

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2015

CORAM

THE HONOURABLE MR. JUSTICE **D.HARIPARANTHAMAN**

C.R.P.(PD)Nos.2821 to 2823 of 2015 and
M.P.Nos.1 to 1 of 2015

T.S.Subbaiya

... Petitioner in all
CRPs

vs.

Vengaiyan

...Respondent in all CRPs

Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 10.12.2014 in E.A.Nos.52,53 and 54 of 2014 respectively in E.P.No.7/2006 in O.S.No.24 of 1999 on the file of Subordinate Judge, Cheyyar (FAC).

For Petitioner : Mr.C.M.Mohanasundaram

For Respondent : Mr.P.Wilson
Senior Counsel for
M/s.P.Wilson Associates

COMMON ORDER

The revision petitioner was brought on record as one of the respondents in E.P.No.7 of 2006 in O.S.No.24 of 1999 on the file of Sub-Court, Cheyyar. The revision petitioner is none other than the brother of the respondent.

2. The respondent herein filed O.S.No.94 of 1993 on the file of Sub-Court, Arani. It is a specific performance suit. The said suit was later transferred to Cheyyar and re-numbered as O.S.No.24 of 1999. In the suit, the first defendant viz., Radhammal was the mother and the second defendant viz., Krishnaveni was one of the sisters of the respondent.

3. Both the defendants remained ex parte and an ex parte decree was passed on 28.01.2003 in O.S.No.24 of 1999.

4. The mother of the respondent, who was the first defendant in O.S.No.24 of 1999 filed I.A.No.367 of 2003 to condone the delay of 171 days in filing the application to set aside the ex parte decree. The same was dismissed by the Trial Court on 16.06.2004.

5. Thereafter, the mother of the respondent viz., Radhammal filed C.R.P.No.2038 of 2004 against the aforesaid order. This Court dismissed the said Civil Revision Petition vide order dated 09.11.2006.

6. However, the second defendant, namely, Krishnaveni did not choose to question the ex parte decree. While so, the mother of the respondent viz., Radhammal died during the year 2011. In the mean time, the respondent herein filed E.P.No.7 of 2006.

7. After the death of Radhammal, the respondent herein brought on record his brother namely one N.S.Srinivasan and also the legal heirs of deceased Radhammal. The legal heirs of Radhammal are N.S.Srinivasan, T.S.Subbiah, S.Padmavathy and Balamani. All those persons, who were brought on record as respondents after due notice, remained ex parte in E.P.No.7 of 2006.

8. As far as the revision petitioner is concerned, he was set ex parte on 22.02.2013 in E.P.No.7 of 2005.

9. The learned counsel for the petitioner has fairly submitted that he was aware of the execution proceedings; he received notice and he was made a party to E.P.No.7 of 2006 as stated above.

10. In these circumstances, the revision petitioner filed E.A.No52 of 2014 to condone the delay of 574 days in setting aside the ex parte order dated 22.02.2013 in E.P.No.7 of 2006; E.A.No.53 of 2014 to set aside the ex parte order dated 22.02.2013 and E.A.No.54 of 2014 to stay all further proceedings pursuant to E.P.No.7 of 2006.

11. All the above applications viz., E.A.Nos.52 to 54 of 2014 were dismissed by the Trial Court by an order dated 10.12.2014. These revision

petitions are against the aforesaid order dated 10.12.2014.

12. Heard both sides.

13. The learned Senior Counsel appearing for the respondent has submitted that without going into the merits of the issue, this Court could dismiss the Civil Revision Petitions on the simple ground that E.A.No.52 of 2014 to condone the delay of 574 days to set aside the ex parte order cannot be maintained, in view of Order 21 Rule 106 of C.P.C.,

14. According to the learned Senior Counsel, one month outer limit is prescribed under Order 21 Rule 106 C.P.C. Under the said provision, any application filed beyond one month cannot be entertained. He would further submit that in view of the statutory provision under Order 21 Rule 106 CPC prescribing one month outer limit, petition filed under Section 5 of Limitation Act cannot be entertained.

15. In support of his contention, the learned Senior Counsel relied on the following judgments:-

i) Damodaran Pillai and ors. v. South India Bank Ltd.,
[MANU/SC/0550/2005]

ii) M.Ponnupandian v. Selvabakiyam and ors. [2003 (4) CTC
225]

16. I am not able to agree with the submission made by the learned Senior Counsel for the respondent on the legal position. It is true that Order 21 Rule 106 C.P.C., prescribes one month outer limit for entertaining an application to set aside an ex parte order passed in execution proceedings. But the learned Senior Counsel has failed to take note of the amendment made by the Madras High Court, by which, an application under Section 5 under Limitation Act could be entertained.

17. In fact, the said issue was squarely covered by the decision of this Court in **N.Rajendran v. Shriram Chits Tamil Nadu Pvt., Ltd., Rep. by its Branch Manager/Foreman, Tiruvarur reported in (2011) 8 MLJ 12]**

18. In the said judgment, the decision relied on by the learned Senior Counsel in **Damodaran Pillai's** case was considered by this Court and held that as far as Tamil Nadu is concerned, the judgment could have no application and Section 5 application could be entertained.

19. Another learned Judge of this Court has passed an order dated 17.06.2013 in C.R.P.(NPD) No.3248 of 2011 **[M/s.United India Insurance Co. Ltd., v. Mrs.Lakshmi and ors]** in the light of the decision rendered in N.Rajendran's case (cited supra).

20. Therefore, as far as this Court is concerned, a petition to set aside the ex parte order can be entertained even beyond 30 days in execution proceedings, however, the aggrieved person has to explain the delay and if the aggrieved person fails to do so, the application deserves to be dismissed. Hence, I am not inclined to agree with the submission made by the learned Senior Counsel to dismiss the CRP at the threshold based on the judgment of the Apex Court that was rendered in the light of Order 21 Rule 106 CPC, without reference to amendment of Madras High Court.

21. The aforesaid narration makes it clear that the mother of the revision petitioner, who was the first defendant took efforts to set aside the ex parte decree and she failed in that effort. The matter came up before this Court by way of CRP, which was also dismissed on 09.11.2006.

22. Further, the learned counsel for the petitioner has submitted that the petitioner was well aware of the execution proceedings and notice was given to him and he was also made as a party. It has to be taken note of that not only the revision petitioner, but his brother one N.S.Srinivasan and the legal heirs of the deceased viz., Rajammal also remained ex parte. One of the sisters viz., Krishnaveni, who was one of the defendants in the suit also remained ex parte and she also remained ex parte in the execution proceedings.

23. In these circumstances, the revision petitioner filed applications in E.A.Nos.52 to 54 of 2014 to condone the delay, to set aside the ex parte order in E.P.No.7 of 2006 on 22.02.2013 and to stay all further proceedings.

24. The Trial Court came to the conclusion based on facts that the delay was not satisfactorily explained. Since the application in E.A.No.52 of 2014 was dismissed, other applications were consequentially dismissed. I do not find any infirmity in the order as the Trial court gave cogent reasons for its conclusion. The revision petitioner fails to explain the delay in filing the application to set aside the ex parte order in E.P.No.7 of 2006.

25. For the all foregoing reasons, the Civil Revision Petitions fail and accordingly, the same are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

11.08.2015

Index : Yes/No
Internet : Yes

Note : Issue order copy on 01.09.2015

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To

The Subordinate Judge, Cheyyar (FAC)

D.HARIPARANTHAMAN,J.,

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