



C.R.P.(MD)No.2634 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 04.07.2023

Delivered on : 01.08.2023

CORAM:

THE HONOURABLE **MR.JUSTICE C.KUMARAPPAN**

C.R.P.(MD)No.2634 of 2017

Muthuchamy

... Revision Petitioner/

Petitioners/ 1st Respondent

Vs.

1.Neelavathy

2.Nallammal

3.Maruthayee

4.Minor.Manibarathi

5.Minor.Keerthivasan

(Minor R4 & R5 represented by the

Next friend's mother Umadevi)

.. Respondents/Respondents /

Plaintiffs

Prayer: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the order of dismissal, dated 24.10.2017, in I.A.No.285 of 2017, in O.S.No.132 of 2012, passed by the Principal District Munsif, Manaparai.



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For Petitioner : Mr.P.Ganapathisubramanian

For Respondents : Mr.Arul Jenifer
for Mr.RMS.Sethuraman for R1 to R5

ORDER

The instant Civil Revision Petition has been filed against the fair and decretal order, made in I.A.No.285 of 2017, in O.S.No.132 of 2012, in and by which, the application filed under Section 5 of the Limitation Act, to condone the delay of 401 days, in filing the connected petition, to set aside the *exparte* decree, was dismissed.

2. The revision petitioner is the first defendant before the trial Court. Against whom, the respondents /plaintiffs have filed a suit for declaration, to declare the sale deed executed in favour of the defendant as null and void. Wherein, the trial Court passed the *exparte* decree on 20.01.2014. Against the said *exparte* decree, when the revision petitioner / first defendant filed an application to set aside the *exparte* decree, there was a delay of 401 days. Hence, he filed an application under Section 5 of the Limitation Act, to condone the above delay, on the ground that he was suffering from Jaundice and was aged about 73 years. He would also further contend that the Jaundice made him to become weak.



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3. The respondents / plaintiffs have strongly objected this application and contended that the allegation put forth by the petitioner is far from truth, and that though the revision petitioner pleads his aging and Jaundice for condonation of delay, in the meantime, he has participated in the criminal proceedings lodged against the second respondent. Therefore, the very reason assigned by the petitioner is not a sufficient cause so as to condone the delay. Hence, prayed to dismiss this application.

4. After hearing both sides, the learned trial Judge by an elaborate order, has considered various aspects and found that there was a delay of 437 days, in filing the Section 5 application, and also there was a delay of 460 days in representing the delay condonation application, and also found that the very continuous suffering of Jaundice for a period of 437 days cannot be believed. Eventually, the learned trial Judge dismissed the application. While dismissing the application, the learned trial Judge has also referred the Judgments, of the Hon'ble Apex Court referred in ***BalaKrishnan V. Krishnamoorthy***, reported in ***AIR-1998-SC-3222***. Wherein, it has been held that, a lethargic litigant cannot be allowed to leisurely choose his own time in preferring application. The relevant



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excerpts would run thus:

Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be putt to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

5. In the same context, the trial Judge has also referred the decision of this Court in ***N.E.P.C India Ltd. V. S.Gopakumar, made in C.R.P.(PD)(MD)No.2395 of 2008, dated 29.01.2009.*** The trial Judge also



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referred the decision of the Hon'ble Apex Court in ***Oriental Aroma Chemical Industries Ltd. V. Gujarat Industrial Development Corporation and another*** reported in ***2010-5-SCC-459***, in which, it is observed thus:

“8. ...The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate”



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6. On close scrutiny of the above judgments, the ratio that emerges from the above judgment is that the expression “sufficient cause” under Section 5 of the Limitation Act, is elastic enough to enable the courts to apply the law in a meaningful manner, to subserve the ends of justice.

7. However, in the judgment of **N.Balakrishnan V. Krishnamoorthy**, (cited supra) it has been held that while the trial Court condoning the delay, by way of positive order, the revisional Court should be slow in interfering with the positive order of the trial Court. However, if the order of the trial Court in dismissing the delay condonation application is not rationale, then, the revisional Court can interfere with the order, otherwise, the very refusal to condone the delay would result in foreclosing the rights of the parties.

8. With this background, if we look at the facts of the instant case, though the petitioner prayed to condone the delay of 401 days, according to the findings of the learned trial Judge, there was a delay of 437 days. Therefore, now we must see whether the petitioner has shown sufficient cause to condone the said delay. Here, the reason assigned by the



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revision petitioner is that he was aged about 73 years and suffered from Jaundice. Because of such suffering coupled with his aging, he became very weak. He would further plead that, though he had contacted his counsel, during December - 2014, he could not file an application to set aside the *exparte* decree within time, as he need to collect certain more documents. During such process, there was a delay of 437 days.

9. While passing the impugned order, the trial Judge presumed that a person, who was suffering from Jaundice could not have been bedridden for a continuous period of 437 days, and that the very participation of the petitioner before the another Court proceeding has to be found against him. While ratiocinating the above finding, this Court is not in a position to agree with the reasoning. Because we can't isolate the illness of the petitioner from his old age. Here, the petitioner was 73 years old. Naturally, the very aging would definitely impact the well-being of the aged person for some period. Therefore, we can't ignore the plight of the aged person, while considering Section 5 of the Limitation Act application. Therefore, the reasoning put forth by the petitioner is within the contour of the definition "sufficient cause".



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10. It is pertinent to mention here that the very suit was filed to declare the sale deed of the defendant as void. Thus, keeping in mind with the nature of the suit, and also keeping in mind with the age, and the age related after effects of Jaundice, this Court is inclined to condone the delay, by interfering with the order of the trial Court. However, due to this delay, the respondents would have definitely suffered some hardship. Therefore, to compensate their hardship and to test the *bonafide* of the revision petitioner, this Court is inclined to impose certain condition.

11. As a result, this Civil Revision Petition stands **allowed** on condition, and thereby, the I.A.No.285 of 2017, in O.S.No.132 of 2012, of the Principal District Munsif, Manaparai, is hereby allowed, on payment of cost Rs.5,000/- (Rupees Five Thousand only) to the respondents / respondents / plaintiffs, within four weeks from the date of receipt of the copy of the order, failing which, this revision petition shall stand dismissed without any further reference to this Court. The learned trial Judge shall endeavour to dispose of the matter as expeditiously as possible, since the suit is of the year 2012.

NCC : Yes/No
Index : Yes/No
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01.08.2023



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To

- 1.The Principal District Munsif,
Manaparai.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN.,J.

Ls

Pre-delivery Order made in
C.R.P(MD)No.2634 of 2017

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