



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.11.2016

CORAM

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THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

C.R.P(MD)No.2207 of 2011 and
M.P.(MD).No.1 of 2011

Manimuthu

... Petitioner/1st Respondent/
1st Respondent/1st Defendant

Vs.

1.The Periyar Self Respect Propaganda Institution,
Rep. by its Secretary,
K.Veeramani,
S/o. C.S.Krishnasamy,
5-B, Periyar Thidal,
E.V.K. Sampath Salai,
Vepary, Chennai.

... 1st Respondent/Appellant/
Petitioner/Plaintiff

2.Surimuthu

... Respondent/2nd Respondent/
2nd Respondent/2nd Defendant

Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order passed in C.M.A.No.2 of 2009 on the file of Sub Court, Pattukkottai dated 29.01.2011, reversing the fair and decreetal order passed in I.A.No.202 of 2008 in O.S.No.67 of 2002 dated 26.11.2008 on the file of District Munsif Court, Pattukkottai.

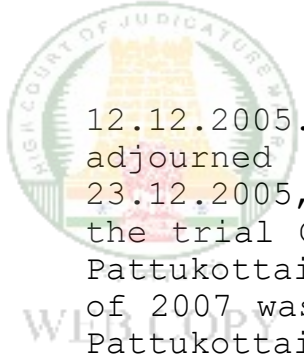
For Petitioner : Mr.R.Vijayakumar
For 1st Respondent : Mr.D.Veerasekaran
for Mr.P.Natarajan

ORDER

The present revision petition is filed against the fair and decreetal order passed by the Subordinate Court, Pattukkottai in C.M.A.No.2 of 2009 on 29.01.2011.

2.The case on hand is a suit for recovery of possession and the first defendant is the petitioner in the present Civil Revision Petition.

3.The learned counsel for the appellant contended that the suit was posted for trial on 05.12.2005 and it was adjourned to

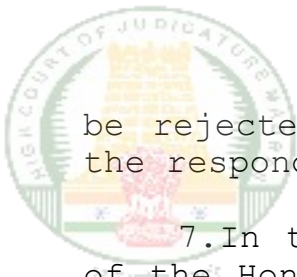


12.12.2005. Subsequently, at the request of the plaintiff it was adjourned to 19.12.2005 and finally posted on 23.12.2005. On 23.12.2005, the plaintiff in the suit was unable to appear before the trial Court for conducting trial and the District Munsif Court, Pattukottai dismissed the suit for default. Subsequently, I.A.No.202 of 2007 was filed to restore the suit. The learned District Munsif, Pattukottai though allowed the petition filed to condone the delay of 12 days in filing the petition to restore the suit, dismissed the petition filed to restore the suit. Against the said order of District Munsif, Pattukottai, the plaintiff filed C.M.A.No.2 of 2009 before the Subordinate Court, Pattukottai. The learned Subordinate Court by setting aside the fair and decreetal order passed by the District Munsif, Pattukottai, allowed the petition to restore the suit on file on 29.01.2011, against which the present petition has been filed under Article 227 of the Constitution of India.

4.The contention of the learned counsel for the petitioner is that the reason stated by the plaintiff/respondent is that he was in abroad on 23.12.2005 and such reason was proved as false and therefore, the fair and decreetal order passed by the learned District Munsif, Pattukottai is correct and the order of the first appellate Court is erroneous. He further contended that the appreciation of the facts and circumstances by the District Munsif, Pattukottai was right and the same was erroneously rejected by the first appellate Court without assigning any fresh reason for setting aside the order of the District Munsif, Pattukottai.

5.Per contra, the learned counsel for the respondent opposed the contention of the petitioner by stating that the first appellate Court, namely, the Subordinate Court, Pattukottai has categorically found that the plaintiff/1st respondent was not in station on 23.12.2005 and in fact he was in a conference at Yernakulam, in the State of Kerala. The fact remains that the respondent/plaintiff was not in station on 23.12.2005, but the place in which he was staying on that day was erroneously stated and therefore, in the interest of justice the said mistake has to be condoned. Though it was proved that he was not in Singapore on that day, the fact remains that he was out of station, namely, at Yernakulam, Kerala. Therefore, on this ground the order of first appellate Court ought not to have interfered with and it is a principle that all questions are to be adjudicated on merits and not to be dismissed for default.

6.This Court is of the firm view that the suits are filed to redress the grievance of the litigants and no suit is to be dismissed merely on technical grounds and it can be dismissed only in the circumstances under which the litigants were not prudent enough to conduct the case. In the present case, the respondent/plaintiff was prudent enough to file the petition to restore the suit only with a delay of 12 days and the said delay was also condoned and therefore, this Court cannot come to a conclusion that he is not prudent enough to conduct the proceedings. Such being the position, the contention of the petitioner is to



be rejected and the arguments advanced by the learned counsel for the respondent are to be accepted.

7. In this regard, the learned counsel for the petitioner cited of the Hon'ble Supreme Court in **Pundlik Jalam Patil (D) by LRs. v. Exe. Eng. Jalgaon Medium Project [2008 (5) CTC 663]**. The judgment cited supra cannot be applied in respect of the fact of the present case. Because, in this case, only the petition filed to restore the suit was dismissed for default. The principles laid down by the Hon'ble Supreme Court of India can be adjudicated in the case, where the parties had submitted false statement in order to get the relief in the main suit. But in the present case the respondent/plaintiff was able to prove the fact that the place alone was mistakenly stated. Therefore, this Court is unable to accept the contention of the learned counsel for the petitioner.

8. The learned counsel for the 1st respondent cited another judgment of the Hon'ble Supreme Court in **Sardar Tajender Singh Ghambhir v. Sardar Gurpreet Singh [2014 (6) CTC 116]**, wherein in paragraph 15, it is stated as follows:

"15. The order of the First Appellate Court being eminently just and proper, in our view, there was no justification for the High Court to invoke its power under Article 227 of the Constitution of India and interfere with an order which effectively advanced the cause of justice."

9. The Full Bench of the Hon'ble Supreme Court of India held that cause of justice is to be met out and in the present case justice will be met out only by restoring the suit for effective adjudication on merits.

10. Another judgment cited by the counsel for the 1st respondent is **Arumuga Velar v. Arulmigu Kuzhavar St. Mariamman Kovil [2000 (IV) CTC 48]**, wherein it is held as follows:

"7. While exercising discretion if lower court expressed opinion on the same that also will have to be taken into consideration by this Court. Lower court has held that only because of fault of the court, earlier restoration application could not be posted and for more than 11 years plaintiffs were put to great agony. Only because of that agony, they have filed I.A.No.482 of 1995 and especially when the same has not been pressed, it follows that plaintiffs are not pursuing the same. In I.A.No.771 of 1984, the reason stated is-that the deponent a wife was laid up in the hospital between 20.1.1984 till 17.2.1984 and he had to attend her. The case was posted on 23.1.1984 and he could not attend the court on that date. But when I.A. 482 of 1995 was filed, the reason stated was entirely different. It is said that there is some inconsistency between two affidavits.

8. When lower court has considered both the affidavits and found that sufficient ground is made out for restoration, it cannot be said that the order was passed by lower appellate court without considering the materials.



9. In the recent decision of Honourable Supreme Court reported in N.Balakrishnan v. M. Krishnamurthy, 1998 AIR SCW 3139, their Lordships have considered now section 5 of the Limitation Act will have to be interpreted. In this case, respondents cannot be said as negligent. Restoration application was filed within 30 days. But the Court misplaced the papers and only after 11 years the same has been traced out. Thereafter, respondents had to file another application stating some reason for restoration. In fact that application itself was not necessary. Merely because some statement is made in that application that cannot be a ground to disbelieve the statement in the earlier affidavit. Merely because another statement is made in the subsequent affidavit, it also cannot be found that cause made out in the earlier affidavits are false. In fact there is no reference to the ailment at all in the subsequent affidavit. The Honourable Supreme Court while considering the same in para 13 of the Judgment held thus,

"13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put-forth as part of a dilatory strategy the Court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the Court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether it must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when Courts condone the delay due to laches on the part of the applicant the Court shall compensate the opposite party for his loss."

In the earlier portion of the Judgment i.e, in para 11 and 12 of the Judgment, it is held thus,

"11. Rules 8 of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but see their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of Limitation fixes a life span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts, So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is



enshrined in the Maxim Interest reinpublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial Justice vide *Shakuntala Devi Jain v. Kuntal Kumari*, AIR 1969 SC 575 and *State of West Bengal v. The Administrator, Howrah Municipality*, AIR 1972 SC 749. (Emphasis Supplied).

10. Lower appellate court was entitled to reconsider the entire question since it is an appeal against the order passed by trial court. On appreciation of facts it held that sufficient cause is made out for restoration. So long as there is no finding that application is filed with mala fides or as dilatory tactics, Court should also be lenient in favour of litigant. In this case there is no question of limitation - since restoration application itself was filed within one month. Lower appellate Court believed the evidence of witness. Minor contradictions regarding non-mention of name of hospital or Doctor are all held to be not matters since the evidence was taken about 12 years after the filing of original application."

Applying the principles laid down in the judgment cited supra, this Court is not required to consider the contention of the learned counsel for the petitioner.

11. Accordingly, this Civil Revision Petition is devoid of merits and is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

12. Respective counsels both for the petitioner and respondent represented that it is a suit of the year 2002, which was dismissed for default in 2005 and only in I.A. Stage the matter is prolonged for 11 years and early disposal of the suit is highly just and necessary.

13. Considering the genuine request made by both the parties, this Court is inclined to direct the trial Court, namely, Subordinate Judge, Pattukottai to take up the suit for trial and



dispose of the case as early as possible preferably within period of four months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (Writ)

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Sub Assistant Registrar

To

1.The Subordinate Judge,
Pattukkottai.

2.The District Munsif,
Pattukkottai.

+ 1 CC TO M/S.N.TAMILMANI, ADVOCATE IN SR No. 68685

+ 1 CC TO Mr.R.VIJAYAKUMAR, ADVOCATE IN SR No. 68899

SJ

TE/GSV-PM : 30/11/2016 : 6P/5C

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