

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.3257 of 2014
and M.P.No.1 of 2014

K.Srinivasan

... Petitioner

Vs.

1.G.Govinda Pillai

Gopal Pillai (Died)

2.Jayalakshmi

... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decreetal order made in I.A.No.329 of 2012 in O.S.No.108 of 1998 on the file of the Additional District Munsif Court, Gingee.

For Petitioner : Mr.P.Srinivas

For Respondents : Mr.M.Santharaman (R1)
R2 - given up

ORDER

Challenging the fair and final order passed in I.A.No.329 of 2012 in O.S.No.108 of 1998 on the file of the Additional District Munsif Court, Gingee, the plaintiff has filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.108 of 1998 for declaration and permanent injunction.

3.Since the defendant failed to appear before the trial Court, he was set exparte and an exparte decree was passed on 15.09.2004. Subsequently, the 2nd defendant filed an application in I.A.No.906 of 2009 in O.S.No.108 of 1998 to condone the delay of 1755 days in filing the petition to set aside the exparte decree. The said application was not pressed by the 2nd defendant. Accordingly, the application was dismissed as not pressed by the trial Court on 15.03.2010.

4.Thereafter, the plaintiff filed an application in I.A.No.312 of 2007 seeking for police protection and in that application, the 2nd defendant appeared through counsel and made an endorsement that he would not enter into the suit property. On the basis of the endorsement made by the 2nd defendant, the application in I.A.No.312 of 2007 was closed. Subsequently, on 12.10.2010, when the plaintiff went to the suit property to cut trees, he was prevented by the 2nd defendant and therefore, the plaintiff filed an Execution Petition in E.P.No.54 of 2011 seeking police protection and the same was ordered by the Executing Court.

5.As against the said order, the 2nd defendant preferred a Civil Revision Petition in C.R.P.(NPD).No.3605 of 2011 and this Court, by order dated 31.01.2012 dismissed the Civil Revision Petition and confirmed the order passed by the Executing Court. Thereafter, the 2nd defendant filed an application in I.A.No.329 of 2012 in O.S.No.108 of 1998 to condone the delay of 2684 days in filing the application to set aside the exparte decree dated 15.09.2004. In the affidavit filed in support of the petition, the 2nd defendant has stated that he suffered snake bite on 18.03.2001 and was taking treatment for the same. He has also stated that he entered appearance in the suit through an Advocate and was contesting the suit.

6.Further, in the affidavit the 2nd defendant has stated that since he was taking treatment away from his Village, he could not file the application to set aside the exparte decree in time. As stated above, the 2nd defendant had entered appearance in I.A.No.312 of 2007 before the trial Court and made an endorsement in the said petition. Subsequently, in the year 2011, he filed a Civil Revision Petition in C.R.P.(NPD).No.3605 of 2011 challenging the order passed in E.P.No.54 of 2011. When the 2nd defendant had knowledge about the exparte decree passed in the suit in O.S.No.108 of 1998 in the year 2007, he has not explained the reasons for not filing the application to set aside the exparte decree at least in the year 2007. Only

after the disposal of the Civil Revision Petition in C.R.P.(NPD).No.3605 of 2011 on 31.01.2012, the 2nd defendant has come forward with the present application to condone the inordinate delay of 2684 days in filing the application to set aside the exparte decree.

7.The learned counsel appearing for the petitioner, in support of this contention, relied upon the following judgments:

(i)***CDJ 2016 MHC 2630 [Mohanarangan Vs. Ishrad Ali]*** wherein this Court held that unless the party seeking for condonation of the delay shows sufficient cause for the delay, the delay should not be condoned. Further, this Court also held that the trial Court, without considering the merits of the matter, should not mechanically condone the delay.

8.The same ratio was also laid down by this Court in the judgment reported in ***CDJ 2016 MHC 3305 [Saradhamani & another Vs. Sankar & others]***.

9.The learned counsel appearing for the respondent submitted that when the trial Court had exercised its positive discretion, the Superior Court should not interfere with the discretion exercised by the trial Court. Further, the learned counsel submitted that the 2nd defendant had

satisfactorily explained the reasons for the delay in the affidavit filed in support of the petition.

10. The learned counsel, in support of his contention, relied upon a judgment reported in **1999 1 M.L.J. 114 [N.Balakrishnan Vs. M.Krishnamurthy]** wherein the Hon'ble Supreme Court held as follows:

“9. It is axiomatic that condonation of delay is a matter of discretion of the court. Sec. 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 a want of acceptable explanation whereas in certain other cases, delay of a 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.”

11.It is settled position that unless a party seeking for condonation of the delay gives sufficient cause for condoning the delay, the delay should not be condoned. No doubt, length of delay is not a matter for consideration and the reasoning given by the petitioner has to be considered while deciding an application filed under Section 5 of the Limitation Act. In the absence of sufficient reason given by the party, the delay cannot be condoned.

12.The ratio laid down by the Hon'ble Supreme Court in **(2015) 1 Supreme Court Cases 680 [H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and another]** squarely applies to the facts and circumstances of the present case.

13.In the case on hand, when the 2nd defendant had entered appearance in the year 2007 in the application in I.A.No.312 of 2007 and also filed a Civil Revision Petition in 2011 before this Court, the reasoning for not filing the application before the trial Court to set aside the exparte decree was not explained by the 2nd defendant. In the absence of any reason by the 2nd defendant to file the application at the earliest point of time to set aside the exparte decree, the trial Court should not have condoned the delay. The reasoning given by the trial Court for condoning

the delay cannot be accepted and hence, the same is liable to be set aside. Accordingly, the fair and decreetal order passed in I.A.No.329 of 2012 in O.S.No.108 of 1998 are set aside.

14.In the result, the Civil Revision Petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

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To

The Additional District Munsif Court,
Gingee.

M.DURAIWAMY,J.
va

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