



NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. _____ OF 2025
(@S.L.P. (C) No. 2177 of 2024)**

K. RAMASAMY ...Appellant

VERSUS

R. NALLAMMAL & ORS. ...Respondents

JUDGMENT

K. VINOD CHANDRAN, J.

Leave granted.

2. An ex-parte judgment & decree dated 13.04.2016, for specific performance, was sought to be set aside by application dated 04.01.2020, after condoning the delay of 1312 days, long after legal

representatives of the 1st defendant appeared in an execution petition filed by the plaintiff.

3. We heard learned Senior Counsel, Sri. Dama Seshadri Naidu for the appellant and Sri. Gopal Shankarnarayanan, learned Senior Counsel for the respondents.

4. The impugned order referred to two decisions of this Court in **Collector, Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors.**¹ and **H. Dohil Constructions Company Pvt. Ltd. v. Nahar Exports Ltd.**², both on the issue of condonation of delay and applied the principles of the former to condone the delay and allow the application, setting aside the ex-parte decree on payment of cost of Rupees One lakh and a further direction to file a written statement within a period of four weeks. The suit was also directed to be disposed of within a period of three months from the date of receipt of copy of order. The reasoning for the exercise of such equitable jurisdiction was on

¹ (1987) 2 SCC 107
² (2015) 1 SCC 680

the ground that the predecessor-in-interest who was the defendant in the suit and who had also half interest in the property though had appeared before the Trial Court had not filed a written statement and later died, upon which the wife and son, the legal representatives came into the picture. The contention that the Counsel who was handling the case on behalf of the deceased had taken time to hand over the files; which were misplaced, eventually handed over on 16.12.2019 soon after which the petition to set aside the ex-parte decree was filed, found favour with the learned Single Judge. The High Court reversed the detailed order of the Trial Court which refused to condone the delay on the facts coming out from the records.

5. On the subject matter of the suit, suffice it to notice that the defendants 1 and 2 jointly owned the scheduled property and the first defendant; who is now deceased and is represented by his legal representatives, executed a power of attorney in favour of the second defendant. The second defendant on his behalf and also on behalf of the first defendant executed a sale agreement in favour

of the plaintiff for consideration of Rs. 20 lacs out of which Rs. 5 lacs were paid. The plaintiff though always willing and ready to discharge his part of the agreement, the second defendant failed so to do and also refused to turn up at the Sub Registrar's Office where the plaintiff had gone on 14.01.2016 with the balance sale consideration; resulting in the initiation of the suit for specific performance. The first defendant, the predecessor-in-interest of respondents herein appeared but did not file a written statement. The second respondent also did not appear and the Trial Court passed judgment in the case which is produced as Annexure P-6 herein. Admittedly an execution petition was filed in which the legal representatives, the respondents herein had appeared. It was much later that the petition for setting aside the ex-parte decree was filed.

6. Sri. Naidu argued that there was absolutely no cause for the High Court to reverse the well-considered order of the Trial Court. The delay was not properly explained and the grounds taken cannot at all be countenanced. The suit was decreed on 13.04.2016 and the death of the first

defendant occurred much later on 22.02.2017. The claim that first defendant was hospitalised cannot be accepted since the document produced indicated it to be a hospitalisation long after the judgment and decree. Further the very contention taken up before the trial court that the files were handed over late, also cannot be countenanced since the very same lawyer continued to represent one of the legal representatives. There is no equity in now seeking to set aside a decree of specific performance especially when the plaintiff had deposited the balance consideration of Rs. 15 lacs at the time of filing the suit itself and there is considerable escalation of the value of the property in the time ensuing, which benefit has to go to the plaintiff-appellant.

7. Sri. Shankarnarayan however points out that there are umpteen number of cases in which this Court has exercised the equitable jurisdiction when there is sufficient hardship shown. It is argued that the agreement for sale was a purely collusive affair without knowledge of the first defendant, that the first defendant had cancelled the power of attorney on coming to know of it. The

various transactions between the parties indicated that none had intended the sale agreement to be acted upon, which were suppressed by the plaintiff. The very valuable property was sold away for a pittance and the legal representatives are entitled to the benefit of the property purchased by the hard-earned money of their predecessor. It is also undertaken that the entire advance amount can be deposited and there is sufficient protection granted to the plaintiff by the impugned order which directed expeditious disposal of the suit.

8. The agreement itself is of the year 2013 and the suit of the year 2015, admittedly the first defendant appeared, but since no written statement was filed, he was declared ex-parte. There is nothing to show that the first defendant suffered from any ailment which disabled him to contest the matter; which is the first aspect to be considered while entertaining an application for setting aside the ex-parte decree. Moreover the trial court had specifically spoken of the delay. Admittedly the first defendant had died long after the suit was decreed in which period also he did not contest the suit.

Though a contention was taken by the learned Senior Counsel that the predecessor-in-interest of the respondents was suffering from parkinsonism, the gravity of the affliction was not evident from the document produced before the trial court. This assumes significance since the 1st defendant had appeared in the suit. The hospitalisation, proved by the document, as found by the Trial Court was of only four days and that too long after the Decree.

9. The plaintiff initiated execution proceedings in the year 2018 and both the respondents appeared before the execution court on 20.08.2018 wherein also, no serious contest was made. The contention of the respondent is that they were unaware of the ex-parte decree and had approached their lawyer who had taken considerable time in returning the files which was eventually done on 16.12.2019, soon after which an application to set aside the ex-parte decree was filed. We are unable to accede to the same, since, information regarding the ex-parte decree, if not earlier available to the respondents was definitely available on 20.08.2018 when they appeared before

the execution court. The only contention regarding the further delay caused after the appearance in the execution proceeding is that the files were not handed over by the lawyer. In the more than one year, that it took for the lawyer to trace out the misplaced files, definitely certified copy of the records could have been taken and an application to set aside the ex-parte decree filed. In any event the ex-parte decree would be available in the execution proceedings itself and there was no difficulty in filing an application for setting aside the ex-parte decree immediately. In fact, the respondents having contested the execution proceedings, the Court itself had executed the conveyance to satisfy the decree of specific performance.

10. In ***Mst. Katiji***¹, this Court deprecated a pedantic approach in seeking for an explanation for every day's delay and exhorted the doctrine to be applied in a rational, common sensical and pragmatic manner. It was also held that substantial justice and technical considerations, pitted against each other, the former should be preferred

especially in cases of non-deliberate delay which cannot result in an injustice being done. Even going by the said decision, we cannot find a non-deliberate delay in the above matter. As we already found, there is no explanation for the deceased first defendant, to have not contested the matter, the joint ownership with the other defendant and the power of attorney executed in his favour as also the sale agreement being admitted. If in fact the power of attorney was cancelled as pleaded then it should have made the defendant more alert in contesting the suit in which he appeared. The suit for specific performance filed in his lifetime was left uncontested despite the appearance. The death of the first defendant was long after the decree. The legal representatives though claimed to be unaware of the decree, was made aware when a notice of execution proceeding was served on them. They appeared in the execution court and neither contested it nor filed an application to set aside the decree for long. A frivolous contention has been raised that the lawyer took time to return the files; which contention is also a bland statement made

without the date on which they approached the lawyer being specified. A specific question was put to the first defendant who was examined on oath, in support of the application to set aside the ex-parte decree, as to the same lawyer having been engaged by his mother, which was not denied.

11. Learned Senior Counsel appearing for the respondent vehemently argued on the equitable principles applicable in the teeth of genuine hardship; which however we do not find in the present case. On the question of hardship, the learned Senior Counsel only addressed us on the merits of the subject matter, the apprehension that it could have been a collusive affair while asserting the agreement to have shown a pittance as consideration. We are of the clear opinion that the impugned judgment was not on good grounds and the cost awarded and the directions for expeditious consideration would not unsettle the imbalance which would be caused to the plaintiff who had been waiting to get possession of the property for the last one decade. We are unable to accept the reasoning of the impugned order to condone the delay

occasioned, because there is falsity writ large, in the submission of the lawyer having misplaced the files. The application to set aside the ex-parte decree was only an afterthought and purely experimental. The law favours the diligent and not the indolent. We set aside the order of the High Court, thus restoring the order of the Trial Court rejecting the application for condonation of delay.

12. The appeal, hence, stands allowed.

....., J.
[SUDHANSU DHULIA]

....., J.
[K. VINOD CHANDRAN]

NEW DELHI;
MARCH 03, 2025.