

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2016

CORAM:

THE HON'BLE Ms. JUSTICE R.MALA

C.M.P.No.11956 of 2016

in

C.R.P.No.SR 53007 of 2016

Senthil Prabu

S/o.Venkatachalam

.. Petitioner/Petitioner

Vs.

Kumaravel

S/o.Late S.A.Balasundaram

.. Respondent/Respondent

Prayer:

Petition filed under Section 5 of the Limitation Act to condone the delay of 415 days in filing the Civil Revision Petition.

For Petitioner : Mr.R.Ezhilarasan

For Respondent : Mr.R.Marudhachalamurthy

O R D E R

Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

2.The petitioner has come up with the present application to condone the date of 415 days in filing the Civil Revision Petition against the fair and decreetal order dated 03.03.2015 made in I.A.No.897/2014 in O.S.NO.149/2011 on the file of the Subordinate Court, Sankari.

3.The learned counsel appearing for the petitioner would submit that the counsel engaged by the petitioner previously has

not intimated about the dismissal of the application in I.A.No.897/2014 which was filed to condone the delay of 122 days in filing the petition to set aside the exparte decree dated 12.03.2014 passed in the suit. The petitioner came to know about the same only after receipt of notice for delivery in E.A.No.68/2016 and hence, he has come forward with the present Civil Revision Petition. Thus, the learned counsel for the petitioner prayed for condoning the delay of 415 days in filing the Civil Revision Petition.

4.Resisting the same, the learned counsel appearing for the respondent would submit that the respondent herein as plaintiff had filed the suit in O.S.No.149/2011 for specific performance and the suit was decreed. However, with a view to prevent the respondent from enjoying the fruits of the decree, the revision petitioner had preferred an application to set aside the exparte decree. Subsequently, another exparte decree was passed on 12.03.2014. Thereafter, he filed an application in I.A.No.897/2014 under Section 5 of the Limitation Act to condone the delay of 122 days in filing the petition to set aside the exparte decree dated 12.03.2014 passed in the suit. After contest, the said application was dismissed on 03.03.2015. However, the petitioner has not preferred any revision immediately thereafter and now, he has come forward with the present application to condone the delay of 415 days in filing the Civil Revision Petition. In the meanwhile, the execution petition preferred by the respondent/plaintiff in E.P.No.173/2014 was allowed on 23.07.2015 and the sale deed was executed in favour of the respondent/plaintiff and the E.P was closed on 26.02.2016. Thereafter, on receipt of notice in E.A.No.68/2016 which was filed for delivery of possession, the petitioner has come forward with the present application which shows the attitude of the petitioner in preventing the respondent/plaintiff from enjoying the fruits of the decree. Thus, the learned counsel for the respondent prayed for dismissal of the application.

5.Considered the rival submissions made by both sides and perused the typed set of papers.

6.The respondent herein as plaintiff has filed the suit for specific performance and for permanent injunction. The said suit was decreed exparte on 12.03.2014. Thereafter, the petitioner/defendant preferred an application in I.A.No.897/2014 for condoning the delay of 122 days in filing the petition to set aside the exparte decree dated 12.03.2014. After contest, the said application was dismissed on 03.03.2015 and in paragraph 6 of the said order, the detailed facts of the case and the attitude of the petitioner have been clearly narrated.

Against the said order, no revision was filed in time. However, now he has come forward with the present application to condone the date of 415 days in filing the Civil Revision Petition against the fair and decreetal order dated 03.03.2015 made in I.A.No.897/2014 in O.S.NO.149/2011 on the file of the Subordinate Court, Sankari.

7. In paragraph 2 of the affidavit filed in support of the present application, the petitioner has stated that his counsel had not intimated about the dismissal of the application in I.A.No.897/2014 on 03.03.2015. But the above argument does not hold good because even on an earlier occasion, an exparte decree was passed and it was set aside on payment of costs of Rs.1500/-. While so, on receipt of the notice in the execution petition, the petitioner has filed an application in I.A.No.897/2014 under Section 5 of the Limitation Act to condone the delay of 122 days in filing the petition to set aside the exparte decree dated 12.03.2014. After contest, the said application was dismissed on 03.03.2015. Therefore, the revision petitioner/defendant should have been very diligent in meeting his counsel to follow up the matter. However, he had kept quiet all along and now he is making allegation against his previous counsel and had filed the present application. Nowadays, it has become routine for the clients to put the blame on their erstwhile counsels and keep filing applications to delay the proceedings. Further, it is pertinent to note that the execution petition preferred by the respondent/plaintiff in E.P.No.173/2014 was allowed on 23.07.2015 and the sale deed was executed in favour of the respondent/plaintiff and the E.P was closed on 26.02.2016. Thereafter, on receipt of notice in E.A.No.68/2016 which was filed for delivery of possession, the petitioner has come forward with the present application which shows the malafide intention of the petitioner in preventing the respondent/plaintiff from enjoying the fruits of the decree.

8. As per the dictum of the Hon'ble Apex Court reported in AIR 1998 SC 3222 (N.Balakrishnan v. M.Krishnamurthy), it was specifically held that length of delay is immaterial, but the acceptability of the explanation is the only criterion. It is appropriate to incorporate para-9 of the said decision:

"9. It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the

Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases

delay of very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior Court would be free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammelled by the conclusion of the lower Court."

9. At this juncture, it would also be appropriate to consider the dictum laid down in 2011 (4) SCC 363 (Lanka Venkateswarlu (Dead), rep. by legal heirs) Vs. State of Andhra Pradesh and others), wherein it was held that while considering the applications for condonation of delay under Section 5 of the Limitation Act, the Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason.

10. Considering the facts of the present case in the light of the above decisions, I am of the view that there is no sufficient reason to condone the delay and hence, the present application is liable to be dismissed and accordingly dismissed. Consequently, the C.R.P. (NPD).SR.No.53007/2016 is also dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

pgp

To,

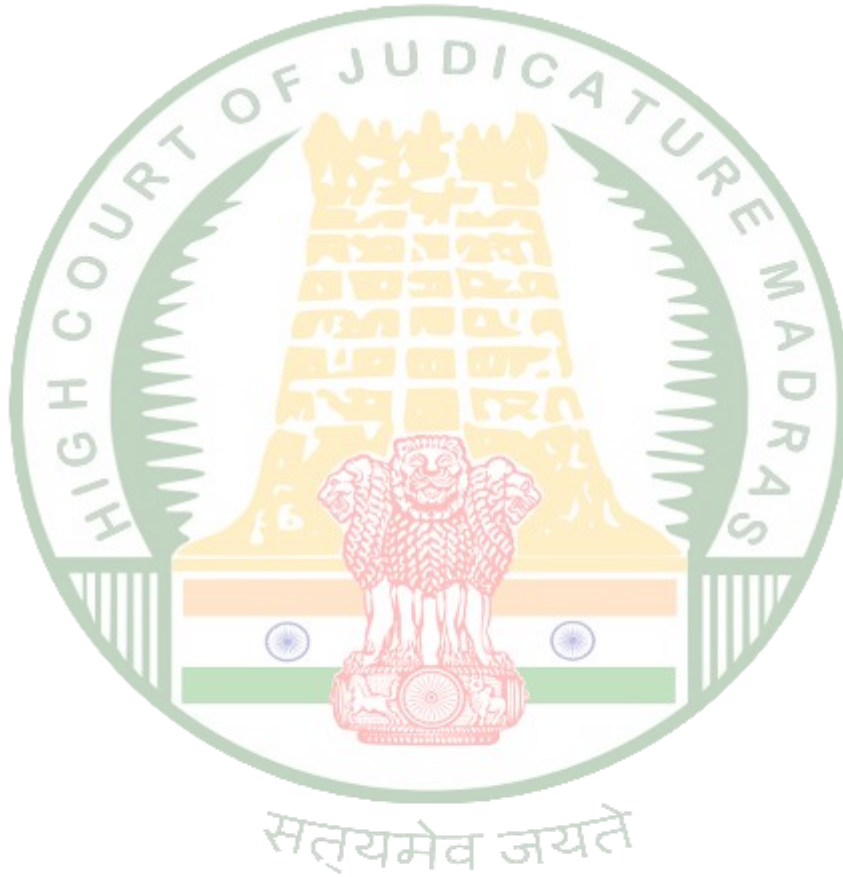
The Subordinate Judge,
Subordinate Court,
Sankari.

WEB COPY

+lcc to Mr.Marudhachala Moorthy, Advocate, S.R.No.73520
+lcc to Mr.Ezilarasu, Advocate, S.R.No.73417

GM(CO)
RS(12/01/2017)

C.M.P.No.11956 of 2016
in
C.R.P.No.SR 53007 of 2016



WEB COPY