

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)No.1816 of 2011

1.P.Sivakumar

2.S.Navamani

3.P.Lakshmi

.. Petitioners

Vs.

1.K.Palanisamy Gounder

2.S.Balasubramanian

..Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the order dated 19.10.2010 passed in I.A.No.1086 of 2010 in O.S.No.312 of 2008, on the file of the First Additional District Judge, Coimbatore.

For Petitioners : Mr.R.Sriram

For Respondents : Mr.V.Anandhamoorthy

ORDER

This Civil Revision Petition is projected on the order passed in the Interim Application in I.A.No.1086 of 2010 in O.S.No.312 of 2008 on the file of the learned I Additional District Judge, Coimbatore. The learned Trial Court dismissed the interim application in I.A.No.1086 of 2010 filed under section 5 of the Limitation Act to condone the delay of 319 days. The Petitioners are Plaintiffs in the Original Suit in O.S.No.312 of 2008 filed for the relief of partition. Before the learned trial court along with the application for the condonation of delay, the 1st plaintiff filed the petition on his behalf and on behalf of other Petitioners/Plaintiffs. In the said suit, written statement was filed by the defendants. However, the suit was posted in the list for trial on 03.08.2009 on that day the plaintiffs were not present. Hence, the case was posted to 11.08.2009, but on that day also the plaintiffs were not present, therefore the learned trial court dismissed the suit for default.

2.It is the further case of the petitioners that the 1st Plaintiff went to Bombay in connection with his business. When he returned to Thiruppur, he has not able to meet his counsel. Though, he was

informed by his counsel, due to the family dispute he was not able to meet his counsel. Further, on 13.07.2010 his well-wishers negotiated and informed that there is possibility for amicable settlement. Even on 02.09.2010 also his Counsel informed about the dismissal. However for all these reasons, there was a delay of 319 days in filing of the restoration petition. So, the petitioners prayed for the restoration of suit by setting aside the order of the learned trial court.

3.Before the learned trail court the Respondents/Defendants filed their counter statement stating that all the reasons adduced in the affidavit filed by the Petitioners/Plaintiffs are false and no proof is filed to ascertain the fact that the 1st Plaintiff/Petitioner was in Bombay when the suit was dismissed for default. Further, the affidavit filed by the Petitioners/Plaintiffs before the trail court is a lack of required information. So, they prayed for the dismissal of the petition as it is devoid of merits and the same was filed without explaining the reason for delay properly. So, the petition filed by the petitioner is liable to be dismissed. As against the order of dismissal, the instant Civil Revision Petition is filed to set-aside the order of the learned trial Court.

4.I heard Mr.R.Sriram, learned counsel appearing for the petitioners and Mr.V.Anandhamoorthy, learned counsel appearing for the respondents and perused all the materials available on records.

5.It is the case of the petitioners that the delay of 319 days was caused in filing the application for restoration of the original suit. Admittedly, the suit is filed for the relief of partition. The reasons adduced for the delay is that the 1st Petitioner/Plaintiff went to Bombay at the relevant time and even after returned to Thiruppur, he was unable to meet his Counsel to take legal action to get restored the original suit. At the same time, it is also stated that due to the dispute in his family and business, he was curtailed to file necessary petition to restore the suit. By appraising the facts and circumstances of the case, the learned trial court was not convinced in the reasons set out in the affidavit filed is the Petitioners/1st Plaintiff and dismissed the same on 19.10.2010.

6.Admittedly, it is the case for partition and the stage of the case, when it was dismissed, was posted for trial. As for as the partition suits are concerned, the plaintiffs may be treated as defendants and the defendants may be treated as plaintiffs. The

capacity of the parties are inter changeable. So, the learned trial court has to approach such an application for condonation of the delay in a liberal manner.

7.Since, in my categorical opinion, suit like partition and declaration should not be passed exparte, but ample opportunities should be given to the parties. I am also opined that the trial Courts should adopt liberal approach in condoning delay applications, since negative orders passed in the condoned delay application will create multiplicity proceedings. Therefore, this Court directed all the Courts below to apply their Judicial views and Judicial conscious, while passing orders on the condone delay petitions either in the suit or appeal. Apart from this, the Hon'ble Apex Court in a recent judgment in Civil Appeal No.3777 of 2015 has very categorically held that condoning the delay of 882 days delay would not be prejudiced to other parties but that delay should be condoned with cost and accordingly, the Hon'ble Apex Court directed the appellant in the appeal to pay a sum of Rs.50,000/- to the respondent. The said case is squarely applicable to the present case on hand.

8.Moreover, the records would go to show that for the first time, the suit was dismissed for default. So, in the considered opinion

of this court, an opportunity may be given to the revision petitioners to proceed with their lis further in accordance with law, by allowing the Civil Revision Petition. Apart from that the reasons adduced for dismissal of the condone delay application are not unacceptable as for as partition suits are concerned.

9. Therefore in the opinion of this Court that the Civil Revision Petition ought to be allowed on terms and accordingly this Civil Revision Petition is allowed.

10. In the result:

(a) this Civil Revision petition is allowed by setting aside the order in I.A.No.1086 of 2010 in O.S.No.312 of 2008, dated 19.10.2010, on the file of the First Additional District Judge, Coimbatore, on condition that the petitioners should pay a sum of Rs.25,000/- to the respondents within a period of four weeks from the date of receipt of copy of this order.

(b) on production of the payment of cost receipt on the specified date, the trial court is directed to number the Restoration Application and to pass orders, by giving

notice to both parties within one month;

(c) on passing the order in the restoration application, the trial court is directed to dispose the suit within three months thereafter, on day to day basis without giving any adjournments to either parties and both the parties are hereby directed to give their fullest cooperation.

03.02.2017

Note: Issue order copy on 13.04.2017

Index: Yes/No.

Internet: Yes/No.

vs

To

The First Additional District Judge,
Coimbatore.

M.V.MURALIDARAN, J.

VS

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