

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).No.2218 of 2016
and CMP.No.11492 of 2016

1.Narashimharaju
2.Jagadeesan
3.Dhanasekar
4.Sakunthala

.. Petitioners/Defendants

Vs.

Suseela

.. Respondent/Plaintiff

Prayer:- Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, against the fair and decreetal order dated 23.03.2016 passed in I.A.No.599 of 2014 in O.S.No.11 of 2009 on the file of the Sub-Court, Sankari.

For Petitioners : Mr.P.Raja

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 23.03.2016 passed in I.A.No.599 of 2014 in O.S.No.11 of

2009 on the file of the Sub-Court, Sankari.

2.Learned counsel for the petitioners would submit that their sister/respondent herein has filed a suit for declaration of title and also injunction against her three brothers and sister, even though the property stood in the name of their father. The petitioners as defendants had entered an appearance, but they have not filed the written statement. The suit was decreed exparte on 11.01.2010. But the petitioners came to know about the same through the son of the plaintiff namely, Raja, only later point of time. Thereafter, they filed an application in I.A.No.599 of 2014 to condone the delay of 1639 days in filing the petition to set aside the exparte decree. The trial Court, after hearing both sides, has dismissed the application. He would further submit that it is a dispute between brothers and sisters and the number of delay is not a criterion. Further, they had assigned the sufficient reason in the application. Merely because the delay is 1639 days, it is not a reason for dismissing the application. The trial Court has held that written statement was not filed within 90 days. But however, the Court has every right to condone the delay and after setting aside the exparte decree, it can receive the written statement. That factum was not considered by the trial Court. Further the exparte decree is not a speaking decree. Hence, he prays for allowing this

revision petition.

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

4. On perusing the typed set of papers, it reveals that the respondent as a plaintiff filed a suit for declaration of title and injunction. The petitioners are brothers and sister of the respondent. They entered an appearance, but they had not filed the written statement in time. It is pertinent to note that all the petitioners are Government servants; the first petitioner was working in Employees Provident Fund Office, the second petitioner was working as Sub-Inspector of Police, the third petitioner was working as Assistant Executive Engineer in PWD, Dharmapuri and fourth petitioner was working as Secondary grade teacher. They know the consequence, if they have not participated in the litigation. They kept quiet all along and thereafter, they filed the application with an inordinate delay as if they were intimated by the son of the plaintiff only later point of time. Since the petitioners are educated and they are Government servants, they must be vigilant to contest the suit. Even though the petitioners filed the vakalat, they had not filed the written statement. The ex parte decree was passed on 11.01.2010. But they had not taken any steps to set aside the ex parte decree as soon as the ex parte decree has

been passed.

5.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. "

6. 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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22. . . .

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."

It is well settled dictum of the Apex Court that 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.

7.As per the above decisions, the party must give a sufficient cause for the condonation of delay. In the case on hand, the

petitioners have not assigned any valid reason as to why they are not in a position to appear before the Court and file the written statement in time and contest the suit. In the application, they stated that they came to know about the exparte decree only through the son of the plaintiff. It is pertinent to note that the suit was filed in the year 2009 and the exparte order was passed after one year. So it clearly shows that the petitioners with a malafide intention to prevent the decree holder to enjoy the fruits of the decree, have come forward with the petition for condonation of delay. Therefore, applying the dictum laid down in Balakrishnan and Lanka Venkateshwarlu cases, I am of the view that the delay of 1639 days has not been properly explained and hence, I am not inclined to condone the delay. So I do not find any illegality or irregularity in the fair and decreetal order passed by the trial Court and therefore, it is hereby confirmed. Consequently, the Civil Revision Petition stands dismissed.

8.In the result, this Civil Revision Petition shall stand dismissed by confirming the fair and decreetal order passed by the trial Court in I.A.No.599 of 2014 in O.S.No.11 of 2009. No costs. Consequently, connected Miscellaneous Petition is closed.

08.12.2016

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Index:Yes/No

R.MALA,J.

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To

- 1.The Sub-Court, Sankari.
 - 2.The Record Keeper
- V.R.Section, High Court, Chennai.

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