

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2016

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P.(NPD) No.140 of 2010
and
M.P.No.1 of 2010

S.Krishnan

... Petitioner

vs.

1.S.Ganeshan

2.The Superintending Engineer,
Operation & Maintenance,
Tamil Nadu Electricity Board,
Dharmapuri.

3.The Assistant Engineer,
Operation & Maintenance,
Tamil Nadu Electricity Board,
Palacode, Dharmapuri District.

4.The Junior Engineer,
Operation & Maintenance,
Tamil Nadu Electricity Board,
Papparapatti, Palacode Taluk,
Dharmapuri District.

Respondents

...

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 28.7.2009 made in I.A.No.174 of 2009 in O.S.No.399 of 2004 on the file of the District Munsif Court, Dharmapuri.

For Petitioner : Mr.M.Selvam

For 1st respondent : Mr.V.R.Anna Gandhi

For respondents 2 to 4 : No appearance

ORDER

This Civil Revision Petition arises against the fair and final order dated 28.7.2009 made in I.A.No.174 of 2009 in O.S.No.399 of 2004 on the file of the District Munsif Court, Dharmapuri.

2. The first respondent/plaintiff filed the suit in O.S.No.399 of 2004 against the fourth defendant/revision petitioner herein and the Tamil Nadu Electricity Board for declaration that the sanction letter issued by the Tamil Nadu Electricity Board be declared as null and void and for injunction restraining the Tamil Nadu Electricity Board from providing electricity connection to the fourth defendant/revision petitioner herein. The first respondent/plaintiff is none other than the fourth defendant/revision petitioner's own brother. Denying the allegations made in the plaint the fourth defendant/revision petitioner filed written statement and all other defendants also filed their written statement.

3. Issues were framed in the suit and the suit was posted for trial on 17.1.2006. On that day, the first respondent/plaintiff did not appear and hence, the suit was dismissed for default.

4. Thereafter, the first respondent/plaintiff filed an Application in I.A.No.174 of 2009 in O.S.No.399 of 2004 under section 5 of the Limitation Act to condone the delay of 1,124 days in filing the petition for restoration of the suit. By order dated 28.7.2009, the Trial Court allowed the Interlocutory Application in I.A.No.174 of 2009 by imposing a cost of Rs.100/- to be paid to the respondents 1 to 3 and Rs.100/- to be paid to the fourth defendant/revision petitioner herein, thereby, affording an opportunity to the plaintiff/first respondent to decide the suit on merits.

5. Aggrieved by the fair and final order, the fourth defendant/revision petitioner has filed this Civil Revision Petition before this Court.

6. Mr.M.Selvam, learned counsel appearing for the revision petitioner would submit that in an Application filed under Section 5 of the Limitation Act, each day's delay must be properly explained and

none of the objections raised by the fourth defendant/revision petitioner was considered. The contention that the first respondent/plaintiff was not well and he was taking treatment in Kovai are false. According to the learned counsel, the order passed by the Trial Court, is bereft of reasons, in condoning the huge delay and therefore, the impugned order is liable to be set aside.

7. Mr.V.R.Anna Gandhi, learned counsel appearing for the first respondent/plaintiff would submit that the suit in O.S.No.399 of 2004 was filed by the plaintiff against the fourth defendant/revision petitioner herein and the Tamil Nadu Electricity Board, for declaration that the sanction letter issued by the Tamil Nadu Electricity Board be declared as null and void and for injunction restraining the Tamil Nadu Electricity Board from providing electricity connection to the fourth defendant/revision petitioner herein. As the first respondent/plaintiff could not appear before the Trial Court on the hearing date, the suit was dismissed for default. Therefore, an opportunity of hearing must be given to the first respondent/plaintiff to decide the suit on merits. Accepting the reasons given by the first respondent/plaintiff, the Trial Court rightly allowed the Interlocutory Application in I.A.No.174 of 2009 in O.S.No.399 of 2004 by imposing costs of Rs.100/- to be paid

to respondents 1 to 3 and Rs.100/- to be paid to the fourth defendant/revision petitioner herein. Therefore, there is no aberration of justice warranting interference of this Court and the Civil Revision Petition is liable to be dismissed.

8. Heard Mr.M.Selvam, learned counsel appearing for the revision petitioner and Mr.V.R.Anna Gandhi, learned counsel appearing for the first respondent and perused the materials on record. Though notice was served on the respondents 2 to 4, there was no representation on behalf of the respondents.

9. As far as the present case is concerned, the first respondent / plaintiff filed the suit against the Tamil Nadu Electricity Board for declaration that the sanction letter issued by the Tamil Nadu Electricity Board be declared as null and void and for injunction restraining the Tamil Nadu Electricity Board from providing electricity connection to the fourth defendant/revision petitioner herein. The trial court accepted the reasons for delay found in the affidavit and allowed the application.

10. The primary function of a court is to adjudicate the

dispute between the parties and to advance substantial justice. In the above cited judgment, the Hon'ble Supreme Court has held that a court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under [Section 5](#) of the Limitation Act should receive a liberal construction so as to advance substantial justice vide ***Shakuntala Devi Jain Vs. Kuntal Kumari [AIR 1969 SC 575]*** and ***State of West Bengal Vs. The Administrator, Howrah Municipality [AIR 1972 SC 749]***. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a looser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone

the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss.

11. ***In Maniben Devraj Shah vs. Municipal Corporation of Brihan***, reported in **(2012) 5 SCC 157**, the Hon'ble Supreme Court in paragraph 18 has referred to the case of ***N. Balakrishnan v. M. Krishnamurthy***, [(1998) 7 SCC 123], wherein the Court made the following observations in paragraph 9:

"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 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.

12. In the light of the decision of the Hon'ble Supreme Court in **N. Balakrishnan vs M. Krishnamurthy** cited supra, this Court is not inclined to interfere with the impugned order passed by the Trial Court but this Court is of the view that the costs imposed can be enhanced in order to meet the litigation expenses borne by the other side.

13. Therefore, in the interest of justice and following the ratio laid down in the aforesaid judgment, this Court is inclined to pass the following orders:-

The fair and final order dated 28.07.2009 passed in I.A.No.174 of 2009 in O.S.No.399 of 2004 on the file of the District Munsif Court, Dharmapuri, is modified to the extent that the first respondent/plaintiff shall pay a sum of Rs.10,000/- (Rupees ten thousand only), instead of Rs.100/-, payable to the revision petitioner herein, within a period of four weeks from the date of receipt of a copy of this order and the other aspects remain unaltered, failing which, the aforesaid order passed by the Trial Court stands set aside.

14. In the result, the Civil Revision Petition is partly allowed. The connected Miscellaneous Petition is closed. No costs.

26.04.2016

Index : yes / no

asvm/ avr

To
The District Munsif Court,
Dharmapuri.

D.KRISHNAKUMAR, J.

(asvm)

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