

Reserved on : 15.07.2016

Delivered on : 20.07.2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

**C.R.P.(NPD).Nos.4255 & 4256 of 2009
and M.P.No.1 of 2009**

1.Saradhamani

2.Ramachandran
Ramachandran

... Petitioners in C.R.P.(NPD).4255/2009
... Petitioner in C.R.P.(NPD).4256/2009

Vs.

Sankar

... Respondent in C.R.P.(NPD).4255/2009

1.V.Sankar

2.Sub Registrar,
Sub-Registrar's Office,
Jalakandapuram,
Mettur Taluk.

3.Chinnaponnu

... Respondents in C.R.P.(NPD).4255/2009

C.R.P.(NPD).No.4255 of 2009 filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order dated 14.09.2009 made in I.A.No.1259 of 2008 in O.S.No.15 of 2003 on the file of the District Munsif Court, Mettur.

C.R.P.(NPD).No.4256 of 2009 filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order dated 14.09.2009 made

in I.A.No.1257 of 2008 in O.S.No.189 of 2002 on the file of the District Munsif Court, Mettur.

For Petitioner (in both C.R.Ps) : Mr.R.Subramanian

For Respondents (in both C.R.Ps) : Mr.J.Ramakrishnan (R1)

Mr.T.Jayaramaraj,
Government Advocate (CS) - (R2)
R3 - no appearance

COMMON ORDER

Since the trial Court had dismissed the applications in I.A.No.1257 of 2008 in O.S.No.189 of 2002 and I.A.No.1259 of 2008 in O.S.No.15 of 2003 by a common order, both the Civil Revision Petitions are disposed of by this common order.

2.C.R.P.(NPD).No.4255 of 2009 arises against the fair and decreetal order passed in I.A.No.1259 of 2008 in O.S.No.15 of 2003 on the file of the District Munsif Court, Mettur. The defendants are the petitioners and the respondent was the plaintiff.

3.C.R.P.(NPD).No.4256 of 2009 arises against the fair and decreetal order passed in I.A.No.1257 of 2008 in O.S.No.189 of 2002 on the file of the District Munsif Court, Mettur. The plaintiff is the petitioner and the respondents were the defendants in the suit.

4.The 2nd petitioner filed the suit in O.S.No.189 of 2002 for

mandatory injunction directing the 1st respondent to execute the Sale Deed in his favour and for permanent injunction. The 1st respondent filed the suit in O.S.No.15 of 2003 for permanent injunction restraining the 2nd petitioner from creating encumbrance over the suit properties. The respondents filed their return statement and were contesting the suit.

5.Since the 2nd petitioner failed to appear before the trial Court, his suit in O.S.No.189 of 2002 was dismissed for non-prosecution on 17.08.2005. Similarly, since the petitioners remained absent before the trial Court, they were set exparte and an exparte decree was passed in O.S.No.15 of 2003 on 05.09.2007.

6.Thereafter, the 2nd petitioner filed an application in I.A.No.1257 of 2008 in O.S.No.189 of 2002 to condone the delay of 1046 days in filing an application to restore the suit in O.S.No.189 of 2002. The petitioners also filed an application in I.A.No.1259 of 2008 in O.S.No.15 of 2003 to condone the delay of 298 days in filing the petition to set aside the exparte decree passed in O.S.No.15 of 2003. In the affidavit filed in support of the petitions, the petitioners have stated that they came to know about the dismissal of the suit in O.S.No.189 of 2002 and the exparte decree passed in O.S.No.15 of 2003 only on 11.07.2008, when the 1st respondent came to the suit property along with VAO and Surveyor to measure the property. Only

when the Panchayadars enquired with the 1st respondent, they came to know about the exparte decree passed in O.S.No.15 of 2003 dated 05.09.2007 and the dismissal of the suit in O.S.No.189 of 2002. Further, in the affidavit filed in support of the petitions, the petitioners have stated that in the month of August 2005, at the instance of their relatives and Panchayadars, the dispute between the petitioners and the 1st respondent was compromised and it was agreed between the petitioners and the 1st respondent to withdraw both the suits and it was also agreed that the 1st respondent should execute a Sale Deed in respect of 43 cents of land in Survey No.30/2A for the sum of Rs.4,00,000/- already received by him. The averments stated in the affidavit filed in support of the petitions were disputed by the 1st respondent stating that there was no compromise between the parties at any point of time. In the counter, the 1st respondent has stated that the petitioners filed applications for return of the documents filed in the Interlocutory Application on 09.07.2008 and that the present applications for condonation of delay were filed only on 29.07.2008. The trial Court, after taking into consideration the case of both sides, dismissed both the applications. Aggrieved over the same, the petitioners have filed the above Civil Revision Petitions.

7. When the suit in O.S.No.189 of 2002 was posted for trial on 17.09.2005, the counsel for the 2nd petitioner reported no instructions and

therefore, the suit was dismissed for non-prosecution. In O.S.No.15 of 2003, when the suit was posted in the list on 05.09.2007, on that day, the counsel for the petitioners reported no instructions and also filed a memo to that effect. On that day, the 1st respondent was examined as P.W.1 and the suit was decreed exparte. Though the petitioners contended that the dispute was compromised between the petitioners and the 1st respondent at the instance of the relatives and the Panchayadars, none of the relatives and the alleged Panchayadars were examined to establish the said contention. Only the 2nd petitioner was examined as P.W.1 and the 1st respondent was examined as R.W.1. R.W.1 specifically denied the contention raised by petitioners with regard to the alleged compromise in the month of August 2005.

8.When the 1st respondent had denied the said contention, the burden is on the petitioners to establish that there was compromise between the parties and only because of the said compromise they reported no instructions before the trial Court. But the petitioners failed to produce any independent witness to prove the alleged compromise in the month of August 2005.

9.It is also pertinent to note that Exs.A1 & B1, which are the petitions seeking for return of the documents filed by the petitioners before

the trial Court, were filed on 09.07.2008. However, the present applications for condonation of delay were filed only on 29.07.2008. But in the affidavit, the petitioners have stated that they came to know about the exparte decree passed in O.S.No.15 of 2003 and the dismissal of the suit in O.S.No.189 of 2002 only on 11.07.2008. When the defendants have filed the applications for return of the documents as early as on 09.07.2008 (i.e.) prior to their alleged knowledge of the decree passed in the suit and the dismissal of the suit, the averments stated in the affidavit cannot be true. From the filing of the applications on 09.07.2008, it is clear that at least on 09.07.2008 they had the knowledge about the dismissal of the suit and the exparte decree passed in the suit.

10.Mr.R.Subramanian, the learned counsel appearing for the petitioners, in support of his contention, relied upon the following judgments:

(i)***(2010) 12 Supreme Court Cases 159 [Bhagmal and others Vs. Kunwar Lal and others]*** wherein the Hon'ble Supreme Court held as follows:

“12.It is to be seen here that the question of delay was completely interlinked with the merits of the matter. The appellant-defendants had clearly pleaded that they did not earlier come to the Court on account of the fact that they did not know about the order passed by the Court proceeding ex

parte and also the ex parte decree which was passed. It was further clearly pleaded that they came to know about the decree when they were served with the execution notice. This was nothing, but a justification made by the appellant-defendants for making Order 9 Rule 13 application at the time when it was actually made. This was also a valid explanation of the delay. The question of filing Order 9 Rule 13 application was, in our opinion, rightly considered by the appellate Court on merits and the appellate Court was absolutely right in coming to the conclusion that the appellant- defendants were fully justified in filing the application under Order 9 Rule 13 CPC at the time when they actually filed it and the delay in filing the application was also fully explained on account of the fact that they never knew about the decree and the orders starting the ex parte proceedings against them. If this was so, the Court had actually considered the reasons for the delay also. Under such circumstances, the High Court should not have taken the hypertechnical view that no separate application was filed under Section 5.

13. The application under Order 9 Rule 13 CPC itself had all the ingredients of the application for condonation of delay in making that application. Procedure is after all handmaid of justice. Here was a party which bona fide believed the assurance given in the compromise panchnama that respondent 1-plaintiff would get his suit withdrawn or dismissed. The said compromise panchnama was made before the elders of the Village. Writing was also effected, displaying that compromise. The witnesses were also examined. Under such circumstances, the non-attendance of the appellant-

defendants, which was proved in the further proceedings, was quite justifiable. The appellant-defendants, when ultimately came to know about the decree, had moved the application within 30 days. In our opinion that was sufficient.”

(ii)(2013) 11 Supreme Court Cases 341 [S.Ganesharaju (Dead) through LRS. and another Vs. Narasamma (Dead) through LRS. and others] wherein the Hon'ble Supreme Court held as follows:

“12.The expression “sufficient cause” as appearing in Section 5 of the Limitation Act, 1963, has to be given a liberal construction so as to advance substantial justice. Unless the respondents are able to show mala fides in not approaching the Court within the period of limitation, generally as a normal rule, delay should be condoned. The trend of the Courts while dealing with the matter with regard to condonation of delay has tilted more towards condoning the delay and directing the parties to contest the matter on merits, meaning thereby, that such technicalities have been given a go-by.”

11.Countering the submissions made by the learned counsel for the petitioners, Mr.J.Ramakrishnan, learned counsel appearing for the respondent submitted that the trial Court had rightly dismissed the applications filed by the petitioners since the petitioners failed to explain the reasons for the delay in a proper manner.

12. In support of his contention, the learned counsel relied upon the following judgments:

(i) **(1993) 1 Supreme Court Cases 572 [Binod Bihari Singh Vs. Union of India]** wherein the Hon'ble Supreme Court held that a party should not be encouraged by rejecting the bar of limitation pleaded by the opposite party when the party seeking condonation would establish that he has taken false plea to get rid of bar of limitation.

(ii) **(2014) 11 Supreme Court Cases 351 [Brijesh Kumar and others Vs. State of Haryana and others]** wherein the Hon'ble Supreme Court held as follows:

“10. The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However the Court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the Court cannot condone the delay on sympathetic grounds alone.”

13. There is no dispute with regard to the ratio laid down by the Apex Court in the judgments relied upon by the learned counsel for the petitioners. However, when the petitioners have not explained the reasons for the delay in a proper manner, the delay cannot be condoned. As already stated, when the petitioners have stated that they had the knowledge of the dismissal of the suit and the ex parte decree passed in the suit only on 11.07.2008, the said averment can only be a false averment for the reason that the petitioners have filed applications for return of the documents as early as on 09.07.2008 itself and the present applications for condonation of the delay were filed on 29.07.2008. Further, the contention with regard to the alleged compromise was also not proved by the petitioners by examining the alleged relatives and the Panchayadars, who had compromised the dispute between the parties.

14. In these circumstances, the judgments relied upon by the learned counsel for the petitioners are not applicable to the facts and circumstances of the present case. Unless, the petitioners give sufficient cause for the delay, the delay should not be condoned. The judgment reported in ***(2015) 1 Supreme Court Cases 680 [H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and another]*** squarely applies to the facts and circumstances of the present case. When

there is inordinate delay of 1046 days and 298 days, the petitioners are duty bound to explain the delay in a proper manner.

15. In the case on hand, they miserably failed to explain the reasons for the delay in an acceptable manner. In these circumstances, the trial Court had rightly dismissed both the applications. The ratio laid down by the Hon'ble Supreme Court in the judgments relied upon by the learned counsel for the respondent squarely applies to the facts and circumstances of the present case.

16. In these circumstances, I do not find any error or irregularity in the orders passed by the trial Court. The Civil Revision Petitions are devoid of merits and are liable to be dismissed. Accordingly, the Civil Revision Petitions are dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
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20.07.2016

M.DURAI SWAMY, J.

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To

1.The District Munsif Court,
Mettur.

2.The Sub Registrar,
Sub-Registrar's Office,
Jalakandapuram,
Mettur Taluk.

Order made in
C.R.P.(NPD).Nos.4255 & 4256 of 2009
and M.P.No.1 of 2009

20.07.2016