

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2017

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P.(NPD)No.33 of 2011

A.Palaniappan .. Petitioner

Vs.

V.Thiruppathi .. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and final order passed on 21.09.2010 in I.A.No.2194 of 2009 in AS.CFR.No.29519 of 2009, on the file of the Principal District Judge, Coimbatore.

For Petitioner : Mr.S.Gunalan

For Respondent : Mr.N.Thiagarajan

ORDER

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The unsuccessful petitioner before the Court below has filed this Civil Revision Petition assailing the order dated 21.09.2010 made in I.A.No.2194 of 2009 in AS.CFR.No.29519 of 2009 by the learned

Principal District Judge, Coimbatore.

2.The facts of the case, insofar as they are relevant for the disposal of this petition, are stated thus:

The respondent herein filed a suit for specific performance in O.S.No.3 of 2006, on the file of the Sub Court, Udumalpet, on the basis of an agreement dated 17.03.2004 entered into with the petitioner herein. It is stated that the said suit was directed to be listed on 31.10.2006 for filing of written statement by the petitioner herein, and since he failed to file a written statement on the said date, the petitioner was set *ex parte* and an *ex parte* decree was passed on the very same day, i.e., 31.10.2006 itself.

3.Thereafter, on 24.11.2006, the petitioner claims to have filed an application for setting aside the *ex parte* decree. However, in view of the change of petitioner's counsel, the petitioner filed I.A.No.425 of 2008 to condone the delay of 713 days in filing the petition to set aside the *ex parte* decree, referred supra. The said application was dismissed on 28.07.2009. Whereupon, the petitioner filed C.R.P.(NPD) No.2604 of 2009, which was dismissed by this Court by order dated 10.09.2009.

4.Assailing the said order, the petitioner moved the Hon'ble Supreme Court by way of S.L.P.No.28056 of 2009, which was dismissed as withdrawn on 04.12.2009, recording the statement of the petitioner that he intends to file an appeal against the *ex parte* decree.

5.Consequent to the said order, the petitioner filed I.A.No.2194 of 2009 seeking condonation of delay of 1114 days in filing the appeal. However, the learned Principal District Judge, Coimbatore, by order dated 21.09.2010, dismissed the application. Calling into question the said order, the present revision is filed.

6.The learned counsel for the petitioner vehemently contended as under:

i.The agreement dated 17.03.2004, specific performance of which was sought by the respondent by filing suit in O.S.No.3 of 2006, is actually in respect of a loan transaction and not for sale as claimed by the respondent and the same is evident from the fact that the agreement is only for Rs.2,55,000/-, whereas the value of the property on the date of agreement was Rs.20

lakhs;

ii. The mother of the petitioner passed away on 17.3.2008 and his wife, who was suffering heart ailment from 2005, passed away on 25.03.2008, and in that mental condition, due to stress and strain and family circumstances, the delay in filing the appeal occurred. In support of this plea, the learned counsel for the petitioner produced the death certificates in respect of the petitioner's mother and petitioner's wife and submitted that the trauma and mental agony the petitioner would have suffered due to the sudden death of two members of his family cannot be put in words and the delay that occurred on account of such happenings in the family needs to be condoned. He added that, in any event, it is not the case of the respondent that the petitioner had wantonly or deliberately delayed filing of the petition. In support of his plea, reliance was placed on the following decisions: (a) *Mohammed Aslam and others v. C.N.A.Gowdhaman*, 2005 (2) CTC 766; (b) *Pavayammal and another v. S.N.Chockalingam and others*, 2009 (5) CTC 414; and (c) *P.Subramanian*

(dead) and others v. S.Viswasam, 2011-1-LW 53.

7.Per contra, the learned counsel for the respondent reiterating the reasons that found favour with the trial Court while dismissing the application of the petitioner, submitted that each day's delay is to be explained by the petitioner and since the petitioner failed to do so, the order passed by the trial Court does not warrant interference.

8.I heard Mr.S.Gunalan, learned counsel appearing for the petitioner and Mr.N.Thiagarajan, learned counsel appearing for the respondent and perused the documents and gave my anxious consideration to the issue raised.

9.The delay in filing the appeal in the case on hand is 1114 days and the application for condonation of delay filed under Section 5 of the Limitation Act has been dismissed by the trial Court.

10.The Hon'ble Supreme Court, time and again, held that the power to condone delay by enacting Section 5 of the Limitation Act, 1963 is to enable the courts to do substantial justice to parties by disposing of matters on merits; that the expression "*sufficient cause*"

employed by the Legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which serves the ends of justice which is the life purpose for the existence of the institution of courts; substantial justice deserves to be preferred as against technical considerations; and the courts should prefer to deliver justice on merits in preference to the approach which scuttles a decision on merits.

11. Let us now analyze the scope of revision under Section 115 of the Code of Civil Procedure. It is trite that the powers of a High Court to entertain a revision are circumscribed by Section 115 of the Code of Civil Procedure. Section 115 of the Code of Civil Procedure empowers the High Court to entertain a revision against the decision of the Subordinate Court, only where the Subordinate Court appears to have-

- i. exercised jurisdiction not vested in it by law;
- ii. failed to exercise jurisdiction so vested; or
- iii. acted in exercise of its jurisdiction illegally or with material irregularity.

12. Before advertent to the merits of the case, it would be appropriate to refer to the operative portion of the order passed by the

Court below, which reads as under:

"In the light of the above citations, viewing the facts in the instant case, it is clearly seen that the petitioner has not given any proper, reliable and acceptable details about the date of death of his wife and mother and no material is produced to show about the illness suffered by him...."

(emphasis supplied)

13.The petitioner to justify the delay has filed an additional typed set of papers annexing the death certificates of his mother and wife, apart from enclosing a discharge summary pertaining to his eye surgery. A perusal of the death certificate of his mother shows that she passed away on 17.03.2008 on account of "Cardiac Arrest". The petitioner's wife passed away on 25.03.2008 and the cause of death is stated to be "Uremia" and "Diabetes". That apart, the petitioner also produced a discharge summary for having undergone an eye surgery on 18.10.2008.

14.The death of a family member is a profound, difficult, and painful experience. Grief is a term that refers to the more specific,

complex set of cognitive, emotional, and social difficulties that follow the death of a loved one. Individuals vary enormously in the type of grief they experience, its intensity, its duration, and their way of expressing it. Mourning is often defined as either the individual's internal process of adaptation to the loss of a loved one or as the socially prescribed modes of responding to loss, including its external expression in behaviors such as rituals and memorials. Taken together, the grief and mourning processes are understood to be a normal and universal part of the natural healing process that enables individuals, families, and communities to live with the reality of loss while going on with living.

15. In the case on hand, the death of two family members – mother and wife of the petitioner, in the same month of March, 2008, on the trot would have definitely left the petitioner high and dry and would have been a painful experience for him and his other family members and that could have taken a toll on his personal life and health. Of course, this factor of death of two family members was not considered by the trial Court, as the petitioner is said to have not substantiated the said plea by producing evidence, as could be seen from the operative portion of the order of the trial Court, extracted

above.

16. In this factual backdrop, let us analyse whether the petitioner has shown sufficient cause for condonation of delay. The Courts are empowered to allow the application for condonation of delay, on sufficient cause being shown or reject such an application in exercise of its judicious discretion. However, such judicious discretion to condone the delay by adopting a liberal approach has to be exercised only in deserving cases, and not in cases where the delay is on account of lethargic attitude and negligence on the part of the applicant. It is not as if each application for condonation of delay has to be allowed as a matter of right, no matter whether any "sufficient cause" for the delay is shown or not. Each case is to be decided on facts and circumstances. The length of delay is no matter. All that matters is the acceptability of explanation.

17. The above said view of this Court is fortified by the following decisions of this Court:

- (a) In *Mohammed Aslam and others v. C.N.A. Gowdhaman*, 2005
- (2) *CTC 766*, the delay was of 1251 days. In the said judgment, a Division Bench of this Court observed as under:

"12. In the impugned order, as said earlier, the learned Judge has not considered the explanation offered by the applicant for the delay of 1251 days. Though the learned Judge was conscious of the fact that by condoning the inordinate delay, the respondents therein (appellants herein) will be put to great hardship, instead of compensating them, directed for the payment of Rs. 10,000/- to the State Legal Services Authority, Chennai, admittedly, which is not a party in this proceedings. We are unable to share the above view. Having found that by condoning the inordinate delay only on the ground that the applicant should be given an opportunity and having found that the said act will cause great hardship to other side, viz., respondents therein, it is but proper to compensate them by awarding reasonable costs to them. The learned Judge has not resorted to such recourse. It is not in dispute that the Courts are here to render justice to both parties. We are unable to understand how the respondents will be compensated by payment of Rs. 10,000/- to the State Legal Services

Authority, Chennai. Equally, we are conscious of the fact that the length of delay is no matter, and acceptability of the explanation is the only criterion. Sometimes the delay of shortest range may be uncondonable due to want of acceptable explanation, whereas in certain other cases, delay of a very long range can be condoned as the explanation therefor is satisfactory. In every case of delay, there may be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and shut the door against him. If the explanation does not smack the mala fides or it is not put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the Court should not lean towards acceptance of the explanation. We are also aware that refusal to condone the delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the Court is always deliberate. Now, even

the higher court of this land have interpreted that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice. Accordingly, in order to give one opportunity to the respondent/applicant and at the same time, to compensate the appellants/respondents, we intend to modify the order of the learned Judge dated 10.03.2005. Though it is stated that the applicant had paid a sum of Rs. 10,000/- to the State Legal Services Authority, Chennai as ordered, in addition to the said amount, the applicant/respondent is directed to pay a further sum of Rs. 20,000/- (Rupees twenty thousand only) to the appellants/respondents within 15 days from today, failing which the order of the learned Judge dated 10.03.2005 shall stand set aside. OSA. No. 44 of 2005 is disposed of accordingly."

(emphasis supplied)

(b) In yet another decision of this Court in *Pavayammal and another v. S.N.Chockalingam and others*, 2009 (5) CTC 414, a learned

Single Judge of this Court held as under:

"7. The word 'sufficient cause' under Section 5 of the Limitation Act will have to be interpreted in a purposeful and meaning way. As a matter of fact, the Court of law is not supposed to adopt a pedantic approach instead it has to take a liberal view while dealing with the Application of condonation of delay. Ordinarily a party does not stand to gain by lodging in Appeal belatedly. Refusing to condone a delay will result in meritorious matter being thrown out at the nascent stage and thereby the cause of justice being defeated. On the other hand, if a party is allowed to enter into the scene of main proceedings, then the matter can be decided on merits. Of course a Court of law providing due opportunities to the parties to prove their case. The judiciary is respected not on account of its power to legalise injustice on technical grounds but it is capable of removing injustice and is expected to do so. This Court is of the considered view that substantial justice will have to be delivered to the parties overriding technicalities."

(emphasis supplied)

(c) The proposition of law laid down in the above said two decisions was also reiterated in the subsequent decision of a learned Single Judge of this Court in *P.Subramanian (dead) and others v. S.Viswasam*, 2011-1-LW 53.

18. In the instant case, a bare perusal of the typed set of documents shows that only on account of non-filing of written statement on 31.10.2006, the very same day the petitioner was set *ex parte* and a decree was passed in favour of the respondent. The said decree was not passed on merits. The petitioner, though has taken steps to set aside the *ex parte* decree, it was with a delay of 741 days, by filing an application on 13.11.2008. It is evident from the narration of events above that two of his family members passed away during March, 2008 and he also underwent an eye-surgery during October, 2008. Therefore, the averment of the petitioner that his wife was suffering from heart ailment from 2005 cannot just be brushed aside. Since the said delay of 741 days was not condoned, he preferred a Civil Revision Petition, which also did not succeed. Later, the petitioner withdrew the SLP before the Supreme Court stating that he would avail

of appeal remedy. That apart, it is the categorical statement of the learned counsel for the petitioner that the property worth Rs.20 lakhs is being usurped by the respondent for Rs.2.55 lakhs.

19. For the foregoing reasons, I am of the firm view that the trial Court has not given substantial credence to the plea of delay on account of death of two family members of the petitioner and acted with material irregularity in exercise of its jurisdiction. This Court is of the considered opinion that this is a fit case where the petitioner should be given an opportunity to put forth his case by way of appeal, rather than curtailing his rights by sticking on technicalities.

20. In the result:

(a) the Civil Revision Petition is allowed by setting aside the order dated 21.09.2010 in I.A.No.2194 of 2009 in AS.CFR.No.29519 of 2009, on the file of the learned Principal District Judge, Coimbatore, on condition that the petitioner pays a sum of Rs.15,000/- as costs to the respondent within a period of two weeks from the date of receipt of a copy of this order;

(b) the Appellate Court, namely the Principal District Judge, Coimbatore, is hereby directed to number the appeal and dispose of the same within a period of two months, after giving notice to both sides; and

(c) till the disposal of the appeal by the learned Principal District Judge, Coimbatore, as stated supra, the sale deed executed by the learned Sub Judge, Udumalpet in Doc.No.157 of 2010, dated 26.11.2009 is kept in abeyance and subject to the order to be passed in the appeal, the sale deed will be acted upon. Consequently, connected miscellaneous petition is closed.

15.02.2017

Note: Issue order copy on 01.11.2017

vs

Index : Yes

Internet : Yes

To

The Principal District Judge,
Coimbatore.

M.V.MURALIDARAN,J.

VS



Pre-Delivery order made in
C.R.P.(NPD)No.33 of 2011
and
M.P.No.1 of 2011

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