



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.03.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP (MD) .No.2659 of 2014 (NPD)

1. Sebastain Thevar

2. Innasi

3. Antony Durairaj

: Petitioners/Petitioners /
Defendants 1,3,4

Vs.

1. Antonysamy

2. Mariya Micheal Pandi

: Respondents/ Respondents /
Plaintiffs

Prayer: This Civil Revision Petition is filed under Section 115 of CPC against the fair and decreetal order dated 30.10.2014 passed in I.A.No.432 of 2014 in O.S.No.515 of 2008 on the file of the learned Additional District Munsif, Tenkasi.

For Petitioners : Mr. A. Haja Mohideen

For Respondent No.1 : Mr. R. Subramanian

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 30.10.2014, passed in I.A.No.432 of 2014 in O.S.No.515 of 2008 on the file of the learned Additional District Munsif, Tenkasi.

2. The revision petitioners are the defendants 1, 3 and 4. The respondents are plaintiffs.

3. The respondents / plaintiffs filed a suit in O.S.No.515 of 2008, on the file of Additional District Munsif, Tenkasi, Thirunelveli District for partition. The petitioners entered appearance and filed written statement. The suit was posted for trial on 07.12.2013. The petitioners did not appear on that day. Therefore, they were set ex parte and the matter was posted to 11.12.2013 and on 13.12.2013 ex parte order was passed. On 18.12.2013, exparte preliminary decree was passed. The petitioners filed application to set aside the ex parte decree along with application in I.A.No.432 of 2014 to condone the delay of 218 days in filing the application to set aside the ex parte decree. According to the petitioners, the first petitioner was suffering from viral fever. The petitioners 2 and 3 were attending to him. Therefore, they could not appear before the Court. Hence, the delay is neither wilful nor wanton.



4. The respondents filed counter affidavit and resisted the same. They contended that only with a view to prolong the proceedings the petitioners have filed I.A.No.432 of 2014 and the reasons given by the petitioners are not correct. The respondents filed I.A.No.279 of 2014 for passing final decree. The petitioners entered appearance and contested the application. Subsequently, the petitioners did not appear and final decree application was ordered ex parte and therefore, prayed for dismissal of the application. The learned Judge considering all the materials on record dismissed the application. Against that order, the petitioners have come out with the present revision.

5. The learned counsel appearing for the petitioners contended that the learned Judge failed to see that the petitioners have given sufficient reason for delay in filing application to set aside the ex parte order. The learned counsel for the petitioners contended that it is well settled that Courts must consider the application to condone the delay liberally and should not shutdown a party at the threshold itself. A party must be given an opportunity to put forth their case on merits. Length of delay is not the Criteria. The Court must consider whether the party has given valid and sufficient reason to condone the delay.

6. In support of his contention he has relied on the following Judgments:-

(i) 2008(1) TNCJ 389 (Mad) (M/s. T.V. Sundaram Iyengar and Sons Ltd., Vs. S. Raghunathan), relevant para 8, wherein it has been held as follows:-

8. As far as the present case is concerned, this Court is of the considered opinion that the term 'Sufficient Cause', must be viewed liberally and taking a liberal view in the matter, this Court is satisfied with the reason furnished in I.A.No.184 of 2003 in O.S.No.558 of 1999 for the condonation of delay of 539 days and allows the Civil Revision Petition with a direction that the Civil Revision Petitioner shall remit a sum of Rs.600/- Rupees six hundred only) to the Tamil Nadu Mediation and Conciliation Centre, Chennai, within two weeks from the date of this order and produce a receipt before the Registrar General, High Court, Madras, failing which the Civil Revision Petition will stand dismissed automatically without any further reference. However, there shall be no orders as to costs.

<https://hcservices.ecourts.gov.in/hcservices/>

(ii) 2008(1) TNCJ 462 (Mad) (K.M.Subramani Vs., Pattammal and others), relevant para 16 and 17, wherein it has been held as



follows:-

16. It is relevant to make a mention that refusing to condone the delay can result in meritorious matter being thrown out at the initial stage and cause of justice being defeated. As against this, when the delay is condoned, the highest that can happen is that the cause would be decided on merits after hearing the parties. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have a vested right in injustice being done because of non-deliberate delay. After all, the litigant does not stand to benefit by resorting to delay. Per contra, he runs a serious risk in the considered opinion of this court. Moreover, it is to be remembered that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and as expected to do so.

17. As far as the present case is concerned, even though sufficient cause has not been mentioned, in view of the decision of the Honble Supreme Court reported in 2002 [1] CTC 769 between RAM NATH SAO @ RAM NATH SAHU AND OTHERS AND GOBARDHAN SAO AND OTHERS that Courts are to take a liberal view in these matters, these court is of the view that in order to deliver substantial justice to the parties and in as much as the technicalities to be avoided by the law Courts and since the processual law is always subservient and is in aid of justice, the conditional order passed in the I.A.No.15254/2003 in regard to the payment of cost of Rs.2,000/- does not suffer from any illegality or irregularity and setting in revision, this court refuses to interfere with the orders passed by the Court below and resultantly, the Civil Revision Petition is dismissed and the order passed by the Lower Court is confirmed for the reasons assigned in this revision by this court. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

(iii) 1998 (7) SCC 123 (N. Balakrishnan Vs. M. Krishnamurthy), relevant para 14, wherein it has been held as follows:-

" 14. In this case explanation for the delay set up by the appellant was found satisfactory to the trial court in the exercise of its discretion and the High Court went wrong in upsetting the finding, more so when the High Court was exercising reversional jurisdiction. Nonetheless, the respondent must be compensated



particularly because the appellant has secured a sum of Rs. Fifty thousand from the delinquent advocate through the Consumer Disputes Riderless Forum. We, therefore, allow these appeals and set aside the impugned order by restoring the order passed by the trial court but on a condition that appellant shall pay a sum of Rupee Ten thousand to the respondent (or deposit it in this court within one month from this date."

(iv) 2008(1) CTC 785 (Ravi Enterprises rep. by its Partner, T.S.Ravi Vs. Indian Bank, Thiruvottiyur Branch, TH Road, Thiruvottiyur, Chennai and others), relevant para 14, wherein it has been held as follows:-

' 14.We are of the view that refusal to condone delay can result in a meritorious matter being thrown at the early stage and cause of justice being defeated. Moreover, the law courts should not prefer to adopt a pedantic approach and on the other hand a pragmatic approach has to be made to deliver substantial justice overriding technical considerations as far as the present case is concerned. '

7. Per contra, the learned counsel for the respondents contended that petitioners have not approached the Court with clean hands. They have suppressed the fact that they entered appearance in the suit and filed written statement on 24.02.2009 and subsequently did not contest the suit. An ex parte preliminary decree was passed. In the final decree application also they entered appearance and again did not contest the application and an ex parte final decree was passed. The petitioners suppressing these facts and have stated that they received notice only on 05.12.2012 which is contrary to fact. The party must give valid and sufficient reason to condone the delay and also the intention of the party must be bonafide and should not be malafide. In the present case the intention of petitioners is not bonafide and the application has been filed only with a view to drag on the proceedings. The Judgments relied on by the learned counsel for petitioners in the circumstances of the case are not applicable to the facts of the present case and prayed for dismissal of Civil Revision Petition.

8. I have heard the learned counsel appearing on either side and perused the materials available on record.

9. From the materials available on record it is seen that the suit is of the year 2008 and it is for partition and the petitioners entered appearance and contested the suit. At the time of Trial they did not appear and an ex parte preliminary



decree was passed. Subsequently, respondent filed I.A.No.279 of 2014 for passing final decree. Petitioners entered appearance and again remained ex parte. The learned counsel for respondents has rightly pointed out that the contention of the petitioners that they received notice in the suit only on 05.12.2012 is not correct. The petitioners have entered appearance in the suit as well as in the final decree application. It is well settled that length of delay is not criteria and the reason given to condone the delay must be bonafide sufficient and valid reasons must be given and the attitude of petitioners must be bonafide. In the present case attitude of the petitioners is not bonafide. The petitioners have suppressed the fact that they entered appearance in the suit and filed written statement. The petitioners have not given sufficient reason to condone the delay. The Judgments relied on by the counsel for the petitioners are not applicable to the facts of the present case in view of the facts stated above.

10. The learned Judge considered all the materials on record in proper perspective and has given valid and cogent reasons for dismissing the Interlocutory Application. Further the learned Judge has exercised his power conferred on him properly and there is no irregularity or illegality warranting interference by this Court.

11. In the result, the Civil revision petition is dismissed confirming the impugned order dated 30.10.2014 passed in I.A.No.432 of 2014 in O.S.No.515 of 2008 on the file of the learned Additional District Munsif, Tenkasi. No costs.

Sd/-

Assistant Registrar (Records)

/True copy/

Sub Assistant Registrar

To

The learned Additional District Munsif, Tenkasi.

+1 CC to Mr.R.SUBRAMANIAN, Advocate, SR No.17172

+1 CC to Mr.A.HAJA MOHIDEEN, Advocate, SR No.17359

CRP (MD).No.2659 of 2014

28.03.2016

trp

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