

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.No.699 of 2012 and
M.P.No.1 of 2012

Saraswathy

.. Petitioner

Vs

Chinnanna Gounder

.. Respondent

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the Fair and Final Order dated 03.09.2010 made in I.A.No.2796 of 2008 in O.S.No.335 of 2003 on the file of the Principal District Munsif, Coimbatore.

For Petitioner : Mr.K.S.Karthik Raja

For Respondent : No Appearance

O R D E R

The Civil Revision Petition is filed against the Fair and Final Order dated 03.09.2010 made in I.A.No.2796 of 2008 in O.S.No.335 of 2003 on the file of the Principal District Munsif, Coimbatore.

2.The case of the petitioner is that the respondent / plaintiff has filed the above suit in O.S.No.335 of 2003 on the file of the Principal District Munsif, Coimbatore, for declaration and for permanent injunction against this petitioner / defendant. On receipt of the suit summon, the petitioner / defendant has filed a detailed written statement by denying the suit averments, but the said suit was set exparte due to non appearance this petitioner / defendant and her counsel and an exparte decree was passed on 19.01.2007, since this case was posted for cross examination of the respondent by the petitioner / defendant.

3.The further case of the petitioner is that she was under the impression that the suit is still pending and the counsel would intimate about the proceeding of the suit and also hearing of the case, but there was no intimation from her counsel and infact the petitioner also not contact her counsel. Hence, no cross examination was taken by this petitioner / defendant.

Therefore, the learned District Munsif has passed a decree on the same day on 19.01.2007 in favour of the respondent / plaintiff.

4.The further case of the petitioner is that originally a suit was filed in O.S.No.1616 of 1999 before the same District Munsif Court, Coimbatore by this petitioner / defendant against this respondent / plaintiff for permanent injunction, restraining the respondent / plaintiff from in any manner interfering with the peaceful possession and enjoyment of the suit property and the said suit was set exparte and the exparte decree was passed on 19.09.2002. Thereafter, this respondent / plaintiff, who is defendant in the above suit in O.S.No.1616 of 1999 has filed an application to set aside the exparte decree dated 19.09.2002, but the said application for setting aside the exparte decree was dismissed due to non payment of cost and infact there was no revision or regular appeal against the exparte decree dated 19.09.2002 in O.S.No.1616 of 1999 filed by this respondent / plaintiff, who is the defendant in the above suit. But suppressing the said decree in O.S.No.1616 of 1999 dated 19.09.2002, this respondent / plaintiff has filed the present suit for declaration and for permanent injunction against this petitioner and the said suit an exparte decree was passed against this petitioner on 19.01.2007.

5.Thereafter, on knowing about the same, this petitioner / defendant has filed an application for setting aside the exparte decree dated 19.01.2007 along with condonation of delay of 627 days in filing the application to set aside the exparte decree in I.A.No.2796 of 2008. In the said application, this petitioner / defendant has narrated the above statement. Against the exparte decree dated 19.01.2007 the application for setting aside the exparte decree ought to have filed within 30 days i.e. on or before 17.02.2007. But, due to old age, the petitioner who is aged about 70 years widow, there was no help and intimation about the case proceedings to her. Therefore, the delay of 627 days was occurred and she prayed the trial Court to condone the delay of 627 days in filing the above application to set aside the exparte decree.

6.The case of the respondent is that though the suit was decreed on 19.01.2007, but the present application in I.A.No.2796 of 2008 filed for condonation of delay of 627 days, but this petitioner / defendant has not given any valid reasons for condone the delay of 627 days. The respondent also states that the petitioner has to disclose the proper valid reasons for each and every day delay and the belated application has filed by the petitioner is only to dilly dallying the proceeding, the petitioner has filed the above application.

7.The respondent also states that the petitioner / defendant has not vigilant to conduct the case in a proper manner and the reason assigned in the affidavit that due to wrong impression and communication gap there is a delay of 627 days was not sufficient one and the inconsistent and contradictory statement in the above application both goes to prove beyond doubt that the application has no truth and he sought for the trial Court to dismiss the above application.

8.Considering both side arguments, the learned Judge has dismissed the above application on 03.09.2010 on the ground that though the matter was posted on 19.01.2007 for cross examination of the respondent / plaintiff by this petitioner / defendant, it is the duty of the learned counsel for the petitioner / defendant to cross examine the PW1, but without noting the same, the petitioner alleged that this was still pending on her impression. The learned Judge further states that it was the duty of the petitioner to know what was the stage of the case and hence, the reason assigned by the petitioner / defendant is not valid one and the petitioner also not explained each and every day delay and hence, the learned Judge has dismissed the above application on the ground that the petitioner was not entitled for the benefit under Section 5 of the Limitation Act.

9.Heard Mr.K.S.Karthik Raja, learned counsel appearing for the petitioner and there is no representation for the respondent.

10.Admittedly, the above suit was posted on 19.01.2007 for cross examination of the respondent / plaintiff by the petitioner / defendant. The petitioner's age was 70 years on the date of application. Apart from this, she has stated that she expected from her counsel about the proceedings of the case, but one or other reason the counsel was not informed properly to this petitioner / defendant.

11.Apart from this, on perusal of a plaint and the affidavit filed in support of the I.A.No.2796 of 2008, I came to know that admittedly the petitioner / defendant has filed a suit in O.S.No.1616 of 1999 against this very same respondent / plaintiff in O.S.No.335 of 2003 before the same District Munsif Court, Coimbatore for the same property for a suit for bare injunction and the said suit was set exparte on 19.09.2002. But, this respondent / plaintiff have not taken any steps to set aside the said exparte decree dated 19.09.2002 by way of filing revision or regular appeal and there was no documents to show that whether the respondent / plaintiff has filed any

application or appeal against the said decree in O.S.No.1616 of 1999 dated 19.09.2002. In fact this respondent / plaintiff also not denied about the filing of the suit in O.S.No.1616 of 1999 against him by this petitioner / defendant, either in his counter in I.A.No.1296 of 2008 or in his written statement.

12.Thus being the case, the trial Court while dealing the cases should apply their mind in proper manner and verify the averments made in the applications filed by the parties either in the restoration application or to set aside application or any other applications. In the case on hand, admittedly there was an averment in paragraph-3 of the affidavit filed in supporting of the condonation of delay petition in I.A.No.2796 of 2008, the petitioner / defendant has clearly stated that she has filed a suit in O.S.No.1616 of 1999 before the very same Court i.e. District Munsif Court, Coimbatore against this respondent / plaintiff and the very same Court has passed a decree on 19.09.2002 for the same suit schedule of property in O.S.No.335 of 2003.

13.When the above averments made by the petitioner / defendant, it is the bounden duty of the learned District Munsif Court, Coimbatore either to direct this petitioner / defendant to produce the document in the said suit decree in O.S.No.1616 of 1999 dated 19.09.2002 or to call for the records in the above suit in O.S.No.1616 of 1999 and thereafter gone through the averments made by the plaintiff in the affidavit in supporting the I.A.No.2796 of 2008 by applying his mind in a proper manner and to deal the said condonation of delay in I.A.No.2796 of 2008.

14.In fact, the very same Court has passed the decree in O.S.No.1616 of 1999, but suppressing the said fact by this respondent / plaintiff has filed the present suit in O.S.No.335 of 203 in the year 2003 i.e. the very next year and get this exparte decree on 19.01.2007 against this petitioner / defendant.

15.Time and again this Court and the Hon'ble Apex Court has categorically held that the trial Court ought to have applied their mind in a proper manner with due diligent while dealing the cases and pass suitable orders or decrees throw by way of speaking order. But, in this case, the learned Judge, by namely Thiru.V.Ravichandran, Principal District Munsif Court, Coimbatore without applying his mind and close his eye by opening his one eye and seen the same only on the set aside application and condone delay application and dismissed the said application on 03.09.2010 by saying that this petitioner has not given any valid reason for condonation of delay.

16.This Court, on perusal of the above order in I.A.No.2796 of 2008 in O.S.No.335 of 2003 dated 03.09.2010, it was made clear that the learned Judge had not applied his mind properly and simply dismissed the above application. This Court has taken a serious view, for dealing of this kind of applications by the trial Court Judges without applying their minds, not acceptable one and it causes injustices to the litigants.

17.This Court time and again issued circulars and direction, directing the Court below to pass a detailed speaking order while dealing the applications or other cases, but in my considered opinion that the learned Judge, namely Thiru.V.Ravichandran, Principal District Munsif Court, Coimbatore has not applied his mind properly and dismissed the above application filed for condonation of delay, with non speaking order.

18.It is admitted fact that the petitioner/defendant has not given valid reason for each and every day delay, though the Hon'ble Apex Court had categorically held that proper reason should be given for each and every day delay. The learned District Munsif ought to have applied his mind and gone through the averments made in paragraph-3 of the affidavit for filing of the earlier suit in O.S.No.1616 of 1999. If the learned District Munsif has made proper verification of filing of earlier suit definitely he would have come to conclusion that there was an order of permanent injunction granted for both the parties namely the plaintiff in O.S.No.1616 of 1999 and this respondent / plaintiff, who is the plaintiff in O.S.No.335 of 2003 for the very same property. If both the parties taking appropriate applications for the implementation of the said decree in O.S.No.1616 of 1999 dated 19.09.2002 and O.S.No.335 of 2003 dated 19.01.2007, then the present learned District Munsiff, Coimbatore put in critical position and it may goes to the extent of passing confusing orders.

19.If the learned District Munsif has applied his mind in a proper manner by verifying the suit records in O.S.No.1616 of 1999 dated 19.09.2002, definitely he would not dismiss the present application in I.A.No.2796 of 2008 dated 03.09.2010, since already a decree was passed against the present respondent / plaintiff for the same property and this respondent / plaintiff will not seek for another injunction for the same property against this petitioner / defendant. Even if the learned District Munsif also whould seen the case in a proper manner that the petitioner's age was 70 years on the date of filing the above application and she was a widow, he ought to have consider the application in I.A.No.2796 of 2008 in a proper manner and to allow the said application. In fact, in the interest of justice and the facts and circumstances of the

present case in hand, the learned Judge ought to have allow the above application in I.A.No.2796 of 2008 and should deal the case in O.S.No.335 of 2003 on merits. Hence, in my considered view, the learned Judge has miserably failed to act upon in a proper manner and applied his mind on the application in I.A.No.2796 of 2008. If the learned Judge is to allow the above application, definitely he would bear in mind that the Court would not grant injunction for the same property to both the parties. This is a utter shocking in the Judiciary that the very same Court has granted two Injunction orders to both the plaintiff and defendant for very same suit schedule of property.

20. Therefore, in my considered opinion, in the interest of justice, this Court highly expected that all the Courts below should apply their minds in a proper manner while dealing the cases by gone the averments made in the affidavit and petitions by calling the appropriate records and relevant documents and to pass detailed speaking order that would be help for the higher forum to deal with the cases in a proper manner and orders would be passed according to law of the land by following the natural justice. In fact, this exercise if to be followed by the Courts below definitely the litigants would get their justice in a proper manner without any fear on the Judiciary.

21. On perusal of the above affidavit, counter, relevant documents and the order passed in I.A.No.2796 of 2008 in O.S.No.335 of 2003 dated 03.09.2010, this civil revision petition has deserves to be allowed.

22. Accordingly, I am inclined to pass the following orders:

(a) the order in I.A.No.2796 of 2008 in O.S.No.335 of 2003 dated 03.09.2010 is set aside and the I.A.No.2796 of 2008 is allowed on payment of cost of a sum of Rs.1,000/- to be paid to the respondent / plaintiff;

(b) thereafter, the trial Court is hereby directed to number the set aside application and pass suitable orders by giving notice to both the parties within a period of one month from the date of receipt of a copy of this order; and

(c) after that, on passing the order in the application, if it is allowed, the learned Judge is hereby directed to dispose of the suit in O.S.No.335 of 2003 within a period of four months from the date of order passed in the set aside application and both the parties are directed to cooperate for the early disposal of the above suit in O.S.No.335 of 2003.

23. Therefore, the civil revision petition is allowed with the above observations with costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

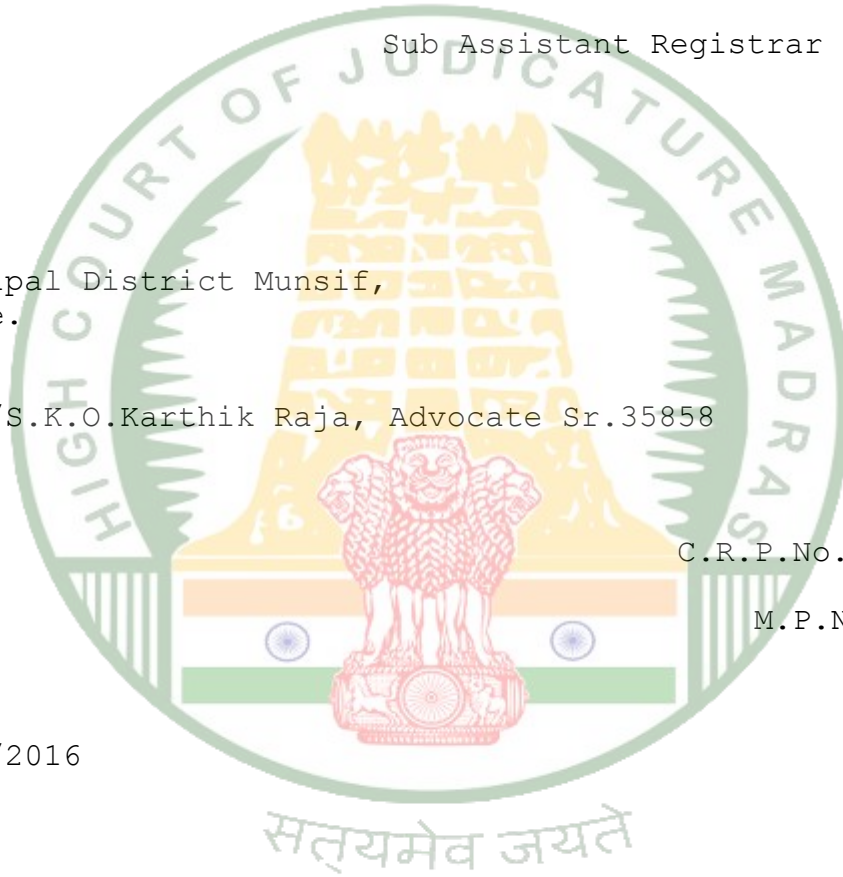
To

The Principal District Munsif,
Coimbatore.

+1cc to M/S.K.O.Karthik Raja, Advocate Sr.35858

C.R.P.No.699 of 2012
and
M.P.No.1 of 2012

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