

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).Nos.158 and 159 of 2017
and C.M.P.Nos.656 and 657 of 2017

Suresh
CRPs

.. Petitioner in both

Vs.

Singaravelu Mudaliar

.. Respondent in both CRPs

Prayer:- Civil Revision Petitions are filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 07.12.2015 in I.A.Nos.70 and 71 of 2013 in HRCOP.Nos.4 and 5 of 2010 on the file of the Principal District Munsif Court, Karaikal.

For Petitioner : Mr.T.Sai Krishna

COMMON ORDER

The civil revision petitions are filed against the fair and decreetal order dated 07.12.2015 in I.A.Nos.70 and 71 of 2013 in HRCOP.Nos.4 and 5 of 2010 on the file of the Principal District Munsif Court, Karaikal.

2.The respondent/landlord has filed H.R.C.O.P.Nos.4 and 5 of 2010 for eviction on the ground of wilful default, personal occupation and act & conduct and for subletting. The petitioner has filed a counter and contested the same. Due to dispute arose between the petitioner and his previous counsel, the counsel has not given the correct date of hearing. So the petitioner is unable to appear before the Court and that exparte decree was passed on 12.12.2011. After receipt of notice in E.P.No.26 of 2012, the petitioner came to know that the exparte decree was passed on 12.12.2011. Immediately, the petitioner has filed I.A.Nos.70 and 71 of 2013 to set aside the exparte decree of eviction along with the petition to condone the delay of 635 days and to set aside the exparte order passed on 03.11.2011 and to permit the petitioner to be heard, respectively. The respondent/landlord has filed a detailed counter. After contest, the applications were dismissed by holding that there is no sufficient reason assigned for condonation of delay of 635 days in filing the petitions to set aside the exparte order. Challenging the same, the petitioner/tenant has preferred the revisions.

3.Heard the learned counsel for the petitioner and perused the typed set of papers.

4.The point to be decided is that whether the fair and decreetal order passed by the trial Court is sustainable and whether the petitioner herein has given sufficient reason for condonation of delay of 635 days?. The respondent/landlord has filed the petitions for eviction and the petitioner/tenant filed a counter and contested the same. As per the affidavit filed by the petitioner in both the applications, he was directed to deposit the rent arrears and as he has not deposited the same, the matter was posted on 19.10.2011 for deposit of rent arrears. Since the petitioner/tenant has not deposited the rent arrears, the matter was adjourned and subsequently, he was absent and exparte decree was passed on 12.12.2011 in respect of HRCOP.No.4 of 2010 and in respect of HRCOP.No.5 of 2010, exparte decree was passed on 03.11.2011. But the petitioner kept quite all along and after receiving notice in E.P.No.26 of 2012 for delivery, he has filed the applications on 08.10.2013 for setting aside the exparte decree along with condonation of delay of 635 days. It is to be noted that the petitioner did not give correct details as to when he received the notice in E.P.No.26 of 2012 and as to why there was a delay in filing the above said applications.

5. In page No.17 of the typed set of papers, it is stated as follows:

".. .. I am a prominent person in Karaikal and actively participating in politics and other social works and due to that, I was unable to contact my earlier counsel on record to persuade the proceedings of the above case which resulted in non-prosecution of the case and consequently, the first respondent herein had obtained exparte order in the RCOP and the exparte delivery in the E.P. Even now, I am ready to deposit the arrears of rent as per directions of this Court.

.. ..

.. ..

.. .. There is delay of 664 days in filing the petition. The delay happened only due to the non-communication of the case proceedings by my earlier counsel on record. Though I came to know about the exparte order only on receipt of the notice in the E.P., I have not filed the set aside petition from the date of knowledge and filed the set aside petition from the date of exparte order in order to avoid the technical defence of the other side. I am also filing an application to condone the delay of 664 days in filing the set aside petition."

But the above averment is not sufficient for condonation of delay. It is pertinent to that the trial Court after considering the counter filed by the respondent held that as to how the matter was adjourned periodically. Further, the petitioner/tenant is not a lay man and he is worldly wise man. Moreover, the petitioner in his affidavit, has stated that he is actively participating in all the proceedings. In such circumstances, the reason assigned by the petitioner is not sufficient to condone the delay. It is pertinent to note that the petitioner has relied upon so many decisions of the Apex Court and this Court. The trial Court after considering those decisions came to the correct conclusion by holding that the delay has not been properly explained by the petitioner/tenant.

6. Now it is appropriate on the part of this Court to consider the decision reported in ***AIR 1998 SC 3222 (N.Balakrishnan v. M.Krishnamurthy)***, wherein it was specifically held that if the length of delay is immaterial, sufficient cause for condonation of delay has to be explained. It is appropriate to extract para-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. . . . "

On considering the above decision along with the facts of the present case, they are the petitions for eviction on the ground of wilful default along with other grounds. The trial Court directed the petitioner/tenant to deposit the rent arrears. The applications stood posted on 19.10.2011 and 03.11.2011, but he has not deposited the amount and that the applications adjourned periodically. Then only, the petitioner was called absent and ex parte decree was passed on 03.11.2011 and 12.12.2011. It clearly shows that the petitioner with malafide intention to squat the property of the respondent/landlord, refused to deposit the rent arrears. In such circumstances, the above Balakrishnan case is squarely applicable to the facts of the present case.

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 para-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"

24. ...

25. ...

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27. ...

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."

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. Lanka

8. On considering the above decision along with the facts of the present case, the landlord filed the petitions for eviction on the ground of wilful default and the petitioner was directed to deposit the rent arrears. As the petitioner had not paid the rent arrears and subsequently, the applications stood adjourned periodically and the petitioner was called absent, ex parte decree was passed on 03.11.2011 and 12.12.2011. The petitioner, without paying the rent arrears to the respondent/landlord, kept quiet all along and after eviction is ordered and received notice in E.P.No.26 of 2012, he has

filed the applications for setting aside the exparte decree along with the condonation of delay of 635 days only on 08.10.2013. Furthermore, the petitioner has not given any sufficient reason for condonation of delay. Under such circumstances, I am of the view that the petitioner with malafide intention to drag on the proceedings, without paying the rent to the landlord, has squatted the property. So I do not find any merits in the revisions. The fair and decreetal orders passed by the trial Court does not suffer any infirmity or illegality and they are hereby confirmed. Consequently, the revisions are dismissed.

9.In the result, the Civil Revision Petitions stand dismissed by confirming the fair and decreetal order made in I.A.Nos.70 and 71 of 2013. No costs. Consequently, connected Miscellaneous Petitions are closed.

23.01.2017

Index:Yes/No
kj

To

The Principal District Munsif Court, Karaikal.

R.MALA,J

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