

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2016

CORAM

THE HONOURABLE MR. JUSTICE M. DURAISWAMY

C.R.P.(NPD)Nos.2108 & 2109 of 2009 &

M.P.Nos.1 & 1 of 2009 &

C.M.P.Nos.10596 to 10598 of 2016

Mohanarangan

... Petitioner in both CRPs

v.

Irshad Ali

... Respondent in both CRPs

C.R.P.(NPD) No.2108/2009 filed under section 115 of the Civil Procedure Code against the fair and decreetal order dated 29.04.2009 made in I.A.No.355 of 2009 in O.S.No.181 of 2007 on the file of the District Munsif Court, Tamabaram.

C.R.P.(NPD) No.2109/2009 filed under section 115 of the Civil Procedure Code against the fair and decreetal order dated 29.04.2009 made in I.A.No.354 of 2009 in O.S.No.180 of 2007 on the file of the District Munsif Court, Tamabaram.

For Petitioner : Mr.Ravikumar Paul
for M/s.Paul & Paul

For Respondents : Mr.AR.L.Sundaresan Sr. Counsel
for Mr. K.S.Arumugam

COMMON ORDER

Challenging the fair and final orders passed in I.A.No.354 of 2009 in O.S.No.180 of 2007 and I.A.No.355 of 2009 in O.S.No.181 of 2007 on the file of the District Munsif Court, Tamabaram, the plaintiff has filed the above Civil Revision Petitions.

2. Since the issues involved in both the Civil Revision Petitions are common, by consent of both the parties, both the Civil Revision Petitions are disposed of by this common order.

3. The plaintiff filed the suits in O.S.Nos. 180 and 181 of 2007 for permanent injunction,

4. The defendant failed to appear before the Trial Court. Hence, he was set exparte, pursuant to the paper publication ordered by the Trial Court and an exparte decree was passed on 13.09.2007.

5. Thereafter, the defendant filed applications in I.A.No.354 of 2009 in O.S.No.180 of 2007 and I.A.No.355 of 2009 in O.S.No.181 of 2007 to condone the delay of 413 days in filing the applications to set aside the ex-parte decrees.

6. In the affidavit filed in support of the applications, the defendant has stated that he came to know about the exparte decrees only when the plaintiff along with some henchmen tried to remove the fencing and trespassing into his property on 3.4.2007 and on verification, he came to know that exparte decrees were passed against him. Thereafter, the defendant filed applications to condone the delay of 413 days in filing the applications to set aside the exparte decrees.

7. The averments stated in the affidavit filed in support of the applications were disputed by the plaintiff.

8. The Trial Court, taking into consideration the case of both the parties, condoned the delay, finding that the defendant was set exparte and that no opportunity was given to him to participate in the trial. Further, the Trial Court, while condoning the delay held that to provide an opportunity to the defendant to participate in the trial proceedings and in the interest of justice, the applications to condone the delay of 413 days are allowed.

9. On a perusal of the affidavit filed in support of the applications, it could be seen that though according to the defendant he came to know about the exparte decree sometime in the year 2007 itself, he choose to remain silent till March 2009 for filing the applications to set aside the exparte decrees.

10. Mr.Ravikumar Paul, learned counsel appearing for the petitioner submitted that in the absence of sufficient cause shown by the party, the Trial Court should not have condoned the delay. In support of his contention, the learned counsel relied upon the following judgments:-

(i) **CDJ 2008 SC 1820 [Pundlik Jalam Patil (D) by Lrs. v. Exe. Eng. Jalgaon Medium Project & Another]** wherein, the Hon'ble Supreme Court held that settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. The Hon'ble Supreme Court further held that the law of limitation

(ii) **CDJ 1997 SC 292 [P.K.Ramachandan v. State of Kerala]** wherein, the Hon'ble Supreme Court held that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of

limitation on equitable grounds. Further, the Hon'ble Supreme Court held that discretion excised by the High Court was, thus, neither proper nor judicious. In the circumstances, the Hon'ble Supreme Court set aside the order passed by the High Court and dismissed the application for condonation of delay.

11. Countering the submissions made by the learned counsel appearing for the petitioner, Mr.A.R.L.Sundaresan, learned Senior Counsel, appearing for the respondent submitted 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. In support of his contention, the learned Senior Counsel relied upon a judgment reported in **1998(7) SCC 123 [N.Balakrishnan v. M.Krishnamurthy]** wherein the Hon'ble Supreme Court held as follows:-

"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 reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different

matter when the first cut 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 case on hand, except saying that the defendant came to know about the ex parte decrees passed on 13.09.2007 in the year 2007, he has not given any acceptable reason for condoning the delay of 413 days in filing the applications to set aside the ex-parte decrees. When the defendant had knowledge about the ex parte decrees even in the year 2007 itself, he could have filed the applications to set aside the ex parte decrees immediately. But, for no reason, the defendant waited till March 2009 for filing the applications to set aside the ex-parte decrees. When the defendant failed to explain the reasons for the delay in a proper manner, the delay cannot be condoned.

13. It is settled position that unless a party seeking for condonation of delay shows sufficient cause for the delay, the delay should not be condoned.

14. The Trial Court without considering the merits of the matter mechanically condoned the delay stating that the defendant was set ex parte pursuant to the paper publication effected by the plaintiff. That is not the

sole ground to condone the delay of 413 days in filing the applications to set aside the exparte decrees. When the defendant was not diligent in prosecuting the matters in a proper manner, the Trial Court should not have condoned the delay.

15. In these circumstances, I am of the view that the fair and decreetal orders passed by the Trial Court are liable to be set aside. Accordingly, the same are set aside. The Civil Revision Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

11.07.2016

Index : No

Note : Issue copy of the order by 13.07.2016

Rj

To

The District Munsif Court,
Tambaram.

M. DURAISWAMY,J.,

Rj

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