

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).No.643 of 2017

Kalaiselvi

.. Petitioner

Vs.

1.Satharam
2.Vijakumari

.. Respondents

Prayer:- Civil Revision Petition is filed under Section 115 of C.P.C, against the fair and decreetal order dated 08.11.2016 made in I.A.No.1472 of 2014 in O.S.No.334 of 2007 on the file of the learned District Munsif, Perambalur.

For Petitioner : Mr.G.Ilamurugu

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 08.11.2016 made in I.A.No.1472 of 2014 in O.S.No.334 of 2007 on the file of the learned District Munsif, Perambalur.

2.The respondents as the plaintiffs filed a suit in O.S.No.334 of 2007 for partition and separate possession of 2/3rd share in the suit property. The first plaintiff is the wife of deceased Arumugam. The second plaintiff and the defendant are daughters of the said Arumugam. Since the petitioner/defendant has not filed the written statement in time, she was called absent and set exparte and that exparte preliminary decree has been passed on 02.11.2007. Thereafter, the petitioner/defendant has filed an application in I.A.No.1472 of 2014 to condone the delay of 2434 days in filing the petition to set aside the exparte decree. That application was dismissed, against which, the present revision is preferred by the defendant.

3.Learned counsel for the petitioner would submit that the defendant was suffering from jaundice and hence, she could not able to appear before the trial Court and file the written statement in time. Hence, there was a delay. Therefore, he prays for allowing the revision.

4.At the time of admission, argument of the learned counsel

for the petitioner is heard in length.

5. The respondents as the plaintiffs filed a suit for partition and separate possession of $2/3^{\text{rd}}$ share in the suit property. The first respondent is the wife of one Arumugam and the second respondent and the petitioner herein are their daughters. As the said Arumugam died intestate, the first respondent, who is his wife, has inherited the property along with their daughters/second respondent and the petitioner herein and that each entitled to $1/3^{\text{rd}}$ share in the suit property. Hence, the respondents filed the suit for $2/3^{\text{rd}}$ partition. But the petitioner/defendant did not file the written statement in time and she was called absent, set exparte and that exparte decree was passed on 02.11.2007.

6. Thereafter, the petitioner has come forward with the application to condone the delay of 2434 days in filing the petition to set aside the exparte decree. The respondents/plaintiffs have filed a detailed counter and in para-4 and 5 of the counter, it is stated that after passing of exparte decree, the first respondent has filed another suit in O.S.No.389 of 2007, wherein the petitioner has been appeared before the Court and that the suit was decreed on 20.12.2007. Further, the first respondent has filed a suit in

O.S.No.323 of 2010 to cancel the sale deed, which was executed by the defendant/petitioner herein in favour of one Ramesh. After contest, on 09.03.2011, the said suit was also decreed. In the above suits, the defendant is a party and she appeared through her counsel. It shows that the petitioner has participated in other proceedings, but wantonly she has not appeared before the Court in the present suit only with a view to drag on the proceedings. So the trial Court has set her exparte and passed the exparte decree on 02.11.2007.

7.Now it is appropriate to consider the dictum laid down 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. . . . "

8. 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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22. . . .

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.

9. Now it would be appropriate to consider para-2 of the affidavit filed in support of the application in I.A.No.1472 of 2014, in which, it is stated that the counsel for the petitioner has intimated that the case has been posted on 30.10.2007. Since the petitioner was suffering from jaundice and was bedridden, she was

unable to appear before the Court and file the written statement in time. Except this, nothing has been stated in the affidavit and no sufficient reason has been assigned as to why the application was not filed in time.

10. The affidavit filed by the petitioner is not true, because the petitioner herein has appeared before the Court and participated in other suits viz., O.S.Nos.389 of 2007 and 323 of 2010 through her counsel. After contest, both the suits were decreed in favour of the respondents. So it is clear that the petitioner is hale and healthy and she appeared before the Court and contested the other suits. But she wantonly kept quite all along and has come forward with the present application for condonation of delay of 2434 days only with a view to drag on the proceedings and to prevent the respondents/plaintiffs, who are none other than her mother and sister to enjoy the fruits of the decree. Applying the dictum laid down in Balakrishnan and Lanka Venkateshwarlu cases, I am of the view that the delay of 2434 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.

11.In the result, this Civil Revision Petition shall stand dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

23.02.2017

Index:Yes/No

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To
The District Munsif, Perambalur.

R.MALA,J.

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