

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P.(NPD).No.2711 of 2014

and

M.P.No.1 of 2014

1.Ramalingam

S/o.Late Karuppan @ Ramasamy

2.Perumal

S/o.Late Karuppan @ Ramasamy

.. Petitioners/Petitioners/Defendants 2 & 3

-Vs.-

Vijaya

D/o.Late Karuppan @ Ramasamy

.. Respondent/Respondent/Plaintiff

Prayer:

Civil Revision Petition is filed under Section 115 of Code of Civil Procedure against the fair and decreetal order dated 21.04.2014 made in I.A.No.205 of 2014 in O.S.No.99 of 2012 on the file of the Principal District Munsif, Tirupattur.

For Petitioners : Mr.M.V.Venkateshan

For Respondent : No Appearance

ORDER

The present Civil Revision Petition has been filed challenging the fair and decreetal order dated 21.04.2014 made in I.A.No.205 of 2014 in O.S.No.99 of 2012 on the file of the Principal District Munsif, Tirupattur.

2.The respondent herein as plaintiff has filed the suit for declaration of title and injunction. Since the revision petitioners/defendants did not prefer to file a written statement, the suit was decreed exparte on 26.11.2012. Thereafter, the revision petitioners/defendants filed an application to set aside the exparte decree along with an application for condonation of delay of 410 days. The Trial Court after considering the objections raised by the respondent/plaintiff had dismissed the said application stating that no sufficient or acceptable reasons have been mentioned. As against the said order passed by the Trial Court, the present Civil Revision Petition has been preferred.

3.The learned counsel appearing for the revision petitioner would submit that when the matter was listed on 26.11.2012, though the defendants were ready to file their written statement, the 2nd defendant was suffering

from age related ailments such as giddiness and vomiting and he also suffered from Jaundice, consequent upon which he became unconscious. Only after recovery, he came to know that the suit was decreed exparte and thereafter, he had filed the application to set aside the exparte decree along with an application to condone the delay in filing such application. But the Trial Court without considering the said factum had dismissed the application and hence, the learned counsel for the revision petitioner prayed for setting aside the fair and decreetal order passed by the Trial Court.

4. Even though the respondent was represented by a counsel, when the matter was posted for hearing on several occasions, there was no representation on behalf of the respondent and hence, taking into consideration of the argument advanced by the learned counsel for the revision petitioners and the typed set of papers, this Court is inclined to pass an order.

5. The respondent herein as plaintiff has filed the suit for declaration of title and injunction on the basis of the sale deed dated 30.04.2007. The four defendants in the suit are none other than the brothers of the plaintiff. Though they entered appearance through their counsel, they did not choose to file their written statement and hence, the suit was decreed exparte on

26.11.2012. But the defendants filed an application to set aside the exparte decree along with an application to condone the delay of 410 days on 10.02.2014. As per the dictum of the Hon'ble Apex Court reported in **AIR 1998 SC 3222 (N.Balakrishnan v. M.Krishnamurthy)**, it was specifically held that length of delay is immaterial, but the acceptability of the explanation is the only criterion. It is appropriate to incorporate para-9 to 11 of the said decision:

"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. ""

6. In the instant case, considering paragraph 2 of the affidavit filed by the defendants, it was stated that though the defendants were ready to file their written statement, but the second defendant was suffering from age related ailments such as giddiness and vomiting and he also suffered from Jaundice, consequent upon which he became unconscious and hence, after recovery he came to know that the suit was decreed *ex parte* and thereafter, he has come up with the application to set aside the *ex parte* decree. But nothing more has been stated regarding the other defendants. Even if the second defendant was suffering from the ailment, the other defendants 1, 3 and 4 could have very well filed the written statement. But no reason has been assigned as to why they had not approached their counsel for filing the written

statement. They have kept quiet all along and thereafter filed the present application.

7. At this juncture, it would also be appropriate to consider the dictum laid down in **2011 (4) SCC 363 (Lanka Venkateswarlu (Dead), rep. by legal heirs) Vs. State of Andhra Pradesh and others**), wherein it was held that while considering the 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. It would be appropriate to incorporate paragraphs 19, 23, 28 and 29 of the said decision:

“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.In the instant case, as already stated, no sufficient reason has been assigned for the delay caused in preferring the petition to set aside the exparte decree. The Trial Court has rightly considered those aspects in proper perspective in paragraph 10 of its order and has come to a correct conclusion. Hence, I do not find any reason to interfere with the fair and decreetal order dated 21.04.2014 made in I.A.No.205 of 2014 in O.S.No.99 of 2012 and the same is hereby confirmed.

9.In fine, the Civil Revision Petition is dismissed as devoid of merits. Consequently, connected miscellaneous petition is closed. No costs.

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Index:Yes/No

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