



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

C.R.P. (NPD) (MD)No.1169 of 2015

and

M.P. (MD)No.1 of 2015

Daniel : Petitioner/Petitioner/3rd Defendant

Vs.

1.Esakkimuthu Nadar

2.Udayamani Ammal

: Respondents/Respondents/Plaintiffs

Prayer:

Civil Revision Petition is filed under Section 115 of Code of Civil Procedure to set aside the fair and decretal order in I.A.No.698 of 2014 in O.S.No.41 of 2007, dated 18.03.2015, on the file of learned District Munsif -cum- Judicial Magistrate, Cheranmahadevi.

For Petitioner : Mr.J.Ashok

For Respondents : No Appearance

ORDER

This Civil Revision Petition is directed against the order dated 18 March, 2015, in I.A.No.698 of 2014 in O.S.No.41 of 2007, whereby and whereunder, the learned District Munsif -cum- Judicial Magistrate, Cheranmahadevi, was pleased to dismiss the application filed by the petitioner, to condone the delay in filing the application to set aside the *exparte* decree.

2. The respondents filed a suit in O.S.No.41 of 2007, against the petitioner and others. The suit filed before the learned District Munsif -cum- Judicial Magistrate, Cheranmahadevi, was one for declaration of title and permanent injunction. The petitioner was set *exparte*. Thereafter, *exparte* decree was passed on 26 September, 2011.

3. The petitioner filed an application in I.A.No.698 of 2014, to condone the delay of 1071 days in filing the application to set aside the *exparte* decree.

4. Before the Trial Court, the petitioner contended that he has been residing in the State of Maharashtra. He was not served with any summons or notice from the Trial Court for his appearance. The petitioner submitted his explanation for the delay.

5. The learned Trial Judge dismissed the application primarily on the ground that the petitioner has not produced documents in



support of the reasons given for the delay in question. Feeling aggrieved, the petitioner is before this Court.

6. The learned counsel for the petitioner contended that the petitioner was not served by the Trial Court. The suit was, earlier, dismissed for default. The Trial Court restored the suit, without even issuing notice to the defendants. According to the learned counsel, the petitioner has given sufficient reasons for his absence and as such, the learned Trial Judge was not correct in dismissing the application.

7. None appeared on behalf of respondents.

8. The petitioner was arrayed as third defendant in O.S.No.41 of 2007 on the file of learned District Munsif -cum- Judicial Magistrate, Cheranmahadevi. The petitioner was not served with summons for his appearance in O.S.No.41 of 2007. However, the record shows that the counsel, who appeared on behalf of first defendant, took time to file vakalat on behalf of the petitioner also. The Trial Court, without ascertaining as to whether summons was actually served on the petitioner, made him *exparte* on 13 August, 2007. The action on the part of the counsel for the first defendant taking time to file vakalat on behalf of the petitioner, arrayed as third defendant, made the Trial Court to declare the petitioner *exparte*, without actually verifying as to whether summons was served on him.

9. The suit in question was dismissed for default on 24 January, 2011. It was restored on 09 April, 2011 by the learned Trial Judge. The learned Trial Judge failed to issue notice to the defendants including the petitioner before restoring the suit. Merely because the petitioner was *exparte*, it cannot be said that while considering the application for restoration, he is not entitled to a notice.

10. The respondents filed an application in I.A.No.445 of 2011, to withdraw the suit against the first defendant. The suit was later decreed on 26 September, 2011, by exonerating the first defendant.

11. The records summoned from the Trial Court does not contain any material to show that the petitioner was served with the summons in O.S.No.41 of 2007. The petitioner is, therefore, perfectly correct in his contention that he has been living in Maharashtra and he was not aware of the pendency of the suit in question. There is nothing on record to show that the petitioner instructed the counsel for the first defendant to file vakalat on his behalf. The fact that the respondents have withdrawn the suit against the first defendant would justify the contention taken by the petitioner that it was the hand work of the first defendant and without his knowledge, the counsel took time to file vakalat. These background facts were not considered by the learned Trial Judge, while dismissing the application to condone the delay.



12. The Supreme Court in Parimal vs. Veena [2011(2) Scale 302], explained the concept of "sufficient cause". The Supreme Court said:

"9. "Sufficient Cause" is an expression which has been used in large number of Statutes. The meaning of the word "sufficient" is "adequate" or "enough", in as much as may be necessary to answer the purpose intended. Therefore, word "sufficient" embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that party had not acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been "not acting diligently" or "remaining inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously.

11. While deciding whether there is a sufficient cause or not, the court must bear in mind the object of doing substantial justice to all the parties concerned and that the technicalities of the law should not prevent the court from doing substantial justice and doing away the illegality perpetuated on the basis of the judgment impugned before it."

13. The Supreme Court in S.Ganeshharaju vs. Narasamma [2012(4) Scale 152], observed that matters should be heard on merits rather than shutting the doors at the threshold. The relevant observation reads thus:

"15. The expression "sufficient cause" as appearing in Section 5 of the Indian Limitation Act. 1963, has to be given a liberal construction so as to advance substantial justice.

16. Unless Respondents are able to show malafide in not approaching the court within the period of limitation, generally as a normal rule, delay should be condoned. The trend of the courts while dealing with the matter with regard to condonation of delay has tilted more towards condoning delay and directing the parties to contest the matter on merits, meaning thereby that such technicalities have been given a go-by.

17. Rules of limitation are not meant to destroy or foreclose the right of parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly.



18. We are aware of the fact that refusal to condone delay would result in foreclosing the suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate.

19. In fact, it is always just, fair and appropriate that matters should be heard on merits rather than shutting the doors of justice at the threshold. Since sufficient cause has not been defined, thus, the courts are left to exercise a discretion to come to the conclusion whether circumstances exist establishing sufficient cause. The only guiding principle to be seen is whether a party has acted with reasonable diligence and had not been negligent and callous in the prosecution of the matter."

14. The affidavit filed in support of the application in I.A.No.698 of 2014 contain materials sufficient for the purpose of condoning the delay. I am, therefore, of the view that the learned Trial Judge was not correct in dismissing the application.

15. In the result, the order dated 18 March, 2015, is set aside. The application in I.A.No.698 of 2014 is allowed.

16. In the upshot, I allow the Civil Revision Petition. No costs. Consequently, the connected miscellaneous petition is closed.

sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

The District Munsif -cum- Judicial Magistrate,
Cheranmahadevi.

+ 1 CC TO M/S.JEYAPPA ASSOCIATES SR NO.42206

SML

TE:12/08/2015 : 4P/3C

Order made in
C.R.P. (NPD) (MD) No.1169 of 2015

Dated:-

27.07.2015