

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.11.2016

Delivered on: 09.11.2016

CORAM

THE HONOURABLE THIRU JUSTICE **V. PARTHIBAN**

C.R.P.(NPD) No.3087 of 2010

Lakshmi Petitioner

vs

1. Raja
2. Chinnathayee
3. Kamala
4. Santha
5. R.Sennthilkumar Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India against the order, dated 11.3.2010 of the learned Principal District Judge, Salem made in I.A.No.185 of 2006 in unnumbered Appeal Suit of 2016.

For petitioner : Mr.D.Shivakumaran

For respondent : Mr.A.K.Kumaraswamy

ORDER

This Civil Revision Petition has been filed against the order, dated 11.3.2010 of the learned Principal District Judge, Salem made in I.A.No.185 of 2006 in unnumbered Appeal Suit of 2016, refusing to condone the delay of 1163 days in filing the appeal.

2. Heard the learned counsel on both sides.

3. The petitioner herein, who was the plaintiff, approached the learned District Munsif Court, Salem by filing a suit in O.S.No.1099 of 1998, seeking partition of the suit property, claiming to be one of five legal heirs of her deceased father. The respondents 1 to 4 herein, who are the defendants in the said suit, are also legal heirs, interested in the partition of the suit property. 5th respondent herein is the 5th defendant in the suit. He was the third party purchaser of the suit property.

4. In the suit, the 5th respondent herein filed a written statement, denying the claim of the petitioner/plaintiff and also stated that the suit property was sold to him for a valid consideration and all the legal representatives had been party to the document as signatories and the sale consideration was distributed to all the legal heirs including the petitioner/plaintiff. Therefore, the question of any partition of the suit property, would not arise.

5. After hearing the parties, the learned District Munsif, Salem dismissed the suit, holding that the petitioner/plaintiff was not entitled to any share in the suit property and hence, he is not entitled

for the relief of partition. The learned trial Judge recorded elaborate reasons as to why, the petitioner/plaintiff was not entitled to the relief as prayed for, vide judgment dated 20.6.2003. Thereafter, the petitioner/plaintiff filed the appeal before the Principal District Judge, Salem, along with an interlocutory application in I.A.No.185 of 2006, seeking to condone the delay of 1163 days in filing the appeal. In support of his prayer for condonation of delay, the petitioner/plaintiff before the lower appellate Court, who was the appellant therein, averred that original Advocate whom he engaged, died immediately after dismissal of the original suit and therefore, she was not able to find the house to collect case bundle in order to file the appeal in time. She also averred that she was fell sick for some time. Only in 2006, when the 5th respondent, namely, 5th defendant in the suit, started cutting the trees in the suit property, the petitioner/plaintiff searched the Advocate house and got back the case bundle and filed the appeal.

6. On behalf of the 5th respondent, a counter affidavit was filed, stating that there was no explanation for condonation of delay and the affidavit filed in support of interlocutory application was bereft of of valid reasons. He also denied the petitioner having fell sick for some time as no date on which, the petitioner fell sick and recovered, was

mentioned in the affidavit. Therefore, the 5th respondent prayed for dismissal of the interlocutory application.

7. After hearing the parties, the learned Principal District Judge, dismissed the interlocutory application filed by the petitioner seeking condonation of delay of 1116 days in filing the appeal. The learned Judge has passed a well considered order after adverting to all the pleadings and documents filed by the parties, particularly, the learned Judge came to the conclusion that the delay, which sought to be explained by the petitioner/plaintiff therein, was beyond the period of limitation and therefore, the same cannot constitute 'sufficient cause'. He relied upon a decision reported in 2009 SAR (Civil) 41 of the Hon'ble Supreme Court, which, having followed the decision reported in 1981 I SCC 495 (Ajit Singh Thakur Singh and another versus State of Gujarat) held that a party is entitled to await until last date of limitation for filing an appeal, but when the party allows the limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before limitation expires, it was not possible to file the appeal within the time and no events or circumstances arising after the expiry of limitation can constitute a sufficient cause. The learned Judge, on going through the affidavit found that the

petitioner/plaintiff has not taken steps to file the appeal long after expiry of the time prescribed to file the appeal. The reason attributed by him for delay in filing the appeal cannot constitute sufficient cause and moreover, the reason attributed by the petitioner was also not satisfactory. In the circumstances, the condoned delay petition came to be dismissed. The present Revision Petition is against the said order.

8. On behalf of the petitioner, arguments put forth before the first appellate Court had been reiterated. As regards the legal submission is concerned, the petitioner relied upon the decision reported in 2007(2) CTC 58 (***The Secretary, Madras Race Club, Chennai versus Saraswathy Kailasam***). In the said decision, this Court held that when the substantial justice and technical considerations are pitted against each other cause of substantial justice deserves to be preferred. However, such preference is correct if there is no gross negligence or deliberate inaction imputable to the parties in seeking the condonation of delay. It is also to be seen whether the petitioner had acted with due diligence in prosecuting her case.

9. As regards the instant case is concerned, there was lack of

due diligence on the part of the petitioner herein and therefore, the decision cited by the petitioner may not be of any assistance in granting the relief as prayed for.

10. The petitioner also cited decisions, viz., 2014-4-LW.882 (***M/s.Bharat Petroleum Corporation Ltd. versus C.S.Prakasa Rao***) and 2015-2-L.W.961 (***Executive Officer, Antiyur Town Panchayat versus G.Arumugam(D) by LRs.***). In earlier decision, this Court has held in para 16 as under:

"16. The condonation of the delay is the discretion of the Court and such discretion is to be exercised if the delay is within certain limits. Length of delay is immaterial, but the acceptability of explanation is material. If the explanation does not indicate any mala fides or dilatory strategy, then the Court should be liberal in condoning the delay. In other words, while exercising the discretion, the Court has to adopt a pragmatic approach and the Court must have regard to all the circumstances of the case. The prejudice to the other side is one important consideration, while the Court adopting a liberal approach."

11. The above ruling would clearly show that there should be acceptability of explanation though the length of delay is immaterial. This Court further held that the discretion to condone the delay is to be exercised if the delay is within certain limits and should also see

that no prejudice be caused to other side which is paramount consideration while adopting the liberal approach.

12. As far as the case on hand is concerned, the delay which is sought to be condoned is inordinate, which is not properly explained to the satisfaction of the Court and any such condonation of inordinate delay would definitely cause great prejudice to the other side. Therefore, the first appellate Court has rightly rejected the application filed by the petitioner seeking the condonation of delay.

13. As regards the latter decision, the same may not be applied to the facts and circumstances of the present case as the same deals with the matter pertaining to the delay on the part of the Government officials and public servants for defeating the justice.

14. In the above circumstances, this Court is of the view that the delay was not only huge and inordinate, but the same was not explained satisfactorily. Therefore, the order, dated 11.3.2010 in I.A.No.185 of 2006 passed by the learned Principal District Judge, Salem, does not call for any interference by this Court.

Accordingly, the Civil Revision Petition is dismissed. No costs.

Internet: yes/no
Index: Yes/no
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V.PARTHIBAN, J.

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Pre delivery Order in
CRP NPD No.3087 of 2010

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