



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP (NPD) (MD).No.170 of 2016 and CMP(MD).No.789 of 2016

WEB COPY

1.B. Satheesh kumar

2.B. Senthilkumar

: Petitioners/Petitioners/Defendants

Vs.

S. Ramila

rep. Through her Power Agent

: Respondent/Respondent/Plaintiff

Balasubramani

Prayer: This Civil Revision Petition is filed under Section 115 of CPC against the fair and decreetal order dated 24.11.2015 made in I.A.No.346 of 2010 in O.S.No.106 of 2004 on the file of the District Munsif cum Judicial Magistrate, Kodaikanal.

For Petitioners

: M/s. N. Krishnaveni

For Respondent

: Mr. D. Srinivasaraghavan

ORDER

This Civil Revision has been filed against the fair and decreetal order, dated 24.11.2015, made in I.A.No.346 of 2010 in O.S.No.106 of 2004, on the file of the District Munsif-cum-Judicial Magistrate, Kodaikanal.

2. The revision petitioners are the defendants. The respondent / plaintiff filed a suit for declaration that the sale deed executed by one Subbuthaiammal in favour of the petitioners, on 27.08.1997, as null and void and for recovery of possession of the suit property. The petitioners entered appearance through their counsel, but, they did not file written statement. They were set ex parte and ex parte decree was passed. The petitioners filed application in I.A.No.346 of 2010, to condone the delay in filing the application to set aside the ex parte decree.

3. According to the petitioners, their counsel did not inform the hearing date and they came to know about the ex parte decree only during hearing, by the Revenue Divisional Officer, Kodaikanal, at the time of hearing of appeal in Patta proceedings. Immediately, they filed Interlocutory Application to set aside the ex parte decree. Resisting the same, the respondent filed counter affidavit and stated that pending suit, the petitioners transferred patta in their name on 20.03.2007. To cancel the patta, the respondent filed appeal before the Revenue Divisional Officer. After enquiry, the appeal was posted for orders. In order to get over the orders, the petitioners have come out with the present revision with false allegations. The suit is of the year 2003 and the ex parte decree was passed on 20.04.2007.

4. The learned Trial Judge after considering the materials on record and arguments of the learned counsel for the petitioners and the respondent, dismissed the Interlocutory Application filed by the



petitioners to condone the delay in filing the petition to set aside the ex parte decree.

5. Against the said order dated 24.11.2015, the present Civil Revision Petition is filed.

6. The learned counsel for the petitioners submitted that on receipt of summons in the suit, they have engaged an advocate to conduct the suit. Their counsel did not inform the date of subsequent hearing. The petitioners should not be penalized for the mistake of their counsel. On coming to know of the exparte decree, immediately, the petitioners filed an application to set aside the ex parte decree with condone delay petition. The relief sought for by the respondent cannot be granted by ex parte decree and prayed for allowing this revision. The learned counsel appearing for the petitioners relied on the following judgments:-

i) 2001(6) SCC 176 (M.K. Prasad Vs. P. Arumugam), wherein in paragraph 10, it has been held as follows:-

10. In the instant case, the appellant tired to explain the delay in filing the application for setting aside the ex parte decree as is evident from his application filed under Section 5 of the Limitation Act accompanies by his own affidavit. Even though the appellant appears not to be as vigilant as he ought to have been, yet his conduct does not, on the whole, warrant to castigage him as an irresponsible litigant. He should have been more vigilant but his failure to adopt such extra vigilance should not have been made a ground for ousting him from the litigation with respect to the property concededly to be valuable. While deciding the application for setting aside the ex parte decree, the court should have kept in mind the judgmnet impugned, the extent of the propety involved and the stake of the parties. We are of the opinion that the inconvenience caused to the respondent for the delay on account of the appellant being absent from the court in this case can be compensated by awarding appropriate and exemplary costs. In the interests of justice and under the peculiar circumstances of the case, we set aside the order impugned and condone the delay in filing the application for setting aside the ex parte decree. To avoid further delay, we have examined the merits of the main application and feel that sufficient grounds exist for setting aside the ex parte decree as well.

ii) 1998(7) SCC 123 (N. Balakrishnan Vs. M.Krishnamurthy), wherein in paragraph 9 it has been held as follows:

9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be



exercised only if the delay is within the certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes, delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

iii) 2010(6)SCC 786 (Improvement Trust, Ludhiana Vs. Ujagar Singh and others), wherein in paragraphs 14 to 16, it has been held as follows:-

14. Even though the appeal dismissed by the first appellate court on the ground of delay, stood confirmed by the High Court but even the special leave petition was delayed by 258 days, in refiling there was further delay of 90 days. No doubt it is true that this Court after considering the appellant's application was pleased to condone the delay and leave was granted. But this has been argued by Mr. Vijay Hansaria to show the conduct, behaviour and attitude of the appellant in prosecuting the matter.

15. Be that as it may, we are of the opinion that the delay in filing the first appeal before the District Judge, Ludhiana, for setting aside the sale has not been so huge warranting its dismissal on such hyper technical ground. In fact, according to us, the appellant had taken all possible steps to prosecute the matter within time. Had there been an intimation sent to the appellant by Mr.P.K. Jain, its erstwhile advocate, and if even thereafter the appellant had acted callously then we could have understood the negligent attitude of the appellant but that was not the case here. No sooner the appellant came to know about the dismissal of its objection filed before the executing court, under Order 21 Rule 90 CPC it made enquiries and filed the appeal.

16. While considering the application for condonation of delay no straightjacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not. Each case has to be weighed from its facts and the circumstances in which the party acts and behaves. From the conduct, behaviour and



attitude of the appellant it cannot be aid that it had been absolutely callous and negligent in prosecuting the matter.

7. The learned counsel appearing for the respondent submitted that the order passed by the learned Trial Judge is valid and legal. He further submitted that pending suit, they transferred patta in their name on 20.03.2007 and the suit was decreed ex parte on 20.04.2007. The reason given by the petitioners is that they came to know only when the patta proceedings pending before the Revenue Divisional Officer, is not correct. After receiving patta, the petitioners did not appear before the Execution Court. Therefore, they were set ex parte on 08.01.2014 and subsequently, they filed E.A.No.3 of 2014 in E.P.No.25 of 2013 on 28.02.2014 to set aside the ex parte order passed on 08.01.2014 and re-deliver the property, which was already delivered to the respondent. The petitioners have not given any sufficient and valid reason and they have filed an application only to drag on the proceedings without any sufficient cause. The respondent counsel relied on the following judgments:-

(i) The Judgment of this Court, passed in **CRP (NPD) .No.2890 of 2013 (V. Amutha Vs. Venkatesan and others)**, dated 18.01.2016, wherein in paragraph 7 it has been held as follows:-

" 7. It is settled position that unless a party seeking for condonation of the delay shows sufficient cause for condoning the delay, the delay cannot be condoned. In the case on hand, in the absence of any acceptable reason shown by the defendants to condone the inordinate delay of 750 days, the same cannot be condoned."

(ii) 2015(1)MWN (Civil) 125 (P. Chockalingam Vs. Manjula and others), wherein in paragraphs 10 and 14, it has been held as follows:-

"10. It is seen from the records that the respondent in CRP.No.2710 of 2014 had purchased the property through a Public Auction held on 29.03.2007. The learned XVIII Assistant Judge, City Civil Court, has held that the Public Auction was conducted in the presence of the petitioner and after considering the evidence, the learned Judge has held that the public sale is valid and it was done strictly by observing the procedure established in law. It is also not is dispute that the petitioner was aware of the Sale Deed executed in favour of the respondent. But, according to the petitioner only due to the advice of his counsel, he did not file Appeal in time.

14. The petitioner has filed the applications to condone the delay of 1752 and 1753 days, respectively in filing the Appeals. The only explanation given by the petitioner is that on the advice of his counsel, he did not file Appeals in time. The reason given by the petitioner, does not merit acceptance of this Court. In the light of the principles laid down by the Hon'ble Apex Court in Esha Bhattacharjee V. Managing Committee of



Raghunathpur, Nafar Acadme, 2013(5) CTC 547, there is distinction between condoning the inordinate delay and a delay of short duration or few days. While considering the Delay condonation Applications, the conduct, negligence, inaction, behavior and attitude of a party are relevant factors to be taken into consideration. In my considered opinion the petitioner has not shown sufficient cause for condoning the delay and the explanation lacks bona fides. Hence, I do not find any illegality or irregularity in the impugned orders."

8. I have heard the learned counsel appearing on either side and perused the materials available on record, the order of the learned Judge and the judgments relied on by the learned counsel for the parties.

9. From the materials available on record, it is seen that the revision petitioners entered appearance through their counsel. Their contention is that their earlier counsel did not inform about the hearing of the date, is not acceptable. The petitioners ought to have been diligent enough to contest the suit, by filing written statement and letting in evidence to prove their case. In addition to that, the appeal with regard to cancellation of patta was pending before Revenue Divisional Officer. In such circumstances, the reasons given by the petitioners are not valid and bonafide and it is well settled that the length of delay is not the criteria, but the reasons given must be sufficient reason to condone the delay. The petitioners have failed to give any valid reason to condone the delay.

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 in proper perspective 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 of the learned District Munsif cum Judicial Magistrate, Kodaikanal, passed in I.A.No.346 of 2010 in O.S.No.106 of 2004, dated 24.11.2015. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/

Assistant Registrar(C.O)I/C

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Sub Assistant Registrar(C.S)
Madurai Bench of Madras High Court,
Madurai.

To

The District Munsif cum Judicial Magistrate, Kodaikanal.

+1cc to M/S.N.Krishnaveni, Advocate in SR.No.8832

+1cc to M/S.D.Srinivasa Raghavan, Advocate in SR.No.8802

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