

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.01.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).No.4548 of 2015
and M.P.No.1 of 2015

T.N.Natesan

.. Petitioner/Defendant

Vs.

K.Appavoo

.. Respondent/Plaintiff

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 13.10.2014 made in I.A.No.949 of 2012 in O.S.No.66 of 2010 on the file of the Sub-Court, Tiruchengode.

For Petitioner : Mr.T.Murugamanickam

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 13.10.2014 made in I.A.No.949 of 2012 in O.S.No.66 of 2010 on the file of the Sub-Court, Tiruchengode.

2.The respondent herein as a plaintiff filed a suit in O.S.No.66 of 2010 for recovery of money due on promissory note stating that the revision petitioner herein has borrowed a sum of Rs.2,00,000/- on 14.12.2009 and since he did not repay the same, the plaintiff after issuance of notice, filed the suit. The suit was decreed exparte on 05.01.2011 for non filing of written statement. So the revision petitioner/defendant has come forward with an application in I.A.No.949 of 2012 under Section 5 of Limitation Act to condone the delay of 649 days in filing the application to set aside the exparte decree passed against him on 05.01.2011 stating after receipt of notice in R.E.P.No.36 of 2011, he appeared through his counsel on 21.10.2011. At that time only, he came to know that since written statement was not filed, the suit was decreed exparte. Under such circumstances, there is enormous delay in filing this application to set aside the exparte decree. The trial Court, after hearing both sides, dismissed the application, against which, the present revision has been preferred by the defendant.

3.At the time of admission, argument of the learned counsel for the revision petitioner is heard in length.

4.Learned counsel for the revision petitioner/defendant submits that the trial Court has passed one line decree that too an exparte decree. As per the decision of the Madurai Bench of this Court reported in **2015 (4) L.W. 142 (The Commissioner, Rameshwaran Municipality, Ramanathapuram District v. Tmt.Subbuthayammal and others)**, the trial Court would scrutinise the available pleadings and documents, consider the evidence adduced, and would do well to frame the point for determination and proceed to construct the exparte judgment dealing with the points at issue one by one. But the trial Court without considering the above aspect passed the decree. Hence, he prayed for allowing the revision.

5.On perusing the typed set of papers, it reveals that the plaintiff after issuance of notice and receipt of reply notice, filed the suit for recovery of money due on promissory note dated 14.12.2009. The suit was decreed exparte on 05.01.2011 for non appearance of defendant and non filing of written statement. The plaintiff/respondent has filed R.E.P.No.36 of 2011 for attachment and the defendant has received summons and appeared through his counsel. At that time only, the defendant/revision petitioner came to know that the suit was decreed exparte for non filing of written

statement. Thereafter, the defendant has filed the present application to condone the delay in filing the application to set aside the exparte decree passed against him.

6. Once exparte decree has been passed, he has to file an application within 30 days to set aside the same. If he filed an application to set aside the exparte decree beyond 30 days, he has to file an application under Section 5 of the Limitation Act to condone the delay in filing petition to set aside exparte decree. If he did not serve with notice and he has no knowledge about the suit, he may very well file an application for setting aside the exparte decree within 30 days from the date of knowledge. But it is not the case of the revision petitioner that he is not aware of the suit proceedings. He fairly conceded that he received summons in the suit and engaged a counsel. He would further submit that after receipt of summons in R.E.P.No.36 of 2011, at that time only, he came to know that because of non filing of written statement, exparte decree passed. Admittedly, the defendant/revision petitioner has not filed an application to set aside the exparte decree within 30 days from the date of passing of decree. So there is a delay of 649 days.

7.As per the dictum of the Apex Court reported in **AIR 1998 SC 3222 (N.Balakrishnan v. M.Krishnamurthy)**, it was specifically held that if the length of delay is immaterial, sufficient cause for condonation of delay has to be explained. It is appropriate to extract para-9 to 11, which read as follows:

"9. 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.

10.The reason for such a different stance is

thus: The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. "

In the case on hand, this Court has to decide whether the defendant/revision petitioner has given sufficient cause for condonation of delay. In the affidavit filed in support of the application, the defendant stated that there is a chance for settlement and that he was under the impression that the suit would be settled and so he kept quiet. According to me, the reasons assigned by the defendant in para-5 and 6 are not sufficient for condonation of delay. That factum was rightly considered by the trial Court.

8. Further, in the judgment of the Apex Court reported in **2011 (4) SCC 363 (Lanka Venkateswarlu (Dead), rep. by legal heirs) Vs. State of Andhra Pradesh and others**), in para-19, 23, 28 and 29, it was held as follows:

"19. We have considered the submissions made by the learned counsel. At the outset, it needs to be stated that generally speaking, the courts in this country, including this Court, adopt a liberal approach in considering the application for condonation of delay on the ground of sufficient cause under Section 5 of the Limitation Act. This principle is well settled and has been set out succinctly in *Collector, Land Acquisition v. Katiji* (1987) 2 SCC 107.

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23. The concepts of liberal approach and reasonableness in exercise of the discretion by the Courts in condoning delay, have been again stated by this Court in *Balwant Singh v. Jagdish Singh* (2010) 8 SCC 685 as follows:- (SCC p.696, paras 25-26)

"25. We may state that even if the term 'sufficient cause' has to receive liberal construction,

it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of 'reasonableness' as it is understood in its general connotation.

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise (sic a lis). These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly"

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28. We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as "liberal approach", "justice oriented approach", "substantial justice" can not be employed to jettison the substantial law of limitation. Especially, in cases where the Court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any lis between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms.

29. The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. Whilst considering 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. Whims or fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers."

As per the above decision, for condonation of delay, the discretion has to be exercised in a systematic manner informed by reason and justice must be done to both parties. Further, the condonation of delay is only a discretion that too judicial discretion and while exercising the judicial discretion, the Court should consider the loss caused to the opposite party.

9. Even though the defendant stated in the affidavit that he is a chronic heart patient and he is unable to move freely, to substantiate the same, he has not examined himself as a party. It is to be noted that he did not file any scrap of paper before the Court that during the relevant period, he was a chronic heart patient and he was taken steps for negotiation for settlement.

10. According to the revision petitioner, the decree passed by

the trial Court is in one line and so it has to be set aside. To substantiate his arguments, he relied upon the decision reported in **2015 (4) L.W. 142 (The Commissioner, Rameshwaran Municipality, Ramanathapuram District v. Tmt.Subbuthayammal and others)** and he has drawn attention of this Court through para-36 and 37 of the judgment, wherein it is held as follows:

“36.The Supreme Court in Ramesh Chand Ardawatiya v. Anil Panjwani [AIR 2003 SC 2508], while considering the provisions of Order IX Rule 6 and Order VIII Rule 10 of the Code of Civil Procedure, observed that even if the suit proceeds ex parte under Order IX Rule 6, the necessity of proof by the Plaintiff of its case cannot be dispensed with. The Supreme Court observed as under:

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“Yet the trial Court would scrutinise the available pleadings and documents, consider the evidence adduced, and would do well to frame the 'point for determination' and proceed to construct the ex parte judgment dealing with the points at issue one by one. Merely because the Defendant is

absent the Court shall not admit evidence the admissibility whereof is excluded by law nor permit its decision being influenced by irrelevant or inadmissible evidence."

37. In *Meenakshisundaram Textiles vs. Valliammal Textiles*, [2011(3) CTC 168], a Division Bench of this Court held that even an *exparte* judgment should contain reasons. The relevant portion of the judgment reads thus:

"6. In terms of the above provisions, every judgment should contain a concise statement of the case, the points for determination, decision thereon and the reasons for such decision. A judgment which does not contain the bare minimum facts, the point for determination, the evidence adduced and the application of those facts and evidence for deciding the issue would not qualify it to be called as "judgment". The judgment should contain the brief summary of the facts, the evidence produced by the plaintiff in support of his claim and the reasoning of the learned Judge either for decreeing the suit or its dismissal. "

But the above decision is not applicable to the facts of the present case. Because, that application was not filed to set aside the *exparte*

decree. But in the case on hand, in the judgment passed by the trial Court, facts of the case, suit claim have been mentioned, further it was held that proof affidavit of P.W.1 recorded, Exs.P1 to P4 marked, suit claim proved and that the suit was decreed. There is no point for determination, since the defendant did not file written statement.

11.Considering the aforesaid circumstances of the case and also the delay of 649 days, I am of the view, the revision petitioner has not given sufficient cause for condonation of delay and after filing execution petition only, he filed the present application. But the suit is for recovery of money due on promissory note. The trial Court has considered the same in proper perspective and came to the correct conclusion. So the impugned order passed by the trial Court does not suffer any infirmity or illegality and it is hereby confirmed. Consequently, the Civil Revision is dismissed.

12.Under such circumstances, I am of the considered opinion, the revision petitioner/defendant only with a view to drag on the proceedings filed the application. Therefore, this Civil Revision Petition is dismissed with costs. The revision petitioner is directed to

pay a sum of Rs.5,000/- (Rupees Five Thousand only) to the Chief Minister's Flood Relief Fund. Consequently, connected Miscellaneous Petition is closed.

18.01.2016

Index:Yes/No

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R.MALA,J.

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To

The Sub-Court, Tiruchengode.

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