to the Office of the Sub Registrar direct, for the execution of sale deed. Finding he is not available immediately, notice has been issued. Payment also has been made into the Court within a reasonable time. If the decree-holder had asked for extension of time, one can infer that he had no money and only in order to procrastinate, the decree-holder is adopting dilatory tactics. It is not so in this case.

9. The judgment-debtor ought to have been pragmatic in accepting the balance of sale consideration, especially when the mortgage created by the judgment debtor has been discharged by the decree-holder.

10. The Compromise settlement are guided by the principles of justice, equity, fair play and other legal principles. Therefore, it is the duty of the courts to uphold and give full effect to compromise by giving effect in letter and spirit.

11. Compromise brings the truth to the forefront. Justice is

truth in action. Thus, justice is rendered wholly and completely by accepting / recognizing / implementing the compromise. It will be appropriate to quote the judgment of the High Court of Delhi, reported in the case of ***HS BEDI v. NATIONAL HIGHWAY AUTHORITY OF INDIA, dated 22nd January, 2016, in RFA 784/2010***, where, the Court has emphasized the importance of invoking the provisions of the Section 209 IPC, whenever false pleadings are made. The relevant observation, in the said judgment, reads as under:-

16.7. Whenever a false claim is made before a Court, it would be appropriate, in the first instance, to issue a show cause notice to the litigant to show cause as to why a complaint be not made under Section 340 Cr.P.C. for having made a false claim under Section 209 of the Indian Penal Code and a reasonable opportunity be afforded to the litigant to reply to the same. The Court may record the evidence, if considered it necessary.

16.8. If the facts are sufficient to return a finding that an offence appears to have been committed and it is expedient in the interests of justice to proceed to make a complaint under Section 340 Cr.P.C., the Court need not order a preliminary inquiry. But if they are not and there is suspicion,

albeit a strong one, the Court may order a preliminary inquiry. For that purpose, it can direct the State agency to investigate and file a report along with such other evidence that they are able to gather.

16.9. Before making a complaint under Section 340 Cr.P.C., the Court shall consider whether it is expedient in the interest of justice to make a complaint.

16.10. Once it prima facie appears that an offence under Section 209 IPC has been made out and it is expedient in the interest of justice, the Court should not hesitate to make a complaint under Section 340 Cr.P.C.

17. This Court hopes that the Courts below shall invoke Section 209 of the Indian Penal Code in appropriate cases to prevent the abuse of process of law, secure the ends of justice, keep the path of justice clear of obstructions and give effect to the principles laid down by the Supreme Court in *T.Arivandandam v. T.V. Satyapal* (supra), *S.P. Chengalvaraya Naida v. Jagannath* (supra), *Dalip Singh v. State of U.P.*(supra), *Ramrameshwari Devi v. Nirmala Devi* (supra), *Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria* (supra), *Kishore Samrite v. State of Uttar Pradesh* (supra) and *Subrata Roy Sahara v. Union of India* (supra)."

12. But for the application filed by the appellants seeking condonation of delay, this court would have chosen to issue notice to the respondents under Section 209 IPC.

13. In the result, the fair and final order, dated 10.07.2014 in E.P.No.274 of 2008 in O.S.No.374 of 2006 on the file of the II Additional District and Sessions Court at Tiruppur, is set-aside and **the Civil Miscellaneous Appeal is allowed.**

13.1. The respondents are directed to execute the sale deed in favour of the appellants within a period of two weeks from the date of receipt of a copy of this judgment. It is made clear that the amount payable to the respondents, which is in Court deposit, shall be withdrawn by the respondents either on the date of execution of sale deed or anytime, thereafter.

24.05.2017

Index : Yes / No

Web : Yes / No

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To

1. II Additional District and Sessions Court, Tiruppur.
2. The Section Officer, V.R.Section,
Madras High Court, Chennai 104

Dr. S.VIMALA, J.,

srk

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