



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :23.02.2015

CORAM:

THE HON'BLE TMT. JUSTICE PUSHPA SATHYANARAYANA

CRP (NPD) (MD) No. 2259 of 2014

and

M.P. (MD) No. 1 of 2014

WEB COPY

K. Chellam Naicker

.. Petitioner

Vs.

1.State of Tamil Nadu
Rep. by the District Collector
Tuticorin

2. The Tahsildar
Ottapidaram Taluk
Ottapidaram
Tuticorin District

...Respondents

PRAYER: Petition filed under Section 115 of the Code of Civil Procedure to set aside the order dated 08.7.2014 passed by the Principal District Munsif, Thoothukudi, in I.A. No. 1968 of 2013 in O.S. No. 413 of 2009.

For Petitioners : Mr. M.P. Senthil

For Respondents : Mr. M. Rajarajan, GA

ORDER

Challenging the order dated 08.7.2014 passed by the learned Principal District Munsif, Thoothukudi, in I.A. No. 1968 of 2013 in O.S. No. 413 of 2009 wherein and by which the application filed by the defendants / State of Tamil Nadu under Section 5 of the Limitation Act praying to condone the delay of 1128 days in filing petition to set aside the *ex parte* decree dated 02.7.2010, was allowed, the present Civil Revision Petition has been preferred by the plaintiff.

2. The plaintiff filed suit O.S. No. 413 of 2009 on the file of the Principal District Munsif, Thoothukudi, for declaration that the second schedule property belong to him and for a consequential permanent injunction restraining the defendants and their men from interfering with his possession and enjoyment over the same. The plaintiff had claimed title under a partition deed within the family and claims to be in possession of the suit property. The suit was decreed declaring the title of the second schedule in favour of the plaintiff on 02.7.2010 in which the defendants had remained *ex parte*.



3.As against the said *ex parte* decree, the second defendant Tahsildar, Ottapidaram Taluk, had filed an application in I.A. No. 1968 of 2013 to condone the delay of 1128 days in preferring the application under Order IX Rule 13 CPC.It was contended by the second defendant Tahsildar that the second schedule property is a Government poromboke and the plaintiff cannot have any right over the same. Besides, he contended that due to manpower shortage in the office, the case could not be followed by the defendants and taking advantage of their absence, the plaintiff got the decree in his favour *ex parte*. Therefore, he prayed for condoning the delay of 1128 days in filing petition to set aside the *ex parte* decree. The said application was contested by the plaintiff / respondent therein that there is no just and sufficient cause explained by the defendants and that there is also no proof that there was no man power in Taluk Office.

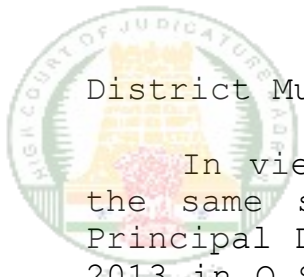
4. The learned Principal District Munsif, Thoothukudi, after hearing the submissions made by the learned counsel for the parties, held that as the claim of the defendants that the second schedule property is a poromboke land, the plaintiff cannot be allowed to take advantage of an *ex parte* decree. Hence, the learned Judge, with a view to afford an opportunity to the defendants to put forth their case, allowed the application on payment of a sum of Rs.3500/- payable to the plaintiff.

5.The only point to be decided before this Court is whether the order of the Court below in allowing the application to condone the delay of 1128 days in filing petition to set aside the *ex parte* decree suffers from any infirmity or irregularity.

6.It is axiomatic that condoning delay is matter of discretion of the Court. It is also settled that the length of delay is no matter whereas only the acceptability of the explanation is the only criteria in condoning the delay. Even short length of delay is uncondonable due to unacceptable explanation.

7.In this regard, this Court would like to refer to the judgment of the Hon'ble Supreme Court in ***Esha Bhattacharjee vs. Managing Committee of Raghunathapur Nafar Academy and others* [2013 (12) SCC 649]** wherein it has been held that a liberal approach has to be adopted while considering the grounds for condonation of delay and Their Lordships have also enlisted the principles that are to be followed while condoning the delay. While recommending a liberal, pragmatic, justice oriented, non-pedantic approach in matters of condonation of delay, the Hon'ble Apex Court, in paragraph 21.13, has also held that the State or a public body or an entity representing the collective cause should be given some acceptable latitude.

8. Applying the said principle, accepting the reason given by the defendants / respondents herein, this Court feels that there is no infirmity in the order passed by the learned Principal



District Munsif, Thoothukudi, warranting interference.

In view of the above, the Civil Revision Petition fails and the same stands dismissed confirming the order of the learned Principal District Munsif, Thoothukudi, passed in I.A. No. 1968 of 2013 in O.S. No. 413 of 2009. However, there shall be no order as to cost. Consequently, connected Miscellaneous Petition is closed. Considering the fact that the suit is of the year 2009 and the defendants have also filed written statement, learned Principal District Munsif, Thoothukudi, is directed to dispose of the suit on or before 31st October, 2015.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1.The Principal District Munsif,
Thoothukudi.

2. The Record Keeper

V.R. Section

Madurai Bench of High Court

Madurai

+1cc to Mr.M.P.Senthil, Advocate Sr.No.8185

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AA/11.03.2015/3p- 4c/

Order in
C.R.P. (NPD) (MD) No. 2259 of 2014

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