

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2016

C O R A M

THE HON'BLE Mr.JUSTICE S.M.SUBRAMANIAM

CRP(PD).NO.2722 OF 2013 and M.P.No.1 of 2013

Smt.Nagalakshmi (Died)

1.B.S.Sathiyarayanan
2.B.S.Ramachandra
3.Smt.Saraswathi
4.B.S.Dwaraknath
5.B.S.Raghavan
6.Smt.Jyothi
7.B.S.Somnath
8.B.S.Sekhar
9.B.S.Visveswar

... Petitioners

Versus

Smt.Zackariah (Deceased)
Mr.Zackariah (Deceased)
1.Z.Mubarak
2.Z.Ansar
3.Mrs.Razia Begum
4.Mrs.Rihana Begum
5.Fathima
6.Kathija Begum
7.Daulath

... Respondents

R5 to R7 brought on record as LRS of the deceased R2
vide order of this Court dt.18.11.2014 made in
MP.Nos.1 & 2 of 2014 in CRP No.2722 of 2013.

Criminal Revision Petition filed under Article 227 of the Constitution of India praying against the order and Decree dated 21.02.2013 made in I.A.No.708 of 2012 in O.S.No.381 of 1995, on the file of Learned District Munsif, Uthagamandalam.

For Petitioner	... Mrs.P.T.Asha
For Respondent	... Mr.V.G.Suresh Kumar for R1, 3 & 4 No appearance for R5 to R7

ORDER

Heard Mrs.P.T.Asha, learned counsel for the petitioners and Mr.V.G.Suresh Kumar, learned counsel appearing for the respondents 1,3 & 4 and with their consent, the Civil Revision Petition is taken up for final disposal. None appears for the respondents 5 to 7.

2. The facts in nutshell as argued by the learned counsel appearing for the petitioner is that, the petitioners are the plaintiffs in O.S.No.381 of 1995 and the suit is for declaration, recovery of possession and for mean profits in respect of the suit schedule properties. The suit was set decreed exparte on 11.07.2011 and the respondents/defendants filed an application in I.A.No.708 of 2012 to condone the delay of 334 days in filing the petition to set aside the exparte decree and the petition was filed in

time on 10.08.2011. The petition was returned for compliance by the Registry and hence, there was a delay of 334 days in representing the petition filed to set aside the exparte decree. The petition was allowed by the Court below against which the present revision petition is filed.

3. The learned counsel appearing for the petitioners vehemently contended that the order passed by the Court below cannot be sustained on the ground that the conduct of the defendants in the suit was such that they were going on prolonging the conduct of the suit and therefore, the order is liable to be set aside.

4. It is the further contention of the learned counsel that averments made by the respondents in the affidavit filed in support of the petition are false and contrary to the facts of the case. Therefore the defendants had mis-represented the Court only with an intention to prolong the suit. Therefore, the respondents are not entitled for any lenience by this Court.

5. The learned counsel appearing for the petitioners, in support of her contentions placed reliance on the judgments reported in **2010(2)**

MWN(Civil)688 [Vellaithai and others Vs V.Duraisamy] & 1993

(1) SCC 572 [Binod Bihari Singh Vs Union of India] and submitted that the party should not be encouraged by rejecting the bar of limitation pleaded by the opposite party and condoning the delay.

It is relevant to the extract in Vellaithai's case paragraph 4,6 and 8

4. ***"In dealing with the question of condoning the delay under Section 5 of the Limitation Act, a party seeking relief, has to satisfy the Court that he had sufficient cause for not making an Application within the prescribed time and this has always been understood to mean that the explanation has to cover the whole period. This apply to the delay in representation also. The delay should not be attributable to negligence, inaction or want of bona fide on the part of the defaulting party. In other words, if there is material to indicate the party's negligence in not taking necessary steps, which he would have or should have taken, the Rule of Liberal Approach to such a party cannot be extended.***

5.

6. On a reading of the above said principle set out, it is well settled that the Rule of Liberal Approach should be extended while considering the application for condonation of delay only when sufficient cause has been shown and there is no lack of bona fide or an attempt to hoodwink the Court by the party concerned, who has come forward with an Application for condonation of delay. In such cases, no indulgence could be shown by condoning the delay.

7.

8. The explanation given by the Respondent is that the papers have been mixed up with other bundles in their Lawyer's office and was traced out after three years cannot at any stretch of imagination be considered to be a sufficient cause. In examining the request for condoning the delay in representation, the relevant facts that requires to be taken into consideration is that a decree has been passed against the

Respondent, declaring that the agreement of sale is unenforceable and barred by limitation and in the said view of the matter, the conduct of the respondent clearly shows that there has been a deliberate inaction and gross negligence on the part of the Petitioners which has not been taken note of by the Court below and the discretion of the Court ought not to have been exercised in his favour".

6. The learned counsel for the respondents contended that it is only a delay in representation and the same had happened inadvertently due to carelessness of the petitioners/plaintiffs appearing before the lower Court in the suit. This fact is stated in para 7 of the affidavit filed in support of I.A.No.708 of 2012. It is stated that, the bundle was misplaced by the respondents/defendants and after receiving the same from the High Court, advocate the petition was filed.

7. Heard the learned counsel for the petitioners/plaintiffs and the learned counsel for the respondents/defendants.

8. Considering the rival contentions of the parties this Court is of the opinion that the interlocutory application is only a petition to condone the delay of 334 days in representation. Further the reasons stated in the affidavit for the delay in representing the papers are that, the case papers were handed over to the advocate, practicing in the High Court, Chennai and the same was unable to be received immediately and thus there was a delay in receiving the bundle from the advocate, High Court. Such a reason cannot be brushed aside. Further, because of the delay in transacting the bundle, the rights of the parties cannot be denied. This Court has held in number of decisions that due to the mistake of the counsels or otherwise, the rights of the parties cannot suffer. In the judgment referred by the learned counsel for the petitioner in ***Vellathai's case*** (cited supra) the delay was 961 days and in ***Binod Bihari Singh's case*** (cited supra) it is only a delay in filing the petition to set aside the ex parte decree. Therefore, the above cases cannot be considered in respect of the facts and the circumstances of the present case and the present case is only to condone the delay of 334 days delay in representation of the petition and a lenient view shall be taken in order to allow the

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respective parties to adjudicate the matter on merits.

9. In view of the above facts Civil Revision Petition is dismissed. The order passed by the District Munsif, Uthagamandalam on 21.02.2013 in I.A. No.708 of 2012 in OS.No.381 of 1995 is confirmed. The Learned District Munsif, Uthagamandalam shall take up the petition to set aside the exparte decree and dispose the same within a period of one month from the date of receipt of a copy of this order by affording opportunities to the parties concerned. No costs. Consequently connected Miscellaneous Petition is also closed.

06.10.2016

Index : Yes / No

Internet : Yes / No

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To

The District Munsif, Uthagamandalam

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