

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (NPD) No.2196 of 2011
and
M.P.No.1 of 2011

Chandravanitha (died)

1.Kannan

2.Deiveegam

3.Deivamsan

4.Vichithra

5.Sathiyamarayanan

.. Petitioners

vs

Parthasarathy

.. Respondent

Revision filed under Article 227 of Constitution of India
against the order dated 22.03.2011 passed in I.A.No.874 of 2010 in
O.S.No.341 of 2006 on the file of the Principal District Munsif,
Tindivanam.

For Petitioners

: Mr.G.Baskar

For Respondent

: Mr.B.Vijay

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ORDER

This civil revision petition is filed challenging the order dated 22.3.2011 made in I.A.No.874 of 2010 in O.S.No.341 of 2006 on the file of the learned Principal District Munsif, Tindivanam.

2. The petitioners are the plaintiffs and the respondent is the second defendant in the suit.

3. The facts in a nutshell are as under: The suit schedule property originally belonged to one Rafiabi. From Rafiabi, the property was purchased by Nandagopal Chettiar, who was indebted to several persons. One Ramakrishnan filed insolvency petition in I.P.No.36 of 1970 against Nandagopal Chettiar and the same was allowed on 10.2.1976 by the Sub Court, Cuddalore. The appeal filed against the said order in C.M.A.No.115 of 1976 was allowed on 25.4.1980. The civil revision petition filed against the said order before this Court, being C.R.P.No.1666 of 1981, was allowed on 30.9.1982 and pursuant to the same, I.P.No.26 of 1970 was remanded to the Sub Court, Cuddalore and the Sub Court allowed the insolvency petition and Nandagopal Chettiar was adjudged as an insolvent and the property was vested with the Official Receiver Cuddalore.

4. It is stated that the said property was sold by the Official Receiver by way of auction and the deceased first plaintiff purchased the same on 11.1.1996 for a sum of Rs.27,100/-. The Official Receiver executed a sale deed dated 27.2.1996 in favour of the first plaintiff and possession was taken over immediately.

5. It is further stated that the respondent, his son Vimal and one Ragunath, who have no right over the property, attempted to disturb the peaceful possession and enjoyment of the first plaintiff and therefore the first plaintiff filed suit in O.S.No.341 of 2006 on the file the Principal District Munsif Court, Tindivanam for relief of declaration and permanent injunction. But for the respondent herein, who was arrayed as second defendant, the other two persons were set ex parte in the said suit.

6. Pursuant to the death of the first plaintiff, her legal heirs were impleaded as plaintiffs 2 to 5. Pending the suit, the petitioners and the respondent entered into a compromise with regard to 1 Acre of suit schedule property. Another 1.36 Acre of suit schedule property was sold by the plaintiffs to other persons. Therefore, the suit relief

now pertains to the remaining 0.30 cents of land. Hence, the petitioners filed I.A.No.1997 of 2008 to amend the plaint in respect of the suit property and the same was allowed and the suit property was amended. Thereafter, the suit was decreed in favour of the petitioners on 12.11.2009.

7. Pursuant to the same, the second defendant/ respondent herein filed I.A.No.874 of 2010 to condone the delay of 109 days in filing the petitioner to set aside the ex parte decree dated 12.11.2009. The learned Principal District Munsif allowed the petition on 22.3.2011 on condition that the respondent pays a sum of Rs.350/- to the petitioners on or before 29.3.2011, failing which it was stated that the petition would stand dismissed. As a consequence, it is stated that the application filed by the respondent had been numbered as I.A.No.477 of 2011.

8. In this backdrop, the present revision has been filed by the petitioners assailing the order dated 22.3.2011 made in I.A.No.874 of 2010.

9. It is the contention of the learned counsel for the

petitioners that the respondent has not shown sufficient cause as envisaged under Section 5 of the Limitation Act for condonation of the delay of 109 days in filing the petition to set aside the ex parte decree. He would submit that the learned Principal District Munsif has failed to see that there are negligence and inaction and want of bona fide on the part of the respondent in filing petition under Section 5 of the Limitation Act and in order to harass the petitioners, the respondent has filed the petition. The learned counsel further submitted that the impugned order has been passed without following the settled principles of law resulting in serious miscarriage of justice and thereby irrevocably affecting the petitioners' right to the suit property. Thus, the learned counsel prayed for setting aside the impugned order.

10. Per contra, reiterating the findings of the learned Principal District Munsif, the learned counsel for the respondent submitted that having satisfied with the sufficient cause shown by the respondent, the learned Principal District Munsif allowed the petition subject to payment of cost and therefore, there is no perversity in the order impugned in this revision. He would submit that the merits of title alleged by the petitioners cannot be decided in the revision. The learned counsel further submitted that the delay is neither wilful, nor

wanton and therefore, the learned Principal District Munsif was right in allowing the petition filed by the respondent condoning the delay of 109 days in filing the petition to set aside the ex parte decree.

11. I have considered the rival submissions made by the learned counsel appearing on either side and also perused the materials available on record.

12. The grievance of the respondent is that he is the second defendant in the suit and the first defendant is his son. The deceased plaintiff had filed the suit against the respondent and other defendants for permanent injunction. When the suit was pending, the plaintiff died leaving the respondents 2 to 6 as legal heirs. After the demise of the plaintiff, the respondents 2 to 6 have executed a power of attorney in favour of the respondent and after receiving Rs.15,000/-, the respondents 2 to 6 handed over the property to him and also agreed to withdraw the suit. However, the respondent came to know the ex parte decree passed in the suit through the first defendant who is his son and working in Singapore now only and immediately, he had filed petition to set aside the ex parte decree with delay condonation petition. The delay of 109 days is neither wilful, nor wanton.

13. On the other hand, it is the say of the petitioners that it is not true that after coming to know the contempt petition filed against the first defendant for disobedience of the decree through the first defendant, the second defendant filed the petition. According to the petitioners, on 22.10.2009 itself, the defendants remained ex parte and after examining the plaintiffs, on 12.11.2009, the learned Principal District Munsif has passed the ex parte decree.

14. The learned Principal District Munsif, while allowing the petition on payment of cost observed that now only the respondent came to know the ex parte decree passed in the suit though not acceptable, in order to give a chance to him to prove his case, the interest of justice warrants allowing of the petition.

15. Time and again, the Hon'ble Supreme Court held that "sufficient cause" appearing in Section 5 of the Limitation Act should be liberally considered and the Court should be slow in shutting the door of justice to a litigant on the score of limitation. When the reason for the delay has been properly explained, the Court is to adopt a pragmatic approach to condone the delay when there is no negligence,

inaction or want of bona fide on the part of the applicant. In the present case, the petitioners have not shown the negligence and inaction on the part of the respondent.

16. In *Collector, Land Acquisition and another v. Katiji and others*, reported in 1987 SCR (2) 387, the Hon'ble Supreme Court held thus:

"..... Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore, set aside. Delay is condoned and the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides. Appeal is allowed accordingly. No costs."

17. In *State of Haryana v. Chandra Mani and others*, reported in 1996(II) CTC 109, the Hon'ble Supreme Court held thus:

"11. The expression "sufficient cause" should therefore, be considered with pragmatism in injustice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would

be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. it must be held that the delay of 109 days in this case has been explained and that it is a fit case for condonation of the delay."

18. In *N.Balakrishnan v. M.Krishnamurthy*, reported in 1999-1-L.W. 739, the Hon'ble Supreme Court held as under:

"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 a 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 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."

19. Under Section 5 of the Limitation Act, it is only sufficiency of the cause that matters and not the length and breadth of the delay. While dealing with the petition filed under Section 5 of the Limitation Act, the question of diligence or bona fides are to be considered.

20. It is settled law that 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.

21. In *Maniben Devaraj Shah v. Municipal Corporation of Brihan Mumbai*, reported in 2012 (5) SCC 157, the Hon'ble Supreme Court held thus:

"24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.

22. As stated supra, in the case on hand, the explanation given by the respondent for the delay is acceptable. Liberal approach is to be taken in the petition under Section 5 of the Limitation Act and the respondent had shown semblance of bona fide for the delay on his part. As rightly held by the learned Principal District Munsif, though there was no bona fide in the reason for the delay, in order to give a chance to the respondent to prove his case, the trial Court allowed the petition to condone the delay of 109 days in filing the petition to set aside the ex parte decree on payment of costs. The said approach

adopted by the learned Principal District Munsif is sustainable.

23. Applying the ratio laid down by the Hon'ble Supreme Court in the decisions, supra, to the facts and circumstances of the case on hand, this Court is of the view that the respondent has explained the reason for the delay and the learned Principal District Munsif was absolutely right in allowing the petition. This Court finds any reason to interfere with the order passed by the learned Principal District Munsif. Moreover, pursuant to the order of the learned Principal District Munsif, the respondent deposited the cost and the learned Principal District Munsif numbered the petition to set aside the ex parte decree and the same is pending. The said position has not been denied by the petitioners. Therefore, at this stage, if the order of the learned Principal District Munsif is interfered with, it will cause not only serious prejudice to the respondent but also his right to defend the suit will be curtailed. Therefore, there is no presumption that delay in approaching the Court is always deliberate.

24. In the instant case, the respondent explained the delay in filing the petition for setting aside the ex parte decree as is evident from his petition filed under Section 5 of the Limitation Act

accompanied by his own affidavit. Even though the respondent appears not to be as vigilant as he ought to have been, yet his conduct does not on the whole warrant to castigate 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. This Court is of the considered view that sufficient ground exist for condoning the delay and the learned Principal District Munsif has rightly allowed the petition subject to payment of cost. No valid grounds have been made out to interfere with the order of the learned Principal District Munsif impugned in this revision. Resultantly, the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.

25. In the result,

(a) The Civil Revision Petition is dismissed by confirming the order passed in I.A.No.874 of 2010 in O.S.No.341 of 2006, dated 22.03.2011 on the file of the learned Principal District Munsif, Tindivanam.

(b) The learned Principal District Munsif, Tindivanam is directed to consider and pass

orders in the petition filed by the respondent to set aside the ex parte decree by giving notice to both the parties within a period of one month from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

21.08.2017

vs

Note: Issue order copy o 14.03.2019

Index : Yes

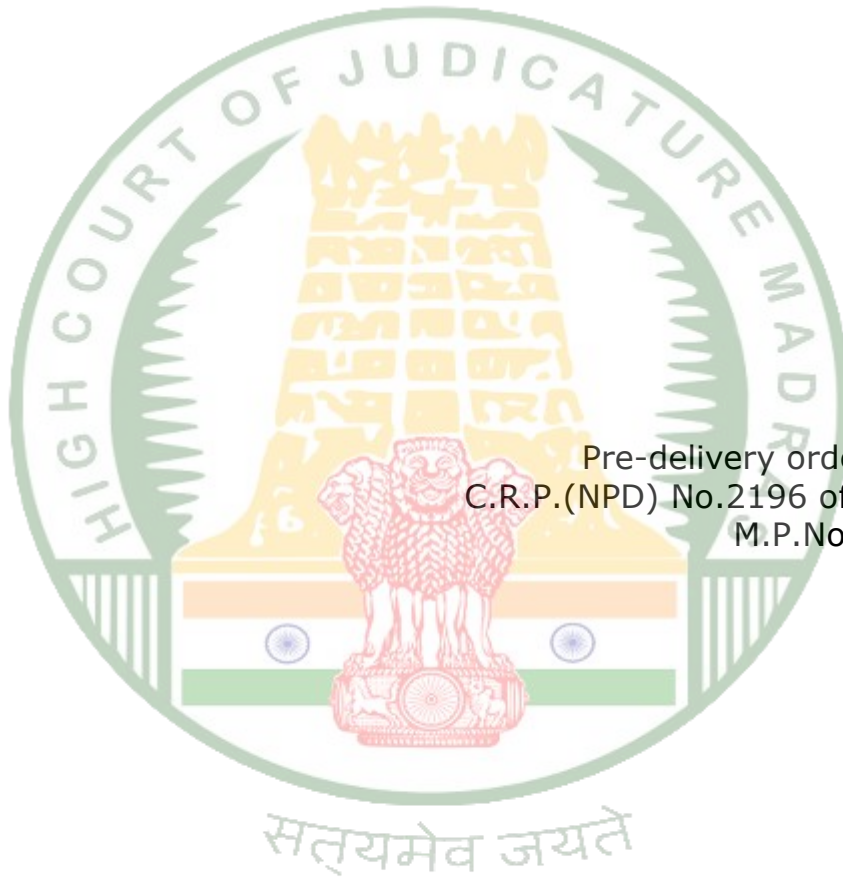
To

The Principal District Munsif,
Tindivanam.

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M.V.MURALIDARAN, J.

VS



Pre-delivery order made in
C.R.P.(NPD) No.2196 of 2011 and
M.P.No.1 of 2011

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