

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2016

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P(NPD) No.189 of 2011
and
M.P.No.1 of 2011

Mrs.Kumudha

... Petitioner

vs.

Arulmigu Padavattamman Temple,
Kaspapuram rep.by its
Executive Officer,
P.Kalanji,
S/o.Periyasamy,
Madambakkam,
Chennai – 73.

... Respondent

Civil Revision Petition filed under Section 115 of CPC against the Order and Decretal Order dated 31.8.2010 passed in I.A.No.645 of 2010 in O.S.No.184 of 2006 on the file of the Court of District Munsif, Tambaram.

For Petitioner : Ms.R.T.Shyamala

For Respondent : Mr.R.Mahalingam

ORDER

This Civil Revision Petition arises against the Order and Decretal order dated 31.08.2010 passed by the District Munsif, Tambaram, in I.A.No.645 of 2010 in O.S.No.184 of 2006.

2. The respondent herein filed the suit in O.S.No.184 of 2006 on the file of the District Munsif, Tambaram, praying for the grant of permanent injunction restraining the first defendant/revision petitioner herein, her men, agents, servants or any one claiming through her from in any manner making any further improvement or construction activities in the suit property belonged to the temple and as also restraining the second defendant/Electricity Department from effecting electricity service connection to the flimsy structure putforth by the first defendant in the suit property. As the first defendant/revision petitioner did not appear before the Court, she has been set exparte on 31.8.2006 and an exparte decree has been passed on 26.10.2006. After obtaining the decree, the respondent/plaintiff filed an execution proceedings, wherein also the first defendant/revision petitioner has not chosen to appear before the Court and hence, she has been set exparte. The plaintiff/respondent took steps for removal of encroachment.

3. At this stage, the first defendant/revision petitioner filed the aforesaid Interlocutory Application under section 5 of the Limitation Act praying to condone the delay of 1218 days in filing the petition to set aside the exparte Decree passed on 26.10.2006. The respondent Temple filed a counter affidavit denying the allegations made in the Application by the revision petitioner. In the Counter Affidavit, it is stated by the respondent that the summons was duly served on the revision petitioner and the revision

petitioner did not choose to appear before the Court and hence, ex parte decree was passed.

4. Upon hearing the arguments of learned counsel on either side and considering the facts of the case, the Trial Court dismissed the Interlocutory Application by order dated 31.8.2010 holding that the huge delay was not properly and sufficiently explained. Aggrieved by this order, the present Civil Revision Petition has been filed by the first defendant/revision petitioner.

5. Mrs.R.T.Shyamala, learned counsel appearing for the first defendant/revision petitioner would submit that the revision petitioner/first defendant was not aware of the proceedings of the Trial Court and she got knowledge only when the bailiff came from the Court taking notice and thereafter, she approached an advocate and sought to file the instant Interlocutory Application and therefore, taking into note of the fact and circumstance of the case and various decisions rendered by this Court as well as the Hon'ble Supreme Court condoning the delay in filing the petition to set aside the ex parte decree, the delay may be condoned and the Civil Revision Petition may be allowed.

6. On the other hand, Mr.R.Mahalingam, learned counsel appearing for the sole respondent Temple would stoutly oppose the petition and contend that Notice was served both in the suit proceedings and execution

proceedings on the revision petitioner but she had not chosen to appear before the Trial Court and she has not assigned sufficient reasons to condone the delay of 1218 days. Hence, the Trial Court rightly dismissed the Interlocutory Application and the order of which does not require any interference at the hands of this Court.

7. Heard the learned counsel appearing for the parties.

8. On perusal of the affidavit filed in support of the Interlocutory Application to condone the delay of 1218 days, this Court finds that sufficient reasons were not shown by the revision petitioner to condone the delay sought for by her. The affidavit just bears the expression of the applicant/revision petitioner that if the delay was not condoned, she would be put to much hardship and nothing is stated how the delay has occasioned. It appears that the instant Application was filed only with a view to drag on the proceedings. In absence of any valid and sufficient reasons, the Trial Court has rightly dismissed the Instant Application, which does not require any interference at the hands of this Court.

9. In ***H.Dohil Constructions Company Pvt.Ltd., vs. Nahar Exports Limited and another reported in (2015) 1 Supreme Court Cases 680***, it has been held by the Hon'ble Supreme Court, which reads as follows:-

"24. ... As has been laid down by this Court, courts are required to weigh the scale of balance of justice in respect of both the parties and the same principle cannot be given a go-by under the guise of liberal approach even if it pertains to refiling. The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the respondents not deserving any indulgence by the Court in the matter of condonation of delay. The respondents had filed the suit for specific performance and when the trial court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered.

25. We, therefore, find total lack of bona fides in its approach and the impugned order of the High Court in having condoned the delay in filing as well as refiling, of 9 days and 1727 days respectively, in a casual manner without giving any reason, much less acceptable reasons, cannot

therefore be sustained. ...”

10. Following the principles laid down in the aforesaid judgment and in the light of the facts of the case, I am not inclined to interfere with the order impugned in this Civil Revision Petition. Accordingly, the Order and Decretal Order dated 31.8.2010 passed in I.A.No.645 of 2010 in O.S.No.184 of 2006 on the file of the Court of District Munsif, Tambaram, is confirmed and the Civil Revision Petition is dismissed. No costs. The connected Miscellaneous Petition is closed.

Index : yes / no
Internet :yes / no
asvm

27.04.2016

To
The District Munsif,
Tambaram.

D.KRISHNAKUMAR, J.

(asvm)

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