

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).No.2058 of 2014
and M.P.No.1 of 2014

M.Kumar

.. Petitioner

Vs.

K.Rukkumani

.. Respondent

Prayer:- Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, against the fair and decreetal order dated 17.12.2013 in I.A.No.454 of 2013 in O.S.No.207 of 2007 on the file of the learned Second Additional Subordinate Judge, Salem.

For Petitioner : Mr.C.Prabakaran
For Respondent : Mr.R.Nalliyappan

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 17.12.2013 in I.A.No.454 of 2013 in O.S.No.207 of 2007 on the file of the learned II Additional Subordinate Judge, Salem.

2.The respondent as a plaintiff filed a suit in O.S.No.207 of 2007 for recovery of money due on promissory note. The petitioner/defendant has contested the same. Because the counsel, who appeared on behalf of the petitioner/defendant before the trial Court, died, the petitioner was not aware of the hearing date and hence, exparte decree was passed on 29.09.2010. Then, the respondent/plaintiff filed E.P.No.19 of 2011 for arrest, in which, the petitioner received notice. Immediately, the petitioner has filed an application in I.A.No.454 of 2013 to set aside the exparte decree along with the petition to condone the delay of 726 days. After contest, that application was dismissed, against which, the present revision is preferred by the defendant.

3.Learned counsel for the petitioner would submit that since the counsel appearing for the petitioner before the trial Court died, the petitioner could not attend the Court on the hearing date. After receiving notice in E.P.No.19 of 2011 only, the petitioner came to know that he was set exparte and exparte decree was passed on 29.09.2010. Immediately, the petitioner has filed an application in I.A.No.454 of 2013 to set aside the exparte decree along with the petition to condone the delay of 726 days. He would further submit

that the petitioner in his affidavit stated that he was suffering from jaundice and viral fever and that he was unable to appear before the trial Court. That factum was not considered by the trial Court. Hence, he prays for allowing the revision.

4. Resisting the same, learned counsel for the respondent would submit that the petitioner has filed the revision only with a view to drag on the proceedings. He would further submit that the petitioner has filed the application in the year 2013, but his counsel died in the year 2010 and exparte decree was passed on 29.09.2010. Thereafter, the respondent/decreed holder filed E.P.No.19 of 2011 for arrest, in which, the petitioner has also received notice and paid a sum of Rs.20,000/- on 04.07.2012 and he undertook to file the balance amount. When the matter was posted on 16.08.2012, the petitioner has not paid any amount. Even though the petitioner paid some amount on 04.07.2012, he has filed the application to set aside the exparte decree along with the condonation of delay only on 03.12.2012. But he has not given any reason as to why there was a delay from the date of receipt of notice in the execution petition till he filed the application. It is further submitted that this Court on 21.12.2016 directed the petitioner to deposit Rs.1,50,000/- to show

his bonafide and the petitioner has also given an undertaking to deposit the amount on or before 21.01.2017. The said conditional order was not complied with by the petitioner. Therefore, he prays for dismissal of the revision.

5.Heard both sides and perused the typed set of papers.

6.The respondent as a plaintiff filed the suit for recovery of money due on promissory note. The petitioner/defendant has engaged a counsel and filed the written statement, but not proceeded further. Hence, the petitioner was set exparte and exparte decree was passed on 29.09.2010. Thereafter, the respondent/decreed holder/plaintiff filed E.P.No.19 of 2011 for arrest, in which, the petitioner received notice and he has also paid some amount. Thereafter, he has not paid any amount. Even though the petitioner paid the amount on 04.07.2012, he has filed I.A.No.454 of 2013 to set aside the exparte decree along with the petition to condone the delay of 726 days only on 03.12.2012. But the petitioner has not given any reason as to why there was a delay from the date of receipt of notice in the execution petition proceedings till the filing of said application.

7.Furthermore, this Court directed the petitioner to deposit Rs.1,50,000/- on or before 21.01.2017 to show his bonafide. But the petitioner did not comply with the above said conditional order.

8.As per the dictum of the Apex Court reported in **AIR 1998 SC 3222 (N.Balakrishnan v. M.Krishnamurthy)**, 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. "

9. 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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22. ...

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."

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.

10.Considering the aforestated circumstances of the case, the suit is for recovery of money due on promissory note and exparte decree has been passed on 29.09.2010. According to the petitioner, as the counsel appearing on behalf of him before the trial Court died, he could not able to attend the Court. After he received notice in the execution petition only, he has appeared and made some payments. It is to be noted that the petitioner has filed the present application only after three months from the date of receiving notice in execution petition. In such circumstances, no sufficient reason has been assigned by the petitioner for condonation of delay. Furthermore, the counter of the petitioner reveals that with a view to prevent the respondent/decreed holder to enjoy the fruits of the decree, he has filed series of applications. The trial Court after considering all the aspects in proper perspective manner, passed the fair and decreetal order. So I do not find any reason to interfere with the fair and decreetal order passed by the trial Court and it is hereby confirmed. Consequently, the Civil Revision Petition is dismissed.

11.In the result, this Civil Revision Petition shall stand

dismissed by confirming the fair and decreetal order passed by the trial Court in I.A.No.454 of 2013 in O.S.No.207 of 2007. No costs. Consequently, connected Miscellaneous Petition is closed.

24.01.2017

kj

Index:Yes/No

To

II Additional Subordinate Judge, Salem.

R.MALA,J.

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