

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2016

CORAM

THE HONOURABLE Dr. JUSTICE. S.VIMALA

Civil Revision Petition No.3315 of 2009
and M.P.No.1 of 2009

1. Rajangam
 2. Smt. Thirumalai Ammal
 3. Smt. Sakila
- Petitioners/D-2,D-8 & D-9

Vs.

1. Smt. Senthamaraj
2. Neelavathi (deceased)
3. Sagunthala
4. G.Balakrishnan
5. Smt. Vasantha
6. Smt. Pattu
7. Smt. Dhanam

(R-4 to R-7 are the L.Rs of Late. Neelavathi)

(R-4 to R-7 brought on record as
L.Rs of the deceased, R-2, vide
order of Court, dated 10.10.2012,
made in M.P.Nos.1 to 3 of 2012,
in CRP No.3315 of 2009)

.... Respondents/Plaintiffs 1 to 3 &
L.Rs of 2nd plaintiff

Prayer :- Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, 1908, to set-aside the fair and decreetal order, dated 22.07.2009, passed in I.A.No.155 of 2004 in O.S.243 of 1997 on the file of the learned Additional District Munsif, Cheyyar.

For Petitioners : Mr. M.Ramesh

For Respondents : Mr. N.Ramanujam

O R D E R

"What are the essential factors to be considered while considering the Application to set-aside the exparte decree - whether it is a justifiability of the reasons stated for non-appearance alone before the Court or the nature of pleadings /

defence, the stake involved and the possibility of rendering substantial justice, at the same time compensating the loss and inconvenience caused to the other side", is the issue canvassed in this Revision Petition.

2. Defendants 2, 8 and 9 in the suit are the Revision Petitioners and the plaintiffs are the respondents.

3. The plaintiffs / respondents herein filed a suit in O.S.No.243 of 1997, claiming their 3/6th share in the suit property. This suit was filed before the learned Principal District Munsif, Cheyyar, and later, on the orders of transfer by the learned Principal District Judge, Tiruvannamalai, it has been transferred to the file of learned Additional District Munsif, Cheyyar, in which Court, it has been numbered as O.S.No.120 of 1994. The suit has been dismissed for non-appearance of both parties on 15.12.1999. Later on, after restoration, for non-appearance of the defendants and non-filing of the written statement, the defendants had been set exparte, on 30.04.2001. The judgment was delivered on 09.11.2001, decreeing the suit.

4. Defendants 2, 8 and 9 filed I.A.No.155 of 2004 to condone the delay of 797 days in filing the petition to set-aside the exparte decree. In the said Application, it is stated that there was a Panchayat during the pendency of the suit and on the strength of the assurance given by the plaintiffs that they will withdraw the suit, the Revision Petitioners did not meet their counsel and only thereafter, they came to know about the exparte decree and also about the pendency of the Application for final decree. The said Application came to be dismissed by the order, dated 22.07.2009. Challenging the same, this Civil Revision Petition has been filed.

5. The learned counsel for the plaintiffs submitted that there is no sufficient cause to condone the delay of 797 days in filing the Application to set-aside the exparte decree and therefore, the Court below has rightly dismissed the same and that the Revision Petition is liable to be dismissed consequently.

6. It is pointed out by the learned counsel for the Revision Petitioners that even after the receipt of notice in the final decree application, the Revision Petitioners did not take immediate steps to get the exparte decree set-aside and this conduct would show that the Revision petitioners were negligent and indifferent in conducting the case and therefore, the Court below rightly did not condone the delay.

7. A perusal of the order passed by the Court below indicates that there is a delay of two years in filing the Application to set-aside the ex parte decree, after the appearance of the parties in the final decree application. The Court below has stated that no explanation was offered by the Revision Petitioners herein. But the fact remains that the explanation has been offered, however, the Court below has not chosen to consider, as to whether the explanation is acceptable or not. It is not uncommon that people enter into negotiation even during pendency of the litigation and as the suit is for partition there is likelihood of the parties having entered into negotiation. However, this explanation has to be considered along with attendant factors to be taken into account.

7.1. Remanding the matter again to consider the reasonableness or acceptableness would result in further delay in disposal and therefore, this Court has chosen to pass a final order giving a finality.

8. The learned counsel for the Revision Petitioners would submit that the length of delay alone is not a criteria to dismiss the petition and the Court is expected to consider the nature of the claim made in the suit, the nature of defence taken by the defendants, the stake involved in the matter and the possibility of rendering substantial justice to the parties. It is also represented that the inconvenience caused to the otherside can be compensated by costs and the defendants are ready to pay the costs, if imposed by this Court.

8.1. The learned counsel for the Revision petitioners relied upon the following decisions, in order to support the contention that the grounds, which are required to be considered by the Court, (which passed the impugned order), were not considered and if that had been done, the petition would not have resulted in dismissal:-

(i) CDJ 2014 MHC 3671 (M/S. Bharat Petroleum vs C.S.Prakasa Rao):-

"14. While deciding, whether the delay has to be condoned or not, the nature of the relief claimed in the plaint, the nature of the defence taken and the benefits, that could be sought under Section 9 of the City Tenants Protection Act or in the alternative, to make a claim of compensation under Section 3 of the City Tenants' Protection Act, have to be kept in mind."

(ii) CDJ 2001 SC 404 (M.K.Prasad v. P.Arumugam):-

"While deciding the application for setting aside the ex-parte decree, the court should have kept in

mind the judgment impugned, the extent of the property involved and the stake of the parties. We are of the opinion that the inconvenience caused to the respondent for the delay on account of the appellant being absent from the court in this case can be compensated by awarding appropriate and exemplary costs."

(iii) CDJ 2002 SC 190 (Ram Nath Sao @ Ram Nath Sahu And ... vs Gobardhan Sao And Others):-

"13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor."

(iv) Order of this Court, dated 31.07.2015 in CRP No.662 of 2005 (Manimegalai : vs Panaian):-

"6. The Supreme Court in M.K.Prasad v. P.Arumugam [2001 (6) SCC 176], while considering the question regarding delay in applying for setting aside the exparte decree, observed that the Court ought to keep in mind the judgment impugned in the matter, the extent of property involved and the stake of the parties, while deciding an application to set aside the exparte decree.

7. The Supreme Court in Ram Nath Sao v. Gobardhan Sao [2002(3) SCC 195], explained the expression "sufficient cause" within the meaning of Section 5 of the Limitation Act, 1963. The Supreme Court very clearly observed that explanation for the delay should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case."

(v) Order of this Court, dated 07.01.2016 (Shri. Srijith C vs The Customs):-

"(iv) Standard Treads v. Collector, reported in 1996 (83) ELT 30 (Ker):-

4. It has to be kept in the forefront that ordinarily a litigant does not stand to benefit by lodging an appeal late. He has no interest in wasting time. It has also to be borne in mind that the great possibility of disastrous results creating a situation that a meritorious matter being thrown out at the threshold causing a heavy burden to the cause of justice has to be defeated at the very start.

5. Judiciary gets its respect in the legal order not on account of its power to legalize injustice on technical grounds. But, it has the capacity and purpose to remove injustice wherever it is in sight and this is what is understood and pointed out by the Apex Court as justice-oriented approach in regard to the matters being thrown out at the threshold of the concerned proceedings."

8.2. Considering the dictum laid down in the above cases, it is for this Court to consider the cumulative circumstances available in this case as to the nature of the relief claimed, the stake involved and the possibility of doing substantial justice to the parties, while compensating the party who suffered inconvenience.

8.3. The delay involved even after entering appearance in the final decree cannot be appreciated, but, at the same time, the predicament involved in not permitting the second Revision Petitioner (8th defendant) to contest the case on merits should be taken into account, while deciding whether to condone the delay or not.

9. It is contended that the status of the eighth defendant as the wife itself is under dispute and if this case is allowed to reach the finality, without an opportunity challenging that, it may affect her right, in all other cases also, as the finding in this case would stand as constructive res judicata and that in such contingency, the interest of the second Revision Petitioner would be greatly prejudiced.

10. Considering the extraordinary hardship to which the eighth defendant would be put to, this Court is inclined to set-aside the order, dismissing the Application to condone the delay. It is appropriate that, the inconvenience caused to other side must be compensated by costs. Therefore, appropriate conditions are to be imposed, while passing orders in the Application to condone the delay.

11. Under normal circumstances, after setting aside the order of the lower Court, this Court would have remanded the matter to the concerned Court to decide the application to set-aside the exparte decree as well as the application to condone the delay in filing the Application to set-aside the exparte decree. But, as this matter is a long pending one, this Court has chosen to dispose of the same, by passing orders in the Application to condone the delay and the Application to set-aside the exparte decree.

11.1. The eighth defendant has already filed the written statement along with the application to set-aside the exparte decree on 18.10.2006.

12. In the result:

(i) the order, dated 22.07.2009, passed in I.A.No.155 of 2004 in O.S.243 of 1997 on the file of the learned Additional District Munsif, Cheyyar, is hereby set-aside and this Civil Revision Petition is allowed.

(ii) The Application to condone the delay and the application to set-aside the exparte decree would stand allowed, subject to the Revision Petitioners (together) paying costs of Rs.10,000/- to the first respondent, Rs.10,000/- to the third respondent and Rs.5,000/- to respondents 4 to 7 (as they are recently impleaded), within a period of one week from the date of receipt of a copy of this order.

(iii) The learned Additional District Munsif, Cheyyar, shall dispose of the suit, within a period of two months from the date of receipt of a copy of this order.

(iv) It is made clear that the Revision Petitioners shall not seek adjournment before the Trial Court and both parties shall cooperate for the speedy disposal of the case.

(v) The written statement of D-2 and D-9, if not filed already, shall be filed within a period of two weeks from the date of receipt of a copy of this order.

No costs. Consequently, the connected CMP is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

srk

Sub Assistant Registrar

To

1. The Additional District Munsif,
Cheyyar

2. The Section Officer,
V.R.Section,
Madras High Court, Chennai - 104

C.R.P. No.3315 of 2009
& M.P.No.1 of 2009

KGK(CO)
CA(18/03/2016)