

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.11.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)No.242 of 2012

1.Selvam @ Selvakumar

2.Sakunthala

.. Petitioners

Vs.

1.Amsaveni

2.Minor Leenapriya

(Rep. by mother and guardian Amsaveni)

..Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the order dated 22.09.2011 passed in I.A.No.372 of 2010 (to condone the delay of 274 days) in O.S.No.16 of 2008, on the file of the learned Principal Subordinate Judge, Tindivanam.

For Petitioners : Mr.N.Ramesh

For Respondents : Mr.S.Rajaraman

ORDER

The case of the revision petitioners is that the respondents herein filed a suit against the revision petitioners and another in O.S.No.16 of 2008 on the file of the Principal Subordinate Court, Tindivanam for compensation amount of Rs.4,00,000/- to the 1st plaintiff and Rs.22,000/- towards past maintenance and Rs.1,000/- towards future maintenance to the 2nd plaintiff minor Leena Priya. The said suit was filed as pauper suit. After allowing the pauper application, the suit was numbered as O.S.No. 16 of 2008. In the said suit the revision petitioners were remained ex-parte for non-filing of written statement and an ex-parte decree was passed against the petitioners herein by the Judgment and Decree dated 29.06.2009. Thereafter the respondents herein filed execution petition in E.P.No.23 of 2010 to attach the properties mentioned in the schedule of the petition. The revision petitioners were received notice in the execution petition and appeared through their Counsel and they also filed counter statement to the above said execution petition.

2.The further case of the revision petitioners is that for non filing of written statement an ex-parte decree was passed against them and the same was came to their knowledge only when they received E.P. notice in the above said execution petition. Thereafter on verification, the revision petitioners came to know that the respondents herein obtained an ex-parte decree against them. To set aside ex-parte decree passed against the revision petitioners, they filed application in I.A.No.372 of 2010 with a delay of 274 days. The respondents herein filed counter affidavit to the condone delay application and made strong objection for allowing the delay petition. The revision petitioners to substantive their case in the condone delay application adduced oral evidence on their side and examined PW1 and PW2 and marked Exs.P1 to P4. On the side of the respondents, the 1st respondent was examined herself as RW1 and no documents were produced on their side.

3.By considering the oral and documentary evidence, the Learned Principal Subordinate Judge was pleased to dismiss the condone delay application by order and decree dated 22.09.2011 on the ground that the reason assigned by the revision petitioners is not justified one and the same is false. Aggrieved over the same, the

revision petitioners filed this civil revision petition.

4.I have heard Mr.N.Ramesh, learned counsel appearing for the petitioners and Mr.S.Rajaraman, learned counsel appearing for the respondents and the entire materials available on records were perused.

5.The challenge made in this civil revision petition is that the dismissal order passed in section 5 application by the revision petitioners. According to the revision petitioners, the respondents herein filed pauper suit by filing pauper application. The revision petitioners were received summon only in the pauper application. After allowing the pauper application, the regular suit was numbered and in which no notice was issued to the revision petitioners. The Counsel for the revision petitioners was also not informed about the numbering of the suit to them. They were under the bonafide belief that they will be informed by their counsel. But an ex-parte decree was passed against the revision petitioners for non filing of written statement.

6.The reason assigned by the revision petitioners to condone the delay of 274 days seeking to set aside the ex-parte decree is that 6

months back when the 1st revision petitioner climbed over the Tamarind Tree, he fell down from the tree and he suffered fracture on his hip and for that he had taken treatment in the hospital for nearly about 2 months. In the meantime, an ex-parte decree was passed against the revision petitioners on 29.06.2009. The 1st revision petitioner as PW1 has adduced evidence to the effect that his counsel informed him that after receiving letter from him, the revision petitioners were directed to meet his counsel. Since, no letter was received from their counsel, he did not meet his counsel. Further the revision petitioners did not know about the allowing of pauper application and conversion of pauper application into regular suit. Further, in the year 2008 he fell down from the Tamarind Tree and in the said accident he had a fracture on his hip and backbone and for that the 1st revision petitioner took treatment at Puthoor. Since, the fracture was not cured, he took treatment with Doctor V.Sekar from 2008-2010 and the hospital treatment receipts were marked as Exs.P1 to P4.

7.The 1st revision petitioner to establish his case examined one E.Murugan on his side as PW2. The said Murugan has corroborated the evidence of PW1. The 1st respondent herein also examined herself as

RW1 and deposed that to delay the disposal of execution petition, the revision petitioners filed the present application with delay and the same cannot be entertained. Despite sufficient time was granted, the revision petitioners have not filed written statement and therefore an ex-parte decree was passed against them. The reason assigned by the revision petitioners to condone the delay of 274 days in setting aside the ex-parte decree is not genuine and the same cannot be accepted.

8.To support his case, the respondent relied on a Judgment reported in **2008 (3) TLNJ 470 (Civil)** in the case of ***S.Vasnatha and others v. P.Packrisamy***, wherein it is held as follows:

“Petition filed to set aside ex-parte decree with a period of condone delay of another 111 days delayed not explained- alleged return of papers improperly by trial court trial- delayed condoned by trial court- on revision held that remedy for irregularities are to initiate action- not proper reason to condone delay- CRP dismissed”.

And another judgment reported in **2009 (4) TLNJ 397 (Civil)** in ***N.Kathirvel v. N.Kalimuthu Gounder Maruthachalam***, wherein it is held as follows:

“Limitation Act 1963, Section 5 – sufficient cause –

sufficient cause is subjective. Negligence of the party in pursuing the case would not constitute sufficient cause – Held – the court while dismissing this CRP held that the reasons mentioned in Para 2 of the Affidavit would not constitute sufficient cause- it is not the length of delay but the bonafides of the party which determines sufficient cause”.

The above said judgments are not applicable to be the facts of the present case.

9.The learned counsel for the revision petitioners has also relied on the following judgments to support his case.

1. **2000 -1- L.W. 547** in the case of **V.Amudha v. S.A.Arumugam and 2 others**, wherein in Para 7 it is held as follows:

“7.Apart from this, the lower court also has taken into consideration that the interests of justice required that the delay must be condoned. Discretion was exercised by the Lower Court on application of mind. Unless the petitioner shows that they are put to manifest injustice or hardship, the discretion exercised by the lower court is not liable to be revised by this Court. When the petitioner herself has

not objection in restoring the suit, she cannot by the lower court. In spite of the said statement by the first plaintiff, the lower Court ordered a cost of Rs.1,000/- to her. The lower court has taken into consideration the interests of justice and the rights of the parties were also protected”.

10.In **2011 (1) TLNJ 516 (Civil)** in the case of ***Sarpudeen v. Pitchai and others***, wherein in para 12 it is held as follows:

“12.This Court aptly points out the decision of the Honourable Supreme Court in N.Balakrishnan –Vs- M.Krishnamurthy reported in (1998) 7 SCC 123, whereby and whereunder, it is laid down as follows:

“A Limitation Act,1963- section 5 – condonation of delay- Discretion of Court- How to exercise – Guidelines stated- Words explanation for the delay is the sole criterion, length of delay not relevant – In absence of anything showing mala fide or deliberate delay as dilatory tactic, Court should normally condone the delay – However, while doing so Court should also keep in mind the consequent litigation expenses to be incurred by the opposite party and should compensate him accordingly – Where a Court condones delay in positive exercise of discretion, Superior Court

and more particularly the revisional Court should not normally disturb the same – But where request for condonation of delay is refused, it would be open to the superior Court to come to its own finding on the basis of explanation for the delay given by the party- delay on the part of defendant – appellant of 883 days in approaching the Court against dismissal of his application to set aside ex-parte decree passed against him – Non-action on the part of his advocate explained as cause for the delay – Appellant also complaining about conduct of the advocate before Consumer Forum and getting Rs.50,000/- as compensation – Appellant's explanation for the delay accepted and delay condoned by trial court – But in revision High Court setting aside the order of trial Court on ground that appellant was negligent and was not careful enough to meet the advocate to verify the stage of the proceedings for a long time – Held, high Court in revision erred in interfering with the exercise of jurisdiction by trial court in condoning the delay when appellant's conduct did not as a whole warrant castigating him as an irresponsible litigant having regard to present busy and preoccupied life.”

8.In the aforesaid decision, it is further observed thus:

‘Rules of limitation are not meant to destroy the rights of the parties and they are meant to see that the parties did not resort to dilatory tactics, but seeking their remedy promptly and the object of providing a legal remedy is to repair the damage caused by reason of legal injury’.

11. In **2009 (1) TLNJ 6 (Civil)** in the case of, ***T.R.Thulkarunai v. Babiammal***, wherein in para 10 it is held as follows:

“10. For the identical principle, learned counsel for the petitioner also relies upon a decision of the Supreme Court in S.L.P.(Crl.)No.131 of 2006 dated 12.08.2008 (state (NCT of Delahi) –Vs- V.Ahmed Jaan

11. Following the dictum laid down by the Supreme Court in the decisions afore stated, bearing the explanation in the affidavit in mind, this court is of the considered view that the delay has been properly explained before this Court satisfactorily. The petitioner has stated about his bad health due to food poison and he did not assign any reason for the delay. It may also be observed that he might have furnished even some other reasons, producing certain

medical certificates, but he has not done so. In the considered view of this Court, the affidavit contains "sufficient causes' for the Court to condone the delay and for the inconvenience caused to the other side it has to be adequately compensated in terms of money. This Court quantifies such terms at Rs.3,000/- (Rupees three thousand only) which is payable by the petitioner to the respondent".

12.In **2009 (4) TLNJ 255 (Civil)** in the case of ***G.Krishnamoorthy v. Arulmigu Sri Pataleeswarar Devasthanam Represented by its Executive Officer Thiupapuliayur Cuddalore,*** wherein in para 4 it is held as follows:

"4.The Learned District Munsif, Cuddalore dismissed the application not satisfied with the reasons adduced for the delay. The Learned Counsel For the petitioner would submit that the petitioner was all along ready to participate in the trial, however due to non-communication on the part of his earlier counsel, he could not appear before the Court. In support of his contention, he placed reliance upon a decision of Supreme Court reported of in AIR 1981

Supreme Court 1400(Rafiq –Vs- Munshilal) wherein there Lordships while discussing an identical situation, were pleased to observe as follows:

3..... After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watch-dog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. Mr. A.K.Sanghi stated that a practice has grown up in the High Court of Allahabad amongst the lawyers that they remain absent when they do not like a particular Bench. May be we do not know, he is better informed in this matter. Ignorance in this behalf is our bliss. Even if we do not put our seal of imprimatur on the alleged practice by dismissing this matter which may discourage such a tendency, would it not repute. What is

the fault of the party who having done everything in his power and expected of him would suffer because of the default of his advocate. If we reject this appeal, as Mr.A.K.Sangai invited us to do, the only one would suffer would not be the lawyer who did not appear but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate admission, or misdemeanor of his agent. The answer obviously is in the negative. May be that the learned advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted.

13.Following the principles laid down in the above said decisions, it is held that if the petitioners herein did not receive communication from their lawyer is true, then the Court may consider condone the delay. The 1st petitioner herein has stated in his evidence in support of allegation contained in the affidavit. Since, the reason appears to be

true, this Court is of the considered opinion that the delay may be condoned, provided with cost of Rs.3,000/- for the inconvenience caused by the revision petitioners.

14.In the result:

(a) this civil revision petition is allowed by setting aside the order in I.A.No.372 of 2010 in O.S.No.16 of 2008, dated 22.09.2011, passed by the learned Principal Subordinate Judge, Tindivanam, on condition that the petitioners should pay a sum of Rs.3,000/- to the respondents or their counsel within a period of three weeks from the date of receipt of a copy of order;

(b) the trial Court is hereby directed to number the set aside application and dispose of the same within a period of one month from the date of receipt of a copy of this order;

(c) thereafter, the trial Court is hereby directed to take up the suit in O.S.No.16 of 2008 by giving first preference, by giving opportunity of hearing to both the

parties without giving adjournment and to dispose of the same within a period of three months. Both parties are hereby directed to give their fullest co-operation for the speedy trial of the suit.

24.11.2016

Note: Issue order copy on 25.04.2017
Internet: Yes
Index: Yes

vs

To

The Principal Subordinate Judge,
Tindivanam.

M.V.MURALIDARAN, J.

VS

**Pre-Delivery order made in
CRP(NPD)No.242 of 2012**

24.11.2016

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