



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28/1/2015

C O R A M

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THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.NPD(MD) No.2302 of 2014

a n d

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

B.N.Veerendran

...

Petitioner

Vs

The Idol of Sri Kaliga Parameswari Temple

@ Kamakshi Amman Temple

rep. By its Executive Trustees

having office at No.95 Kammala Street

Tiruchirapalli.

...

Respondent

Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 24/3/2014 in I.A.No.620 of 2013 in O.S.No.1158 of 2001 on the file of the learned I Additional District Munsif, Tiruchirapalli.

For petitioner

... Mr.VR.Shanmuganathan

For respondent

... Mr.H.Lakshmi Shankar

O R D E R

The revision is directed against the order condoning the delay of 1625 days in filing the petition to set aside the ex parte decree passed in O.S.No.1158 of 2001.

2. The petitioner is the plaintiff, who had filed the suit for injunction restraining the defendant from interfering with the peaceful possession of the suit property. The said suit was decreed ex parte on 1/3/2007. The defendant, who is the temple is represented by the Executive Trustee (elected). The said Sri Kaliga Parameswari Temple @ Kamakshi Amman Temple exclusively belong to Vishwakarma Community. For the management of the Temple, elections were periodically held and the elected trustees will elect the executive trustees among themselves and the period of the office of the trustees is only for three years. The fact that the suit property belong to Devasthanam is also evidenced by the Scheme Decree passed by the Honourable District Court, Tiruchirapalli in O.S.No.2 of 1927.

3. The suit property is a vacant site and only when the trustees are intended to construct a new temple, it was informed by the plaintiff that he had obtained a decree from the Court. Only on seeing the copy of the decree, the trustee has got knowledge of the suit being decreed ex parte. Immediately, the application to set aside the ex parte decree along with the petition to condone the delay in filing the same was filed by the defendant temple.



4. A perusal of the judgment and decree which is attached to the typed set also shows that the judgment is passed ex parte without touching upon the merits or going into the factual details claimed in the plaint.

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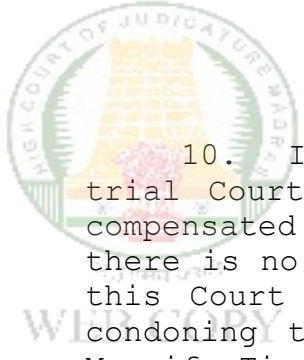
5. The plaintiff contested the said application on the ground that the petitioner is contesting various other cases in the same Court and regularly visiting the Court. Hence they should have had knowledge about the case. In any event, as the decree has become final and conclusive and the same cannot be set aside almost after four years.

6. The District Munsif, who heard the application, allowed the same by condoning the delay holding that in a suit of immovable property, the substantial right of the parties should not be put in infringement without giving due opportunity to lead evidence on either side. As the trustee is a newly elected person, he might not have the details about the case. Before considering the facts and in order to give an opportunity to the defendant to contest the suit, the application was allowed on payment of Rs.3,000/-. The said order is under challenge in the above revision.

7. It was contended by the learned counsel for the petitioner that the delay is enormous and the same cannot be set aside after 4 ½ years, as there was no sufficient cause for condoning the delay. Whether the District Munsif has correctly exercised his discretion? The trial Court found that the deponent as a newly elected Executive Trustee and he was not aware of the proceedings pending between the plaintiff and the temple.

8. The District Munsif in his order had emphatically stated that in case of immovable property, the parties should be given an opportunity to lead evidence. The suit is only for a bare injunction and the decree is obtained without contest. There is no finding on merits by the District Munsif, who passed the ex parte decree. The delay petition was condoned by the trial Court by exercising its discretion. Unless the discretion exercise is on wrong principles, the same need not be set aside.

9. It is time and again reiterated by the Supreme Court that a liberal approach should be extended while considering the application for condonation of delay in setting aside exparte decrees. Sufficient caution has been exhibited to know that wherever there is a lack of bona fides or attempted to hoodwink, the Court by the party concerned, who has come forward with the application for condonation of delay, in such cases, indulgence cannot be shown. It is also clear that it is not the length of the delay that matters but the acceptability of the explanation given by the party. Even a short delay may not be condoned, if the explanation offered is unacceptable. If the party can prove that the delay occasioned not due to the deliberate conduct of the party, but due to any other reason, then the other side may be sufficiently compensated. The prejudice that may be caused to the other side should be compensated monetarily, when the delay can be favourably ordered. Accordingly, the trial Court had allowed this application as there was bona fide in the conduct of the defendant, besides the ex parte judgment was not a considered one.



10. In the above circumstances, the exercise of discretion by the trial Court need not be interfered with. The respondent is also been compensated with costs. From the facts of the case, it can be seen that there is no total lack of bona fides on the part of the defendant. Hence this Court is satisfied with the reasons adduced by the defendant for condoning the delay and hence the order of the I Additional District Munsif, Tiruchirapalli is confirmed.

11. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(Writ)

/True copy/

sub Assistant Registrar

mvs.

To

The I Additional District Munsif, Tiruchirapalli.

C.R.P.NPD (MD) No.2302 of 2014
28.01.2015

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