

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.11.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.1319 of 2012
and
M.P.No.1 of 2012**

Krishnan

.. Petitioner

Vs.

Mohan

..Respondent

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair and decreetal order of the District Munsif Court at Harur, dated 05.09.2011 in I.A.No.461 of 2011 in O.S.No.79 of 1999.

For Petitioner : Mr.P.Valliappan

For Respondent : No Appearance

ORDER

The 2nd defendant is the revision petitioner before this Court. The case of the revision petitioner is that the respondent herein as plaintiff filed a suit against the revision petitioner and another in O.S.No.79 of 1999 on the file of the District Munsif Court, Harur for declaration and permanent injunction. The suit schedule property was allotted to the share of the respondent/plaintiff under an oral family partition. The revision petitioner/2nd defendant proclaimed in the village that he is going to disturb the possession and enjoyment of the plaintiff. The revision petitioner filed a detailed written statement and claimed that he is in absolute possession over the suit property and the patta also issued in his name.

2.While so, an ex-parte decree was passed against the revision petitioner on 28.08.2001. In order to set aside the ex-parte decree, the revision petitioner filed application in I.A.No.461 of 2011 with a delay of 2802 days. The reason for delay mentioned by the revision petitioner in his affidavit is that due to some misunderstanding and quarrel between the revision petitioner and his sons, he left the family and gone to outstation and due to that he was not in a position to

appear before the Court on 28.08.2001. The revision petitioner returned to his village only on 01.06.2009 and on knowing about the exparte decree, immediately he filed a petition to set aside the ex-parte decree passed against him. However, there was a delay of 2802 days in filing the set aside petition. Therefore, he prays the Court below to condone the delay.

3.The respondent herein filed counter affidavit to the delay petition and contented that the reason assigned by the revision petitioner to condone the huge delay of 2802 days is false one. The revision petitioner never gone to out station and he is in his native village only. Hence, the application to set aside the ex-parte decree filed after a long delay of 10 years is liable to be dismissed.

4.In order to prove the fact that the revision petitioner was out of station, he examined himself as PW1 and marked Exs.P1 to P4. On considering the oral and documentary evidence adduced on the side of the revision petitioner and upon hearing the arguments on either side, the lower Court was pleased to dismiss the condone delay application filed by the revision petitioner by order and decree dated 05.09.2011. Aggrieved over the above said order, the revision petitioner filed this civil revision petition.

5.I have heard Mr.P.Valliappan, learned counsel appearing for the revision petitioner. No representation on behalf of the respondent. This Court has carefully perused the records.

6.From the records, it is seen that a suit for declaration of title of the suit property was filed by the respondent herein against the revision petitioner and consequential relief of permanent injunction was also sought for. According to the plaintiff the suit property was allotted to his share under an oral partition. Since, originally the suit properties were joint family properties and therefore, the plaintiff's father's name was mentioned in all the revenue records. The 1st defendant is the brother of the plaintiff and the 2nd defendant is the adjacent land owner. Since the 2nd defendant proclaimed that he is going to create encumbrance over the suit properties. Hence, he filed a suit declaration and permanent injunction.

7.Whereas the revision petitioner contented that the father of the plaintiff Ramasamy and his brother Arumugam jointly executed a sale agreement in favour of the 2nd defendant/ revision petitioner and handed over possession of the suit properties. Though the above said

Ramasamy and Arumugam executed sale agreement in favour of the revision petitioner, the legal heirs of Ramasamy and Arumugam along with their father disturbed the possession of the revision petitioner, he filed a suit in O.S.No.135 of 1991 before the District Munsif Court, Harur against the above said persons and the said suit was decreed in favour of the revision petitioner by Judgment and Decree dated 06.04.1994. The plaintiff disturbing the possession of the 2nd defendant/revision petitioner despite the decree granted in his favour. He is in possession and enjoyment over the suit properties for the past 25 years by cultivating the same.

8.When there is a rival claim over the title of the suit property, it has to be adjudicated by letting in oral and documentary evidence after full pledged trial. However, the revision petitioner allowed the suit to be decreed ex-parte. In order to set aside the ex-parte decree, the revision petitioner filed application in I.A.No.461 of 2009 with a delay of 2802 days.

9.This Court has perused the affidavit and carefully considered the case of the revision petitioner. A perusal of the affidavit disclose that though the reason assigned by the revision petitioner to condone

the delay of 2802 days is not sufficient, however, considering the nature of the issue involved in this suit, this Court feels that this civil revision petitioner could be allowed by imposing reasonable cost to the revision petitioner.

10.The revision petitioner has adduced oral evidence in the condone delay application to substantiate his case and to prove the reason stated by him in the affidavit. Apart from that he has also filed Exs.P1 to P4, the judgment and decree passed in the civil suit in O.S.Nos.86 of 1991 and 135 of 1991. As stated above, since, the suit is filed for declaration of title and no one could deprive of his right and title to his property without conducting the suit on merits.

11.Apart from that, while deciding the condone delay application, the lower Court should have considered the same with a liberal approach by giving one more opportunity to the parties. At the same time the delay caused by the revision petitioner shall be adequately compensated to the other side by way of imposing reasonable cost.

12.In this regard it is useful to refer the following Judgments of this Court:

(i) 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/- ”.

(ii) 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”.

13.In a recent judgment of the Hon'ble Apex Court in a case in C.A.No.3777 of 2015 was allowed, which was filed for condone the delay of 883 days, on condition that the Appellant should pay a sum of Rs.50,000/- to the respondent in that case.

14.As per the dictum laid down in the above judgments of this Court and the Hon'ble Apex Court, this Court feels that to meet the ends of justice, one more opportunity is to be given to the revision petitioner to get a contested decree. Hence, the delay of 2802 days is condoned, however, the revision petitioner is liable to pay cost of Rs.50,000/- to the petitioner.

15.In the result:

a) this Civil Revision Petition is allowed by setting aside the order passed in I.A.No.461 of 2009 in O.S.No.79 of 2004, dated 05.09.2011 passed by the District Munsif, Harur, on condition that the petitioner should pay a sum of Rs.10,000/- as a cost to the petitioner, within a period of four weeks from the date of receipt of a copy of this order;

b) the learned District Munsif, Harur, is directed to

number the set aside application and to pass order within a period one month, by giving fair opportunity to both sides;

c) on passing of the order on the set aside application, the Learned Judge is directed to dispose the said suit within a period of two months from the date of receipt of a copy of this order, on day today basis, by giving first preference to this case, since it is the suit of the year 1999, without giving any adjournment on either parties and both the parties are directed to co-operate for early disposal of the suit without getting any adjournment. Consequently, connected miscellaneous petition is closed.

24.11.2016

Note: Issue order copy on 20.04.2017

Internet: Yes

Index: Yes

vs

To

The District Munsif Court,
Harur.

M.V.MURALIDARAN, J.

vs

**Pre-Delivery order made in
CRP(NPD)No.1319 of 2012
and
M.P.No.1 of 2012**

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