



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 01.12.2016
CORAM
THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P(PD) (MD)No.2449 of 2016
and
C.M.P(MD)No.11563 of 2016

Kumaran ..Petitioner/Petitioner/10th defendant
vs.

1.Chellammal ..Ist Respondent/Ist Respondent/Plaintiff

Shanmuga Konar(died)
Alwar Ammal(died)
Ponnatchiammal(died)
Narayanan(died) ..Respondents/Defendants 1 to 4

2.Palani
3.Velu Konar
4.Thillainathan @ Suresh
5.Thillainayagi @ Vasanthi
6.N.Thangam
7.J.Rani ..Respondents 2 to 7/Defendants 5 to 9 and 11

Prayer: Civil Revision Petition filed under Section 115 of the Civil procedure Code praying this Court to set aside the fair and decretal order passed in I.A.No.1 of 2016 in O.S.No.200 of 1983, dated 22.4.2016 on the file of the Principal District Munsif Court, Ambasamudram.

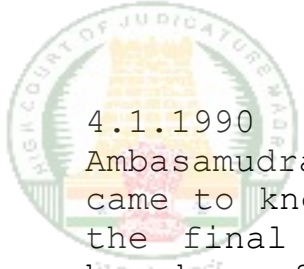
For Petitioner : M/s.H.Arumugam.

ORDER

This revision has been filed seeking for a direction to set aside the fair and decretal order passed in I.A.No.1 of 2016 in O.S.No.200 of 1983, dated 22.4.2016 on the file of the Principal District Munsif Court, Ambasamudram.

2.The facts of the case is as follows:

The first respondent filed a suit in O.S.No.200 of 1983 before the Principal District Munsif Court, Ambasamudram for partition and separate possession of half share of his suit property. In the said suit, the Petitioner was set exparte and an exparte decree was passed on 4.1.1990. Thereafter, the plaintiff filed a petition for final decree and during the pendency of the final decree the petitioner was impleaded in the suit. The Petitioner in the present application has stated that he was not aware of the earlier exparte proceedings passed in the suit on



4.1.1990 passed by the Principal District Munsif Court, Ambasamudram and the said exparte decree passed by the Court below came to know only when the L.R petition filed by the plaintiff in the final decree proceedings. Therefore the present application has been filed to condone the delay of 136 days delay in filing the application to set aside the exparte decree in O.S.No.200 of 1983, dated 4.1.1990.

3. When the suit was pending, the revision petitioner's father Narayanan and his mother Alwar Ammal was set exparte and exparte decree was passed on 4.1.990. Till the death of Narayanan and Alwar Ammal, they have not chosen to take any steps to set aside the exparte decree and the said exparte decree became final. After a lapse of 26 years from the exparte decree passed in the main suit, the petitioner has filed the present application for condoning the delay of 136 days in filing the application to set aside the exparte decree, dated 4.1.90, in the main suit, as if the petitioner came to the knowledge of the said decree only at the time of final decree proceedings. No sufficient cause has been shown by the revision petitioner for the inordinate delay in filing the above application. Therefore the above said contention of the revision petitioner cannot be accepted and the petitioner has also filed the application with huge delay.

4. At this juncture, it is appropriate to consider the decision relied on by the learned counsel for the respondent reported in 2015(5) CTC 534 - *H.Dohil Constructions Co. Pvt. Ltd., V. Nahar Exports Ltd.*, wherein, in paras 20 to 23, it was held that total lack of bona-fides and without assigning reason for filing application for condonation is not a ground for condoning the delay. It is appropriate to incorporate paras 22 and 23 of the said decision.

"22. We may also usefully refer to the recent decision of this Court in *Esha Bhattacharjee* (supra), where several principles were culled out to be kept in mind while dealing with such Applications for condonation of delay. Principle Nos.(iv), (v), (viii), (ix) & (x) of Paragraph 21 can be usefully referred to which read as under:

"(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

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(viii) There is a distinction between inordinate delay and a delay of short duration



or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

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(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the Courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the Application are fanciful, the Courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

23. When we apply those principles to the case on hand, it has to be stated that the failure of the Respondents in not showing due diligence in filing of the Appeals and the enormous time taken in the re-filing can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bona fides as displayed on the part of the Respondents. Further, when the Respondents have not come forward with proper details as regards the date when the papers were returned for re-filing, the non-furnishing of satisfactory reasons for not re-filing of papers in time and the failure to pay the Court-fee at the time of the filing of Appeal papers on 6.9.2007, the reasons, which prevented the Respondents from not paying the Court-fee along with the Appeal papers and the failure to furnish the details as to who was their Counsel, who was previously entrusted with the filing of the Appeals cumulatively considered, disclose that there was total lack of bona fides in its approach. It also requires to be stated that in the case on hand, not re-filing the Appeal papers within the time prescribed and by allowing the delay to the extent of nearly 1727 days, definitely calls for a stringent scrutiny and cannot be accepted as having been explained without proper reasons. As has been laid down by this Court, Courts are required to weigh the scale of balance of justice in respect of both parties and the same principle cannot be given a go-by under the guise of liberal approach even if it pertains to re-filing. The filing of an Application for condoning the delay of 1727 days in the matter of re-filing without disclosing



reasons, much less satisfactory reasons only results in the Respondents not deserving any indulgence by the Court in the matter of condonation of delay. The Respondents had filed the Suit for Specific Performance and when the Trial Court found that the claim for Specific Performance based on the Agreement was correct but exercised its discretion not to grant the relief for Specific Performance but grant only a payment of damages and the Respondents were really keen to get the Decree for Specific Performance by filing the Appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its Appeals registered."

5. In the light of the decision cited above and the decision reported in 2015 1 SCC 618 and CDJ 2016 MNC *Madras in the case of Management of Tamil Nadu State Transport Corporation .vs. The presiding Officer* the Petitioner has not explained the inordinate delay in filing the application to set aside the exparte decree in the main suit. Therefore this Court is not inclined to interfere with the order of the court below. Thus the revision fails.

6. Accordingly, the Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is dismissed. No costs.

Sd/-
Assistant Registrar(crl.side)

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To
The Principal District Munsif, Ambasamudram.

+1cc to M/s.H.Arumugam, Advocate in SR.78417

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vsn
PBK/KM 21/12/2016 ::4P-3C: