

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2016

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (NPD) Nos. 2892 & 2893 of 2010
and
M.P. Nos. 1 & 1 of 2010

N. Ganesan

.. Petitioner in both CRPs

Vs.

Vadivel

.. Respondent in both CRPs

PRAYER in both CRPs: These Civil Revision Petitions are filed under Section 115 of Code of Civil Procedure, against the orders and decreetal orders in I.A. Nos. 277 of 2009 in O.S. No.359 of 2004 and I.A. No.269 of 2009 in O.S.No.34 of 2008 dated 28.06.2010 on the file of District Munsif, Palacode.

For Petitioner : Ms. R. Sri Priya
for Mr. V. Raghavachari

For Respondent : Mr. V.R. Anna Gandhi

ORDER

These Civil Revision Petitions arise against the orders passed in I.A. Nos. 277 of 2009 in O.S. No.359 of 2004 and I.A. No.269 of 2009

in O.S.No.34 of 2008 dated 28.06.2010 on the file of District Munsif, Palacode.

2. The Revision petitioner filed a suit in O.S. No.359 of 2004 before the District Munsif Court, Palacode, seeking for declaration and for permanent injunction as against the respondent. The suit property originally belong to the respondent/ defendant and thereafter the revision petitioner/ plaintiff purchased the aforesaid property under the sale deed dated 24.01.2001 for a valid consideration. According to the revision petitioner, he is in possession of the suit property, from the date of purchase, but there was constant interference at the instance of the respondent/ defendant. Therefore, the suit in O.S. No.359 of 2004 was filed by the revision petitioner. Though the counsel appeared on 29.09.2004 and sought for time to file vakalat and written statement, there was no representation during the subsequent hearings and no written statement was filed. Hence, after recording the evidence of the revision petitioner/ plaintiff, the suit was decreed ex-parte on 13.10.2004. Aggrieved by the same, the respondent/ defendant approached the lower court to set aside the ex-parte decree, with a delay of 1630 days and filing an Interlocutory Application in I.A. No.277 of 2009, to condone the delay. Learned

counsel further submitted that inspite of the notice in the execution proceedings, in E.P. No. 8 of 2008, the respondent/ defendant, has filed the Interlocutory Application only in June 2009. However, the Trial Court, by an order dated 28.06.2010 allowed the application, on payment of cost of Rs.4000/- to the revision petitioner/ plaintiff, on or before 12.07.2010.

3. Learned counsel for the revision petitioner further submitted that the revision petitioner has filed another suit in O.S. No. 34 of 2008 before the District Munsif court, Palacode, seeking for declaration and permanent injunction, against the same respondent, under the same circumstances. But there was no representation and no written statement was filed by the respondent/ defendant, inspite of several adjournments. Hence, after recording the evidence of the revision petitioner/ plaintiff, the suit was decreed ex-parte on 10.09.2008. Aggrieved by the same, the respondent/ defendant filed an application in I.A. No.269 of 2008 in O.S. No.34 of 2008 for condoning the delay of 242 days, in filing the application to set aside the ex-parte decree. Though sufficient cause or bonafide reasons were not given by the respondent/ defendant to condone the delay, the lower court condoned the delay, on payment of a cost of Rs.400/-.

4. Aggrieved by both the orders passed by the lower court, condoning the inordinate delay in filing the applications to set aside the ex-parte decree, the petitioner/ plaintiff has filed the present revision petitions.

5. According to the learned counsel for the respondent/ defendant, it is stated that he was working as a Coolie and was in Bangalore and therefore he was not able to appear on the hearing dates for trial, before the lower court and hence the suit has been set ex-parte. Eventhough there is an inordinate delay in filing the application to set aside the ex-parte decree, pleaded for an opportunity to be given to the respondent/ defendant to adduce oral and documentary evidences to prove his cases. Therefore, taking into consideration the submission of the cases and to avoid multiplicity of proceedings of the court, the lower court has rightly condoned the delay caused by the respondent/ defendant on payment of cost and hence these revision petitions do not warrant interference and sought for dismissal of the same. He further submitted that although the respondent/ defendant is working as a Coolie and for livelihood he is staying at Bangalore, pleaded for an opportunity to be given for

adducing the case on merits, or otherwise the respondent/ defendant would be put to great hardship.

6. Heard Ms. Sri Vidya, learned counsel for the petitioner and Mr. V.R. Anna Gandhi, learned counsel for the respondent and perused the material available on record.

7. In both the suits, the plaintiff and the defendant are one and the same but the suit properties are different. The respondent has filed I.A. No.277 of 2009 in O.S. No. 359 of 2004 and I.A. No. 269 of 2009 in O.S. No. 34 of 2008, to condone the delay of 1630 days and 242 days, respectively, in filing the applications for setting aside the ex-parte orders. Considering the reasons explained in the affidavit that the respondent / defendant is working as a coolie at Bangalore and accepting the sufficient cause shown in the affidavit and in order to afford an opportunity to the respondent/ defendant to defend his case, the lower court has rightly allowed both the condone delay applications, on payment of cost.

8. 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."

9. 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 cost imposed can be enhanced, in order to meet the litigation expenses borne by the other side. Learned counsel for the respondent agreed that there is an inordinate delay in filing the applications to set aside the ex-parte decree and agreed to pay a higher cost to the revision petitioner/ plaintiff, for the delay caused by him. Learned counsel for the revision petitioner/ plaintiff does not have any serious objection in enhancing the cost payable by the respondent herein, while condoning the delay.

10. In the above circumstances, this Court is of the considered view that the delay of 1630 days may be condoned, by enhancing the cost payable by the respondent/ defendant and thereby allow the application in I.A. No.277 of 2009 in O.S. No.359 of 2004, which has been challenged in C.R.P No. 2892 of 2010. Considering the submission made by both the parties, the lower court has rightly condoned the delay of 242 days in filing the application to set aside the ex-parte decree in I.A. No. 269 of 2009 in O.S.No.34 of 2008, on payment of cost of Rs.400/- and hence this court finds no merit to

interfere with the said order and the C.R.P. No.2893 of 2010 is liable to be dismissed.

11. In view of the above facts and circumstances of the case, considering the submission of learned counsel for the revision petitioner and the respondent and in the interest of justice, this Court is inclined to pass the following orders :-

- a) The Revision Petition in C.R.P No.2892 of 2010 is partly allowed and the order passed in I.A. No. 277 of 2009 in O.S. No.359 of 2004 dated 28.06.2010 by the District Munsif Court, Palacode, is modified to the extent of enhancing the cost to a sum of Rs.15,000/- instead of Rs.4000/-, payable by the respondent/ defendant to the revision petitioner/ plaintiff, within a period of eight weeks from the date of receipt of a copy of this order. On payment of the said cost, in the event of allowing the Interlocutory Application under Order IX Rule 13, the Trial Court is directed to dispose of the suit in O.S. No. 359 of 2004, as early as possible, not later than six months, thereafter.

b) The Revision Petition in C.R.P No.2893 of 2010 is dismissed, by confirming the order passed in I.A. No. 269 of 2009 in O.S. No.34 of 2008 dated 28.06.2010 by the District Munsif Court, Palacode.

c) No order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

28.04.2016

Index: Yes/No

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To

The District Munsif Court,
Palacode.

D.KRISHNAKUMAR,J.

avr

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