

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).No.231 of 2017
and C.M.P.No.1039 of 2017

M.R.G.Subbaiyan

.. Petitioner

Vs.

1.Susheela Appaji
2.Bagyalakshmi Ashok
3.Nalini Thimraj
4.Nithya Guhanand

Rep. by Power of Attorney
Agent and Mother Susheela Appaji

.. Respondents

Prayer:- Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decretal order dated 09.06.2016 made in I.A.No.128 of 2015 in O.S.No.41 of 2012 on the file of the District Court, Nilgiris at Udthagamandalam.

For Petitioner : Mr.L.Mouli

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 09.06.2016 made in I.A.No.128 of 2015 in O.S.No.41 of 2012 on the file of the District Court, Nilgiris at Udhagamandalam.

2.The respondents as the plaintiffs filed a suit in O.S.No.41 of 2012 for recovery of sale consideration of Rs.19,88,200/- with interest. Even though the defendant/petitioner herein has filed a vakalat, as he has not filed the written statement in time, he was set exparte and exparte decree was passed on 05.11.2013. Thereafter, the plaintiffs filed E.P.No.4 of 2015 for attachment. The petitioner after receipt of notice in E.P.No.4 of 2015, has filed an application in I.A.No.128 of 2015 to condone the delay of 559 days in setting aside the exparte decree, which was dismissed, against which, the present revision is preferred by the petitioner/defendant.

3.Learned counsel for the petitioner would submit that due to shifting of his office, the records were not traceable, hence he could not contact his counsel to give instruction to file the written

statement in time and that he was set exparte and exparte decree was passed on 05.11.2013. That factum was not considered by the trial Court. Therefore, he prays for setting aside the fair and decreetal order passed by the trial Court.

4.At the time of admission, argument of the learned counsel for the petitioner is heard in length and perused the typed set of papers.

5.The respondents as the plaintiffs filed the suit for recovery of sale consideration with interest. Even though the petitioner/defendant entered into appearance, he has not filed the written statement in time. Admittedly, the suit was filed on 10.10.2012 and the petitioner was set exparte on 05.11.2013. It shows that nearly one year, he has not filed the written statement. It is to be noted that the petitioner kept quiet all along, after exparte decree was passed and after receipt of notice in E.P.No.4 of 2015, has filed the present application to condone the delay of 559 days in filing the petition to set aside the exparte decree.

6.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. "

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"

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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.

8. On perusal of para-4 to 6 of the affidavit filed in support of the application, it reveals that there were no reasons assigned by the petitioner for condonation of delay of 559 days. In para-4, it was stated that due to shifting of office, the records were not traceable and hence, he could not contact his counsel to give instruction to file written statement in time. Therefore, he was set *ex parte* and *ex parte* decree was passed on 05.01.2013. In my opinion, the petitioner has not assigned any valid reason as to why he has not filed the petition to set aside the *ex parte* decree in time as to why the delay has been caused. Further it is pertinent to note that the petitioner kept quite all along and after filing of execution petition only, he has come forward with the application. So it is clear that the petitioner with the *malafide* intention to prevent the decree holders to enjoy the fruits of the decree, has come forward with the present application. Therefore, applying the dictum laid down in

Balakrishnan and Lanka Venkateshwarlu cases, I am of the view that the delay of 559 days has not been properly explained by the petitioner and hence, I am not inclined to condone the delay. So I do not find any illegality or irregularity in the fair and decreetal order passed by the trial Court and therefore, it is hereby confirmed. Consequently, the Civil Revision Petition stands dismissed with costs.

9.In the result, this Civil Revision Petition shall stand dismissed with costs. The petitioner shall pay a sum of Rs.1,000/- (Rupees One thousand only) to the Tamil Nadu State Legal Services Authority, High Court, Chennai. Consequently, connected Miscellaneous Petition is closed.

31.01.2017

Index:Yes/No
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To

The District Court, Nilgiris at Udhagamandalam.

R.MALA,J

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