

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.11.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.1684 of 2011
and
M.P.No.1 of 2011**

R.Shantha

.. Petitioner

Vs.

M.Rajaraman

..Respondent

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the Order and Decree made in I.A.No.727 of 2004 in O.S.No.91 of 1997, on the file of the Principal District Munsif, Cuddalore, Cuddalore District, dated 15.02.2011.

For Petitioner : Mr.K.A.Ravindran

For Respondent : Mr.N.Kannan

ORDER

The case of the revision petitioner is that the plaintiff filed a suit for Recovery of money in the year 1997, as against the respondent herein. The said suit came to be decreed Ex Parte on

24.12.1997. Since the respondent resided at Pondicherry, thereupon the revision petitioner filed Execution Petition before the Sub-court, Cuddalore to transmit the Decree for execution before Sub-court Pondicherry. On receipt of notice in the above execution proceedings, the respondent filed a petition under Section 5 of Limitation Act to condone the delay of 2036 days in filing the application to set aside the exparte decree. Whereas, the Execution court proceeded with the execution and the respondent's property was put on auction and was sold on 26.04.2007. The auction purchaser has also deposited a sum of Rs 4,14,500/-. However, the respondent herein despite the satisfaction of decree by the revision petitioner has chosen to proceed with the above condone delay petition in I.A.No.727 of 2005, by filing a Set Aside application in E.A No.194 of 2007 to set aside the very sale by depositing a sum of Rs 1,22,463/- .

2.The trial court, however, erred in allowing the respondent's Interlocutory application in I.A.No.727 of 2005 by imposing a cost of Rs 1000/- to be paid as compensation to this revision petitioner. The said order of allowing the respondent's application to condone the delay of 2036 days in filing application for setting aside the Ex parte decree is impugned herein.

3.The learned counsel for the revision petitioner contends that the Trial court has erred in allowing the inordinate delay of 2036 days in filing the exparte set aside petition. Though the respondent herein failed to explain sufficient cause behind the delay in filing the set aside application, the trial Court has mechanically condoned the delay by taking a liberal approach. The order of the trial court is contrary to the settled law that in case of delay in filing any application, the petitioner is bound to explain every day's delay in order to condone it. The respondent herein despite wantonly evaded the service of summons at the earlier point of time, but now has filed the application, as if he got knowledge of the suit only on receipt of notice in the EP proceedings. The application is being filed with an ulterior motive to harass the revision petitioner, besides to prevent the revision petitioner from enjoying the fruits of decree.

4.The learned counsel for the respondent contends that the respondent was totally unaware of above said suit filed against him by the revision petitioner, since no summon stood served on him in the said suit. The respondent got knowledge of the suit and its decreetal order, only on receipt of the notice in Execution proceedings. Further it was submitted that the delay is neither wanton nor willful. The respondent due to suicidal death of his

relative girl namely Shanthi on 27.04.1995, who was under the care and custody of the respondent, in the respondent's house was totally put to mental agony. Because of the same he was unable even to attend his work in UCO bank, Nellikuppam branch. Hence he became jobless and stressed. To the misfortune of the respondent, one another namely Uma devi the respondent's relative, who came to the respondent's house for vacation also committed suicide on 16.04.1999 due to her failure in P.U.C exams. In the meanwhile stating the mental stress and agony underwent by the respondent, the employer UCO bank also removed the respondent from its roll. Hence the respondent on facing the successive misfortunes was unaware of the suit, besides the fact that summon was not served on the respondent. The respondent only on receipt of the notice in the Execution petition on 18.07.2003 came to know about the exparte decree dated 24.12.1997. The respondent has also duly proved the above said facts with material evidence. Only on appreciation of the said facts and satisfied with the bonafide and genuine case of the respondent, the Trial court has rightly allowed the respondent's application to set aside the exparte decree passed against him. Hence, he prayed for dismissal of the Civil Revision Petition.

5.I heard Mr.K.A.Ravindran, learned counsel appearing for the

petitioner and Mr.N.Kannan, learned counsel appearing for the respondent and perused all the material records.

6.On perusal of the impugned order this court finds that the respondent to substantiate his claim has marked Ex P1 dated 27.04.1995 to show that the above said Shanthi died in respondent's house. A medical certificate dated 23.08.1999 showing that the respondent was not healthy mentally. The respondent has marked Exhibits P4 and P6 the Certificate and FIR respectively to show that one Uma devi respondent's close relative died in respondent's house on 16.04.1999. The Medical certificates dated 01.05.2000, 05.05.2000 and 28.05.2000 in Ex.P7, P8 and P9 respectively were marked by the respondent to show his unhealthy physical and mental condition. The Trial court on satisfied over the cause of the respondent has allowed the delay condonation petition and thereby condoned the delay of 2036 days in filing set aside petition.

7.The Trial court satisfied with the case of the respondent and having reliance upon the reported judgments of this Court in

i) **2007(4) TLNJ 565 (Civil)** in the matter of **Ramakrishnan**

Vs The AEEO, Tiruvarur & Ors wherein it was held that

"The term every day's delay should be explained, should

not be viewed in pedantic way and the approach of the court must be in common pragmatic manner

- ii) **2000-1-L.W.547**, in the matter of **Amudha Vs S.A.Arumugham & Ors**, wherein it was held that condonation of delay is a matter of discretion of the court and section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within certain time. The court has to take into consideration that interests of justice require that the delay must be condoned.

has allowed the respondent's application holding that the Section 5 application is required to be dealt in a pragmatic way, whereas not in a pedantic way, further it is not the period but only the reasons behind such delay is to be looked into.

8.At this juncture it is needless to say the above legal proposition relied by the trial Court is correct and the courts have their own discretion in this regard.

9.At the same time the trial Court has rightly imposed a cost of Rs 1000/- to be paid to the revision petitioner as compensation for the delay caused by the respondent. In this regard it is useful to refer

the following Judgments of our High Court in **2014 (2) CTC 649** in ***Nagarathinammal and others –Vs- Madhammal*** wherein it is held that

“Through the other averments that the petitioners were misled by the assurance made by the Respondent / Plaintiff to withdraw the case and that the 4th Revision Petitioner had gone to outstations for the treatment of his ailing mother could be construed to be averments not substantiated and insufficient for condoning the delay, the other reason, namely the suspension of the Advocate by the Bar Council of Tamil Nadu, which was not known to the Revision Petitioners previously, can be held to be a valid reason for seeking an order condoning delay in filing the Application to set aside the ex-parte Preliminary Decree. This Court is of the considered view that, when such is the contention of the Revision petitioner and such is the reason assigned by them, the interest of Justice requires passing of an Order giving the Revision Petitioners one more opportunity to contest the case and get a contested verdict and at the same time, direct the Revision Petitioners to compensate the Respondent/ Plaintiff by a cost of

Rs.10,000/- ”.

10.In **2016 (5) CTC 117** in **Sarasu –Vs- Ravi** wherein it is held that

“When a Court of Law deals with an Application to condone the delay filed under Section 5 of the Limitation Act, such Application will have to be generally viewed in a liberal and lenient way to do substantial justice between the parties. By projecting an Application to condone the delay as per Section 5 of the Limitation Act, belatedly, no party will file the same with a mala fide intention. If a party files a Delay Condonation Application belatedly, he or she runs a serious risk.

However, if an Application filed under Section 5 of the Limitation Act is allowed by this Court, to advance the cause of substantial justice, then the maximum that can happen is that a party will be allowed to partake in the main arena of legal proceedings and the main cause can be decided on merits. Per contra, if a meritorious matter is thrown out at the threshold or at early stage the cause of justice will be certainly defeated. In a Condonation of Delay Application filed under Section 5 of the limitation

Act, 1963, the length and breadth of the delay is not a material/ relevant factor”.

11.Apart from this, in a recent Judgment in Civil Appeal No.(S).3777 of 2015, dated 20.04.2015, the Hon'ble Apex Court in a case in condone delay of 886 days in filing the set aside the exparte decree, was allowed on condition that the Appellant should pay a sum of Rs.50,000/- as cost to the respondent. The said case is squarely applicable to this case on hand.

12.In view of the above dictum laid down by this Court and the Hon'ble Apex Court for the foregoing factual reasons behind the delay on the part of the respondent, this court finds no material irregularity in the order made by the Trial court and the same is not warranted interference by this Court.

13.In the result:

(a) this Civil Revision Petition is dismissed by confirming the order in I.A.No.727 of 2005 in O.S.No.91 of 1997, dated 15.02.2011, on the file of the Principal District Munsif Court, Cuddalore, on condition that the respondent should pay a sum of Rs.50,000/- to the

petitioner. The respondent is at liberty to pay the balance amount of Rs.49,000/- since already Rs.1,000/- directed to be paid and the said amount to be paid within a period of four weeks from the date of receipt of a copy of this order;

(b) the trial Court is directed to number and dispose the set aside application within a period of one month from the date of production of the cost payment receipt;

(c) on passing orders in the set aside application, the trial Court is directed to dispose the suit within a period of two months on day to day basis without giving any adjournment to either parties and both the parties are hereby directed to give their fullest cooperation for early disposal of the suit. Consequently, connected miscellaneous petition is closed.

28.11.2016

Note:Issue order copy on 18.04.2017
Internet:Yes
Index:Yes

vs

To

The Principal District Munsif,
Cuddalore, Cuddalore District.

M.V.MURALIDARAN, J.

VS

**Pre-delivery order made in
CRP(NPD)No.1684 of 2011
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