

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.230 of 2011
and
M.P.No.1 of 2011**

A.Sridhar Babu

.. Petitioner

Vs.

1.Velayutham
2.Murugaian
3.Vetrivel

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 22.10.2010 in I.A.No.1404 of 2010 in O.S.No.18 of 2007, on the file of the Additional District Munsif, Villupuram.

For Petitioner : Mr.T.Dhanya Kumar
For Respondents : No Appearance

सतगमने जयते
ORDER

The defendant in O.S.No.18 of 2007, on the file of the learned Additional District Munsif, Villupuram, is the civil revision petitioner before this Court.

2.The short facts of the case of the parties are necessary for the disposal of this civil revision petition which runs as follows:

The respondents/plaintiffs filed a suit against the revision petitioner in O.S.No.18 of 2007 for declaration and permanent injunction. The plaintiffs have also filed an I.A.No.51 of 2007 and I.A.No.52 of 2007 for interim injunction along with the suit and the same were dismissed on merits by an order dated 26.11.2007. The revision petitioner filed written statement and resisted the suit. When the suit was posted for trial in the list on 10.11.2008, there was no representation on the side of the revision petitioner. Hence, the revision petitioner was set ex-parte and an ex-parte decree was passed against the revision petitioner on 10.11.2008.

3. Being so, the 2nd respondent herein filed yet another suit in O.S.No.374 of 2008 against the revision petitioner and other plaintiffs in O.S.No.18 of 2007 for the relief of declaration and partition. That apart the respondents herein filed one another suit in O.S.No.14 of 2010, as against the revision petitioner for compensation and mandatory injunction to restore the pipe line.

4. In the meanwhile the revision petitioner on receipt of summon in O.S.No.14 of 2010 came to know that he suffer an ex-parte decree, for the reason that the counsel engaged by him has shifted his practice from Pondicherry Court to Hosur Court and thereby failed to conduct the case on behalf of the revision petitioner. Because of which, in

O.S.No.14 of 2010 too, an ex-parte decree came to be passed for non-filing of written statement. The revision petitioner got the knowledge of the ex-parte decrees in both suits subsequently.

5.Whereupon the revision petitioner contacted his counsel, who then was practicing before the Hosur Court and on verification through him came to know that in the above said two suits an ex-parte decree was passed against him. Hence, he filed application in I.A.No.1404 of 2010 in O.S.No.18 of 2007 to condone the delay of 635 days in filling the application to set aside the ex-parte decree. The respondents herein filed the counter affidavit and strongly opposed to condone the delay.

6.After hearing either side, the learned Additional District Munsif has dismissed the condone delay application filed by the revision petitioner by an order dated 22.10.2010 and challenging the same the present civil revision petition is being filed.

7.I heard Mr.T.Dhanya Kumar, learned counsel appearing for the petitioner and there is no representation for the respondents and perused the entire records.

8.It is the contention of the learned counsel for the revision

petitioner that the revision petitioner was unaware of the ex-parte decree, which came to be passed against him on 10.11.2008. The same was because of the reason that the revision petitioner's counsel has shifted his practice to a distant district and his shifting of practice was not informed to the revision petitioner.

9. It is an admitted fact that there are totally three suits came to be filed by the respondents herein against the petitioner herein, praying for a variety of reliefs namely Easementary Rights, one for partition and the other for Mandatory Injunction and Compensation. The records disclose that in the above three suits only the rank and capacity as to whether plaintiff or defendant differs, where as the parties remain the same. It is noticed that still one case stand pending between them, at this juncture the revision petitioner has come up with the above application in I.A.No.1404 of 2010 in O.S.No.18 of 2007 to condone the delay of 635 days in filling the application to set aside the ex-parte decree. It is true that the revision petitioner has to substantiate his delay with sufficient reason, but at the same time for the failure of a Counsel, the litigant cannot be deprived of his legal right to sue, provided in the case on hand there is already a suit pending between the same parties. The trial Court has not gone into the above said aspect and erroneously dismissed the delay petition.

i) At this Juncture it would be relevant to look into the decision of our Hon'ble Apex Court in the matter of

Sree Rajendra Mill Ltd., Gandhi Nagar, Leigh Bazaar, Salem v. IOCEE Exports Ltd., 4-E, Century Plaza, No.560-562, Mount Road, Chennai holding that the expression "sufficient cause" under Section 5 of the Limitation Act to receive liberal construction so as to advance substantial justice".

ii. Further as per the dictum laid down in **1998 (7) SCC 123 N.Balakrishnan Vs Krishnamoorthy**, in which, it is held as follows:

"It is axiomatic that condonation of delay is a matter of discretion of the Court Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. 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 reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first cut refuses to condone the delay. In such cases, the superior cut 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."

iii) **(2008) 8 SCC 321 (Perumon Bhagavathy Devaswom Perinadu Village Vs Bhargavi Amma(Dead) rep by Lrs. and others)** in which, it is held as follows:

(i) "The words" sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words 'sufficient cause' in Section 5 of Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the Appellant.

10. In the light of the above said legal proposition and the facts involved in the case, this Court is of the considered opinion that the delay of 635 days is liable to be condoned on payment of cost of Rs.2,000/- to be paid by the revision petitioner to the Legal Aid.

11. In the result:

(a) this civil revision petition is allowed by setting aside the order passed in I.A.No.1404 of 2010 in O.S.No.18 of 2007, dated 22.10.2010, on the file of the learned Additional District Munsif, Villupuram, on condition that the revision petitioner shall pay a sum of Rs.2,000/- to the Tamilnadu State Legal Services Authority, High Court

<http://www.judis.nic.in> Campus, Madras-104, within a period of two weeks from the date of

receipt of a copy of this order;

(b) the trial Court is hereby directed to number the set aside petition and to dispose the same within a period of six weeks thereafter, by giving notice to both the parties. Consequently, connected miscellaneous petition is closed.

03.01.2017

Note: Issue order copy on 28.08.2017

Index: Yes

Internet: Yes

vs

To

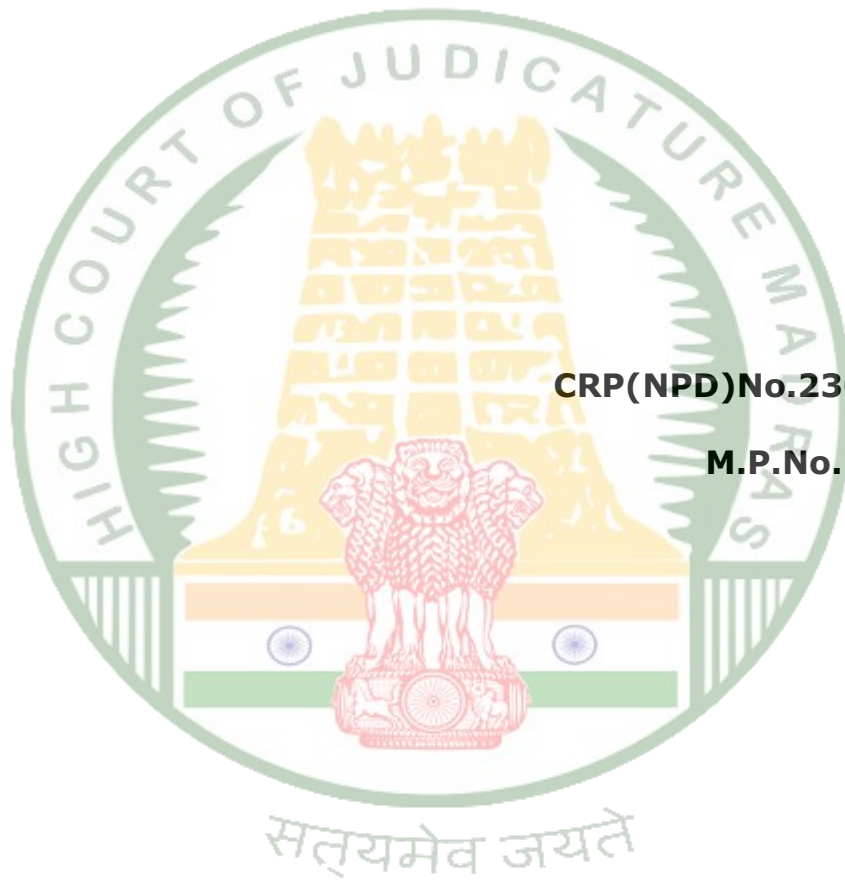
The Additional District Munsif,
Villupuram.



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M.V.MURALIDARAN, J.

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