

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P.(NPD).No.4719 of 2014

and

M.P.No.1 of 2014

Muthulakshmi
W/o.Palanisamy Gounder

.. Petitioner/Petitioner/Defendant

Vs.

Usharani Seenu
W/o.Seenu

.. Respondent/Respondent/Plaintiff

Prayer:

Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and final order passed in I.A.No.730 of 2013 in O.S.No.485 of 2007, dated 02.08.2014 on the file of the District Munsif Court, Dharapuram.

For Petitioner : Mr.S.Saravanan

For Respondent : Mr.A.M.Krishnamoorthy

ORDER

The present Civil Revision Petition has been filed to set aside the order dated 02.08.2014 passed in I.A.No.730 of 2013 in O.S.No.485 of 2007 on the file of the District Munsif Court, Dharapuram, wherein the petition filed under Section 5 of the Limitation Act came to be dismissed.

2.The learned counsel appearing for the petitioner would submit that the petitioner is facing trial in O.S.No.485 of 2007 which has been filed for declaration of title, recovery of possession and also for injunction not to alienate the property till the disposal of the suit. The petitioner filed the written statement and contested the same. While so, when the matter was posted on 06.09.2010 for the evidence on the side of the plaintiff, the chief-examination of P.W.1 was over and when the suit was posted for cross-examination of P.W.1 on 20.09.2010, the learned counsel for the defendant reported no instructions and hence, the matter was adjourned to 22.09.2010. On the said date, since there was no representation, an exparte decree was passed. Therefore, the present application in I.A.No.730 of 2013 in O.S.No.485 of 2007 came to be filed on 11.11.2011, to set aside the exparte order along with an application for condonation of delay of 406 days. In the said

application, it was specifically stated that due to ill health the defendant could not appear before the Court. However, the Trial Court had dismissed the said application and as against the same, the present Civil Revision Petition has been preferred.

3.The learned counsel for the petitioner would further submit that the Trial Court in the impugned order had specifically stated that “this is a serious dispute involving immovable property. The petitioner must be more vigil in prosecuting the case. He realised the seriousness only when the respondent came to effect delivery of possession. Till such time, he had not taken any efforts to have the decree set aside. Four years have elapsed since the passing of the exparte decree”. The learned counsel would further contend that the delay can be compensated by imposing costs and to support the said contention, he relied upon the decision reported in **CDJ 2009 MHC 5150, Anushammal and Another v. The Tamil Nadu Land Reforms Special Appellate Tribunal, Chennai and Others.**

4.Resisting the same, the learned counsel appearing for the respondent would submit that while considering the petition for condonation of delay, the Court must consider the intention of the parties, the reasons

adduced for such delay and whether any prejudice would be caused to the other side, if the delay is condoned. The learned counsel would further submit that the intention of the petitioner is only to delay the proceedings. The suit was filed in the year 2007 and the case was posted for trial in the year 2010. While so, when the matter was posted on 06.09.2010 for the evidence on the side of the plaintiff, the chief-examination of P.W.1 was over and when the suit was posted for cross-examination of P.W.1 on 20.09.2010, the learned counsel for the defendant reported no instructions and hence, the matter was adjourned to 22.09.2010. On the said date, since there was no representation, an ex parte decree was passed. Thereafter, the present application in I.A.No.730 of 2013 in O.S.No.485 of 2007 was filed on 11.11.2011, after delivery was ordered in the execution petition. Further, it is pertinent to note that the application for condonation of delay was returned for defects and the said application was numbered only in the year 2013, which shows the malafide intention of the petitioner to delay the proceedings.

5.The second limb of argument putforth by the learned counsel for the respondent is that the reasons adduced by the petitioner to condone the delay is not sufficient to condone the delay. The petitioner has stated that he is affected by jaundice and hence, he could not meet his counsel and attend the

hearing. He would further submit that the petitioner had already filed a suit in O.S.No.452/2002 for declaration of title in respect of the very same property. The said suit was dismissed against which an appeal was preferred and the same was also dismissed. Now, the present application has been preferred only with a view to drag on the proceedings. Thus, the learned counsel for the respondent prayed for dismissal of the petition.

6.Considered the rival submissions made by both sides and perused the typed set of papers. The suit in O.S.No.485 of 2007 has been filed for declaration of title, recovery of possession and also for injunction not to alienate the property till the disposal of the suit. It is also admitted that the petitioner herein filed the written statement and contested the same. While so, when the matter was posted on 06.09.2010 for the evidence on the side of the plaintiff, the chief-examination of P.W.1 was over and when the suit was posted for cross-examination of P.W.1 on 20.09.2010, the learned counsel for the defendant reported no instructions and hence, the matter was adjourned to 22.09.2010. On the said date, since there was no representation, an exparte decree was passed. Thereafter, the application in I.A.No.730 of 2013 to set aside the exparte decree came to be filed on 11.11.2011, after receipt of summons in the E.P proceedings. Even in the said proceedings, the petitioner

was set exparte and thereafter, an application under Order 21 Rule 106 CPC was filed to set aside the exparte order on 16.11.2011.

7.A perusal of the affidavit would show that though the application was filed in the year 2011, it was filed in a defective manner and the said application was numbered only in the year 2013 after the said defects were rectified. This would show the malafide intention of the petitioner to drag on the proceedings. Further, already a suit in O.S.No.452/2002 was filed for declaration of title in respect of the very same property. The said suit was dismissed against which an appeal was preferred and the same was also dismissed. So, having already lost the earlier legal battle, the petitioner has now come forward with the second round of litigation. 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."

8. Now this Court has to decide whether sufficient cause has been given?

On perusal of the affidavit, it is stated that one month prior to the date of trial, the petitioner was taking treatment for jaundice. However, there is no iota of evidence before this Court. The fact remains that after filing of

the E.P proceedings, the petitioner received notice and the delivery was ordered. Even in the E.P proceedings, the petitioner was set exparte and thereafter, an application under Order 21 Rule 106 CPC was filed to set aside the exparte order on 16.11.2011. Thus, the intention of the petitioner is only to drag on the proceedings.

9.As per the dictum laid down in **2011 (4) SCC 363 (Lanka Venkateswarlu (Dead), rep. by legal heirs) Vs. State of Andhra Pradesh and others)**, 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.In the instant case, the fact remains that the petitioner had already filed a suit in O.S.No.452/2002 for declaration of title in respect of the very same property. The said suit was dismissed against which an appeal was preferred and the same was also dismissed. So, having already lost the earlier legal battle, the petitioner has now come forward with the second round of litigation and even in the said litigation, he has not appeared before the Court

wantonly and filed an application for condonation of delay.

11. At this juncture, it would be appropriate to consider the decision relied on by the learned counsel for the petitioner reported in **CDJ 2009 MHC 5150, Anushammal and Another v. The Tamil Nadu Land Reforms Special Appellate Tribunal, Chennai and Others**. It would be useful to extract paragraph 19 of the said decision:

“19. The Hon'ble Supreme Court in Collector, Land Acquisition, Anantnag Vs. Mst. Katiji (1987) 2 Supreme Court Cases 107, referred to supra has also considered the question, whether to condone or not to condone or considering the question whether or not to apply the standard in applying the "sufficient cause" test to all the litigants regardless of their personality. The Hon'ble Supreme Court after analyzing the power conferred under Section 5 of the Limitations Act, held that liberal approach is to be adopted and the Hon'ble Supreme Court laid down six principles:

"3. The legislature has conferred the power to condone delay by enacting [Section 5](#) of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life purpose for the existence of the institution of Courts. It is common knowledge that this Court

has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6.It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

Therefore, in the said case, the Hon'ble Supreme Court held that in making a justice oriented approach, there was sufficient cause for condoning the delay in instituting the appeal."

12.Applying the dictum laid down in **Anantnag Vs. Mst.Katiji (1987) 2 Supreme Court Cases 107**, I am of the view that the petitioner has filed the application for condonation of delay only with a view to drag on the proceedings and no sufficient reasons has been given to condone such delay. Hence, I do not find any reason to interfere with the finding of the Trial Court and accordingly, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

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