



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11/3/2015

C O R A M

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THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.NPD (MD) No.442 of 2015

S. Kamal ... Petitioner /Respondent/Plaintiff

Vs

Amutha ... Respondent/Petitioner/Defendant

Petition filed under Section 115 of the Code of Civil Procedure to set aside the fair and decreetal order passed by the Principal District Munsif, Srivilliputhur in I.A.No.1488 of 2014 in O.S.No.206 of 2011 on 3/2/2015 and allow this Civil Revision Petition.

For petitioner ... Mr.G.Marimuthu

For respondent ... Mr.N.Rahamadullah

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O R D E R

This Civil Revision Petition is filed by the plaintiff against the order passed in I.A.No.1488 of 2014 allowing the application filed under Section 5 of the Limitation Act.

2. The plaintiff had filed a suit for declaration of title and for recovery of possession. In the said suit, the defendant was set ex parte on 5/9/2011 and on 28/1/2012, an ex parte decree was passed. According to the defendant, she was suffering from Jaundice from 1/9/2011 and she was taking native treatment. Only after the service of notice in the E.P., she got the knowledge about the ex parte decree. As she was suffering from Jaundice which resulted in surgery, she had to be treated in the Hospital and could not come out of the house thereafter. Therefore, there was a delay of 883 days in setting aside the ex parte decree.

3. The said application was resisted by the plaintiff/petitioner, who is the plaintiff contending that there was no explanation for each day's delay and there is no evidence for the treatment for the entire 883 days.

4. The learned District Munsif, Srivilliputhur, after considering the documents and evidence, allowed the same on payment of costs of Rs.10,000/-. Aggrieved by the same, the above revision has been filed by the plaintiff.



5. The only question that has to be decided is whether the revision has to be allowed.

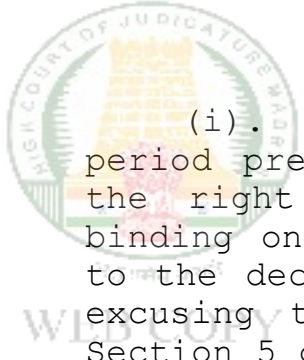
6. According to the defendant, she was suffering from Jaundice even from 1/9/2011 for which she is taking native treatment which later affected her uterus. She also had to undergo a surgery which made her immobile and she could not appear either in person or instruct her counsel. Only after the receipt of the notice in the execution, she came to the knowledge about the ex parte decree against her. Immediately, an application to set aside the ex parte decree was filed with a delay of 883 days.

7. The plaintiff vehemently contested that the defendant has not come out with the truth and has not given the specific dates and on which she was sick and the date of the surgery and period for which she was taking rest. Hence prayed for dismissal of the application.

8. Exs.R.R.1 to 3 are the documents filed on 19/12/2012 by the defendant. Ex.R.1 is the delay petition. Ex.R.2 is the petition to set aside the ex parte decree and Ex.R.3 is the order of setting aside in E.P.No.63 of 2012.

9. Considering the above said documents, the learned Principal District Munsif, Srivilliputhur had come to the conclusion that the counsel engaged by the defendant though had filed all the three applications on the same date had continued only with Ex.R.3 proceedings and did not take care to proceed with Ex.R.1 and Ex.R.2 proceedings.

10. Though normally an Advocate, who is appearing for the defendant in the execution proceedings would immediately take steps to set aside the ex parte decree, the Advocate had bungled in this case. Hence it was argued by the learned counsel for the defendant that the mistake of the counsel should not jeopardise the interest of the party. Besides, the defendant had categorically pleaded that she was suffering from Jaundice and thereafter followed by a surgery, from which one can understand that she was not able to actively defend her case in the suit. In this regard, this court as well as the Apex Court had held in catena of cases that a liberal, pragmatic and justice oriented approach should be taken in deciding the matters dealing with delay. The sufficient cause defined under Section 5 of the Limitation Act should be understood in its proper sense. As substantial justice is paramount and pivotal, technical consideration should not be given utmost importance. While deciding an application under Section 5 of the Limitation Act, the Courts have to consider only two aspects, viz.,



(i). The first consideration is that the limitation of the period prescribed for making the application would give rise to the right in favour of the plaintiff/decreed holder which is binding on both the parties. Such legal right which has accrued to the decreed holder cannot be disturbed, if sufficient cause of excusing the delay is not shown by the party applying under Section 5 of the Limitation Act and

(ii). The second consideration which cannot be ignored is that if sufficient cause of excusing delay is shown, discretion is given to the Court to condone the delay and set aside the ex parte decree. Even if sufficient cause is shown, party is not entitled to the condonation of delay as a matter of right. Therefore, the discretion is with the Court to condone the delay in question on proof of sufficient cause which is a condition precedent for the exercise of such discretion.

11. In this case, though the applications have been filed in the year 2012, the mistake of the counsel had resulted in the delay in addition to the health condition of the defendant. Hence this Court feels that the order of the trial Judge, allowing the application by condoning the delay on payment of Rs.10,000/- is correct and does not warrant any interference.

12. In the result, this Civil Revision Petition is dismissed, confirming the order passed by the Principal District Munsif, Srivilliputhur in I.A.No.1488 of 2014 in O.S.No.206 of 2011 on 3/2/2015. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub-Assistant Registrar

To
The Principal District Munsif, Srivilliputhur.

+One cc to Mr.G.Marimuthu, Advocate, SR.No.11767
+One cc to Mr.N.Rahamadullah, Advocate, SR.No.11688

mvs

RL/4 c- 24/3/2015

order made in
C.R.P.NPD (MD) No.442 of 2015