

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)No.1041 of 2011

Devaraji

.. Petitioner

Vs.

Sivaraji

.. Respondent

Prayer: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, against the order of the learned District Munsif, Thirupathur, Vellore District in I.A.No.699 of 2008 in O.S.No.561 of 2004 dated 26.08.2009.

For Petitioner : Mr.S.V.Karthikeyan

For Respondent : No Appearance

ORDER

The first defendant in the suit is the revision petitioner, filed this civil revision petition as against the order of dismissal of his section 5 application made in I.A.No.699 of 2008 in O.S.No.561 of 2004 dated 26.08.2009 on the file of the learned District Munsif Court, Tirupathur, Vellore District.

2.The respondent herein filed the suit against the revision petitioner and 3 others in O.S.No.561 of 2004 before the learned District Munsif Court, Tirupathur for declaration and permanent injunction. The petitioner though engaged an advocate to file Vakalat on his behalf in the said suit, he failed to file vakalat, and therefore an ex-parte decree was passed against the revision petition on 21.12.2005. The petitioner came to know about the same when he had doubt about the appearance of his counsel in the said suit. Thereafter the petitioner herein filed an application under Order IX, Rule 13 of C.P.C. in I.A.No.699 of 2008 to condone the delay of 895 days in setting aside ex-parte decree.

3.The respondent / plaintiff resisted the said application, contending that the reason assigned to condone the delay of 895 days in seeking to set aside ex-parte decree is not genuine and the same was invented for the purpose of filing the above application. It is the further contention of the respondent that the revision petitioner was served with the summon on 16.03.2005 and thereafter he appeared in person and the suit was adjourned on several hearing for filing written statement. Since written statement was not filed an ex-parte order

was passed against the petitioner herein on 26.10.2005 and thereafter an ex-parte decree was passed against the first defendant / revision petitioner in the above suit was adjourned on several occasion for the evidence of plaintiff and finally the first defendant / revision petitioner was set ex-parte. Therefore the contention of the revision petitioner was utter false. Hence he prayed to dismiss the section 5 application.

4.The Learned trial Judge upon considering the case on either side, come to the conclusion that the reason assigned by the revision petitioner is totally false and the revision petitioner has not proved his case by producing acceptable oral and documentary evidence so as to condone the delay of 895 days, ultimately dismissed the section 5 application. Challenge is made to the said order by the Revision petitioner.

5.I heard Mr.S.V.Karthikeyan, learned counsel for the petitioner and perused the entire materials available on record. No representation on behalf of the respondent.

6.The scrutiny of records disclose that the respondent herein filed the suit for declaration and permanent injunction against the

revision petitioner and others. It is seen from the records that the petitioner herein was set ex-parte and an ex-parte decree was passed against him on 21.12.2005. To set aside the same the petitioner herein has filed an application with the delay of 895 days and the same was dismissed by the trial Court, holding that the petitioner has not explained the delay of 895 days and the reason assigned in the application to condone the delay cannot be accepted.

7.The perusal of order impugned in this civil revision petition though seems to be correct in some extent, but the lower Court when dealing with the condone delay application filed under section 5 of the Limitation Act, such application will have to be viewed in a liberal and lenient way to do substantial justice to the parties. In the instance case, it is the suit for declaration and permanent injunction in which the right and title to the suit property of the revision petitioner is involved. Therefore the relief of declaration shall not be granted to the parties by way of ex-parte decree and it should a contesting decree. Considering the same, in order to give one more opportunity to the revision petitioner the delay of 895 days is liable to be condoned. However, this Court has also taken note of the inconvenience and delay caused to the plaintiff / respondent in deciding the suit on the

part of the first defendant / revision petitioner shall be compensated by way of awarding some reasonable cost.

8. In this regard, it is useful to refer the Judgment of this Court reported in 2016 (5) CTC 117, wherein it is held that

“When a Court of law deals with an application to condone the delay filed under section 5 of the Limitation Act, such application will have to be generally viewed in a liberal and lenient way to do substantial justice between the parties. By projecting an application to condone the delay as per section 5 of the Limitation Act, belatedly, no party will file the same with a mala fide intention. If a party files a delay condonation application belatedly, he or she runs a serious risk.”

9. However, if an application filed under section 5 of the Limitation Act is allowed by this Court, to advance the cause of substantial justice, then the maximum that can happen is that a party will be allowed to part take in the main arena of legal proceedings and the main cause can be decided on merits. Per contra, if a meritorious matter is thrown out at the threshold or at the early stage the cause of justice will be certainly defeated. In a condonation of delay application filed under section 5 of the Limitation Act, 1963 the length and breath of the delay is not a material / relevant factor”.

10. In view of the above, this Court in the interest of justice, equity, fair play and to meet the ends of justice inclined to allow this civil revision petition.

11. In the result:

(a) this civil revision petition is allowed on condition that the petitioner shall pay the cost of Rs.5000/- to the learned counsel for the respondent within a period of two weeks from the date of receipt of a copy of this order,

(b) the trial Court is directed to pass orders in the set aside petition within a period of one month thereafter, by giving notice to other parties.

02.02.2017

Note: Issue order copy on 13.12.2018

Internet: Yes

Index: Yes

vs

To

The District Munsif Court,
Tirupathur, Vellore District.

WEB COPY

M.V.MURALIDARAN, J.

VS



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