

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2017

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THE HONOURABLE MS.JUSTICE R.MALA

Civil Revision Petition (NPD) No.102 of 2017
and
C.M.P.No.494 of 2017

1.Ramathal
2.Kumarasamy

... Petitioners

..Vs..

Nachammal

... Respondent

Prayer: This Civil Revision Petition has been filed under 115 of C.P.C, against the fair and decretal order dated 07.10.2016 made in I.A.No.1196 of 2013 in I.A.No.907 of 2011 in O.S.No.105 of 2009, on the file of the learned Principal Subordinate Judge, Tiruppur.

For petitioners : Mr.S.Franklin
For Respondent : Mr.K.S.Karthik Raja

ORDER

Challenging the fair and decretal order passed in I.A.No.1196 of 2013 in I.A.No.907 of 2011 in O.S.No.105 of 2009, dated 07.10.2016, on the file of the learned Principal Subordinate Judge, Tiruppur, the present revision petition has been filed.

2. The respondent as plaintiff filed O.S.No.105 of 2009 for partition and separate possession of one third share in the suit property by impleading his mother and brother as defendants. An ex-parte decree was passed on 24.07.2009. Thereafter, he has also filed an application for passing final decree i.e., I.A.No.992 of 2010. Subsequently, the petitioners/defendants filed an application to condone the delay in filing petition to set aside the ex-parte preliminary decree passed on 24.07.2009. It was taken as file in I.A.No.907 of 2011, which was dismissed for default on 17.09.2012. Thereafter, they filed the present application to restore I.A.No.907 of 2011 along with the petition to condone the delay of 292 days, which was dismissed, against which the present revision has been preferred.

3. Challenging the said order, the learned counsel for the petitioner would submit that the petitioners are suffering from Blood Pressure and they are unable to appear before the Court below and further, the second petitioner was also bed ridden. Hence, they were unable to appear before this Court. But, that factum was not considered by the trial Court and therefore, learned counsel prayed for setting aside the impugned order.

4. Resisting the said submissions, the learned counsel for the respondents would submit that the main aim of the revision petitioners is only to drag on the proceedings and he has filed series of petition, they have not filed the application in time. The only intention is to prevent the plaintiff who is none other than the daughter of the first petitioner/D1 and sister of the second petitioner/D2, to get the share in the family property. Hence, the said fact was rightly considered by the trial Court and dismissed the petition. He further submitted that sufficient reason has not been assigned, which was rightly considered by the trial Court. Hence, he prayed for dismissal of the revision.

5. Considering the rival submissions made by both sides and on a perusal of the typed set of papers, it is seen that the respondent as plaintiff filed the suit for partition and separate possession of 1/3rd in the share in the two items of the suit property, stating that the properties were purchased by her father on 15.06.1946. He died intestate, leaving behind the plaintiff and the defendants. Hence, she sought for partition and separate possession of 1/3rd share in the suit property. The petitioners herein/defendants have not attended the Court. Hence, ex-parte preliminary decree was passed and final decree application was filed in I.A.No.992 of 2010, in which the revision petitioners entered appearance on 01.12.2010, but they have not filed an application to

condone the delay in filing a petition to set aside the exparte preliminary decree immediately. However, they filed the petition to set aside the exparte preliminary decree along with the petition in I.A.907 of 2011 to condone the delay of 292 days to setting aside the exparte decree. That application was posted for enquiry for several hearings and it was finally posted on 23.08.2012 and subsequently, it was adjourned on 17.09.2012. In those dates, they have not appeared and there was no representation, and hence, the I.A.907 of 2011 application was dismissed for default and therefore, to restore the same, they have filed I.A.No.1196 of 2013 to condone the delay in filing the application to restore the I.A.907 of 2011, as they have not filed the application to restore the I.A.907 of 2011 within 30 days. In the affidavit, in paragraph No.3, they have stated they are not doing well, as they are suffering from ailment. It is further stated that they have not received any communication. To substantiate their case, they have not filed any document. Furthermore, the Blood Pressure is common to all. It is not an ailment. Thus, they have not given sufficient reason for their non-appearance before the Court below on 17.09.2012 and they have not given reason as to why they have not filed the application to restore the I.A.907 of 2011 within the 30 days from the date of dismissal of application.

6. In the dictum of the Apex Court reported in ***AIR 1998 SC 3222 (N.Balakrishnan v. M.Krishnamurthy)***, it was specifically held that

though the length of delay is immaterial, sufficient cause for condonation of delay, has to be explained. It is appropriate to extract paras-9 to 11, which read as follows:

"9. 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 want of acceptable explanation whereas in certain other cases delay of 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.

10. The reason for such a different stance is thus: The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. 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 object of providing a legal remedy is to repair the damage caused by reason of legal injury. "

7. Further, in the judgment of the Apex Court reported in **2011 (4) SCC 363 (Lanka Venkateswarlu (Dead), rep. by legal heirs) Vs. State of Andhra Pradesh and others**), in paras-19, 23, 28 and 29, it was held as follows:

"19. We have considered the submissions made by the learned counsel. At the outset, it needs to be stated that generally speaking, the courts in this country, including this Court, adopt a liberal approach in considering the application for condonation of delay on the ground of sufficient cause under Section 5 of the Limitation Act. This principle is well settled and has been set out succinctly in Collector, Land Acquisition v. Katiji (1987) 2 SCC 107.

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23. The concepts of liberal approach and reasonableness in exercise of the discretion by the Courts in condoning delay, have been again stated by this Court in

Balwant Singh v. Jagdish Singh (2010) 8 SCC 685 as follows:-
(SCC p.696, paras 25-26)

"25. We may state that even if the term 'sufficient cause' has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of 'reasonableness' as it is understood in its general connotation.

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise (sic a lis). These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly"

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28. We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as "liberal approach", "justice oriented approach", "substantial justice" can not be employed to jettison the substantial law of limitation. Especially, in cases where the Court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any lis between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms.

29. The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. Whilst considering applications for condonation of delay under Section 5 of the Limitation Act, the Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers."

8. Thus, it is well settled dictum of the Apex Court that for condonation of delay, the discretion has to be exercised in a systematic manner, informed by reason and justice must be done to both parties. Further, the condonation of delay is only a discretion, that too judicial discretion and while exercising the judicial discretion, the Court should consider the loss caused to the opposite party also. As per the above decisions, the party must give a sufficient reason for the condonation of delay. In the case on hand, the petitioners have not assigned any valid and cogent and convincing reason as to why they were not in a position to appear before the Court and file the written statement in time and contest the suit. In the application, they have stated that they came to know about the ex-parte decree only through the son of the plaintiff. It is pertinent to note that the suit was filed in the year 2009 and the ex-parte order was passed thereafter. So, it clearly shows that the petitioners/defendants, with a mala-fide intention, to prevent the decree holder to enjoy the fruits of the decree, have come forward with the petition for condonation of delay. Therefore, applying the dictum laid down in Balakrishnan and Lanka Venkateshwarlu cases (cited supra), I am of the view that the delay of 292 days, had not been properly explained and hence, I am not inclined to condone the delay. So, I do not find any illegality or irregularity in the impugned fair and decretal order passed by the trial Court and therefore, it is hereby confirmed. Consequently, the Civil Revision Petition will have to be dismissed.

R.MALA,J.,

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9. In the result, this Civil Revision Petition shall stand dismissed by confirming the fair and decretal order passed by the trial Court in I.A.No.1196 of 2013 in I.A.No.907 of 2011 in O.S.No.105 of 2009. No costs. Consequently, connected Miscellaneous Petition is closed.

24.01.2017

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To

The Principal Subordinate Judge, Tiruppur.

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