

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P.(NPD).No.1872 of 2015
and M.P.No.1 of 2015

1.Sengoda Gounder
2.Ramakrishnan
3.Divya

.. Petitioners

Vs.

Sakthivel

.. Respondent

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, praying against the fair and decreetal order dated 04.02.2015 made in I.A.No.22 of 2012 in O.S.No.153 of 2003 on the file of the Sub-Court, Kallakurichi.

For Petitioners : Mr.P.Valliappan
For Respondent : Mr.T.Muruga Manickam

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 04.02.2015 made in I.A.No.22 of 2012 in O.S.No.153 of 2003 on the file of the Sub-Court, Kallakurichi.

2. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent.

3. The learned counsel appearing for the petitioners would submit that the respondent as a plaintiff filed a suit for specific performance against the petitioners on the basis of the sale agreement dated 21.08.2000. Because of his ill health, the first defendant was not appeared before the Court and hence, ex parte decree has been passed on 24.01.2011. Since the first defendant was affected by Jaundice, he was unable to contact his counsel and file an application in time. But he received the notice in E.P.No.64/2011 and then he filed the application. The Trial Court without considering the same has dismissed this application. Hence, he pray for setting aside the impugned order. To substantiate his argument, he relied upon the following decisions:

- 1. 2013 (5) CTC 547 (Esha Battacharjee vs. Managing Committee of Ragnathpur, Nafar Academy and others)**
- 2. 2008 (1) LW 402 (Ramayee and 5 others vs. Palaniammal)**
- 3. 2009 (5) CTC 414 (Pavayammal and another vs. S.N.Chockalingam and others)**
- 4. 2014 (2) CTC 649 (Nagarathinammal and others vs. Madhammal)**

4. Resisting the same, the learned counsel appearing for the respondent would submit that the sale agreement came into effect in the year 2000 and because of non-appearance of the first defendant, ex parte decree has been passed. He further submitted that this is the fourth time, the petitioners have coming for setting aside the ex parte decree and already thrice ex parte decree has been set aside. Twice, ex parte decree has been set aside on payment of cost and once, it was set aside on the No objection made by the respondent. He would further submit that as soon as the first defendant received the notice in E.P.No.64/2011, he gave a complaint before the Police Station and he has not taken steps to file an application and he filed the application only on 21.12.2011, which shows the lethargic attitude of the petitioners. So, the Trial Court has considered all the aspects in proper perspective and came to the correct conclusion. Hence, he prayed for dismissal of the Civil Revision Petition.

5. Considered the rival submissions carefully and perused the typed set of papers.

6. It is an admitted fact that the respondent herein has filed the suit for specific performance on the basis of the registered sale agreement dated 21.08.2000. But on perusal of the counter shows that in the year 2007 itself,

exparte decree has been passed and after filing I.A.No.322 of 2007, which was allowed on payment of cost of Rs.500/- and after complying with the conditional order, it was allowed on 04.01.2008. Subsequently another exparte decree has been passed, it was set aside as per order dated 27.08.2008 in I.A.No.245 of 2008 on payment of cost of Rs.600/-. Further, he is not ready to defend the suit. Further, for the third time, exparte order has been passed. I.A.No.326 of 2010 was filed and it was allowed on the basis of the No objection made by the respondent since it is only an exparte order. For the fourth time, exparte decree has been passed on 24.01.2011. The Trial Court has considered the oral evidence let in by P.W.1 and P.W.2. Even though the first defendant received the notice in E.P.No.64/2011, he has not filed any application immediately, per contra he has gone to the Police Station and given complaint on 05.08.2011 and he filed an application only on 21.12.2011, which shows his delaying tactics.

7.At this juncture, it is appropriate to consider the decisions relied upon by the learned counsel appearing for the revision petitioner reported in **2008 (1) LW 402 (Ramayee and 5 others vs. Palaniammal)**, wherein it was held that Courts are there not to harp on technicalities and to deliver the substantial justice to the parties in dispute, more so when the main suit is only for partition of family properties. But the above citation is not applicable to

the facts of the present case because in that there was a partition suit between the family members and in that there is a delay. So, this Court has held that Courts are there not to harp on technicalities. But here the suit is for specific performance, thrice exparte decree has been passed and once exparte order has been passed and it was pending for more than nine years. In such circumstances, I am of the view that the above citation is not applicable.

8.He also relied upon the decision reported in **2009 (5) CTC 414 (Pavayammal and another vs. S.N.Chockalingam and others)**, wherein it was held that sufficient cause to be interpreted in a purposeful and meaningful way. But the above citation is not applicable to the case of the present case because the first defendant has not given any sufficient cause for not filing the application as soon as he received in E.P.No.64 of 2011.

9.He also relied upon the decision reported in **2014 (2) CTC 649 (Nagarathinammal and others vs. Madhammal)** wherein there is a delay of 903 days in seeking to set aside the exparte Preliminary decree for partition and this Court has awarded Rs.10,000/-. But here the facts are entirely different and it is not the first time the first petitioner has not appeared before the Court. In such circumstances, I am of the view that the above citation is not applicable to the facts of the present case.

10. He also relied upon the decision reported in **2013 (5) CTC 547 (Esha Bhattacharjee vs. Managing Committee of Raghunathpur, Nafar Academy and others)**, wherein in paragraph No.15, the Hon'ble Supreme Court has laid down the principles for condonation of delay, which reads as follows:

“15. From the aforesaid authorities the principles that can broadly be culled out are:

i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

ii) The terms sufficient cause should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict

proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

Vii)The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii)There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix)The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x)If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi)It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii)The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii)The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”

But here in the present case on hand, nothing has been proved by the petitioners because even though he has stated that he suffered with Jaundice and hence he has not appeared before the Court, he was set *exparte* and *exparte* decree was passed, after he received the notice in E.P.No.64/2011, even though he gave a Police complaint on 05.08.2011, he has not filed the application within 30 days from the date of receipt of the notice and he filed the application only on 21.12.2011, which shows his delaying tactics. In such circumstances, as per the dictum laid down in **Balakrishnan's** case, length of delay is immaterial, but sufficient cause has to be given for condonation of delay. But here he has not given any sufficient cause for why he has not filed the application within the time, i.e. Within 30 days from the date of receipt of notice in E.P.No.64 of 2011.

11.In such circumstances, I am of the view that the Trial Court has considered all the aspects in proper perspective and came to the correct

conclusion. Hence, the fair and decreetal order passed by the trial Court does not warrant any interference and therefore, the revision petition is dismissed as devoid of merits.

12.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

03.06.2015

Index:Yes/No
Internet:Yes/No

cse

To

The Sub-Court, Kallakurichi.

R.MALA,J.

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