

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.06.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.1346 of 2013 and
M.P.No.1 of 2013 and
M.P.No.1 of 2015**

The Premier Benefit Fund Ltd.,
Represented by its Chairman and Managing Director
Thiru.P.L.D.Balasubramani,
No.297, Mint Street, Chennai-600 079. .. Petitioner

Vs.

1.G.Shanta

2.M.G.Ashok Kumar .. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 23.09.2011 made in I.A.No.1725 of 2010 in O.S.No.2093 of 2001, on the file of the XVI Assistant Judge, City Civil Court, Chennai, against the dismissing the Petition to condone the delay of 1648 days delay in filing a petition to set aside exparte decree dated 10.02.2005.

For Petitioner : Mr.K.Rajasekaran

For Respondents : Mr.M.Venkadesan (No Appearance)

ORDER

The defendant in O.S.No.2093 of 2001 is the civil revision petitioner before this Court, challenging the order passed in I.A.No.1725 of 2009 in O.S.No.2093 of 2001, dated 23.09.2011, on the file of the XV Assistant Judge, City Civil Court, Chennai.

2.The case of the defendant is that the respondents/plaintiffs were filed a suit against this petitioner/defendant for redemption directing the defendant to receive the amount of Rs.3,40,000/- in full settlement towards mortgage debt dated 08.04.1996 and to discharge the mortgage on receipt of a sum of Rs.3,40,000/-.

3.The petitioner/defendant was appeared through his counsel and filed the written statement. In the written statement, this defendant states that the respondents/plaintiffs have furnished a wrong particulars and they are not the mortgagors. The mortgagors are Smt.Hajithul Rabia and Smt.Sahul Hameed Umma and two mortgagors of Rs.3,25,000/- each have been created and they are in due of more than Rs.5,41,441.50/- in respect of the mortgage of Hajithul Rabia and Rs.5,37,617.70/- under the mortgage of Sahul Hameed Umma. But, the respondents/plaintiffs were filed the suit falsely stated only Rs.3,40,000/- is due as on date. Now,

Rs.8,66,978.50/- and Rs.8,61,399.10/- are due in respect of the mortgagors as per the statement of account furnished by the plaintiffs. Thereafter, the suit was set exparte and exparte decree was passed against this petitioner/defendant on 10.02.2005. Challenging the exparte decree, this petitioner/defendant has filed an application for setting aside the exparte decree along with the condone delay application in I.A.No.1725 of 2009 to condone the delay of 1643 days in filing the set aside application. In the said application, this petitioner has stated that he was engaged the counsel by name Mr.S.Y.Raguraman, Advocate, having office at VIII Law Chambers, High Court Buildings, Chennai-600 104.

4.After exparte preliminary decree, the petitioner/defendant has issued notice in I.A.Nos.19102 and 19103 of 2008, filed by the respondents/plaintiffs for final decree and for return of title deeds respectively. Immediately, he took efforts to contact his previous counsel. Therefore, the petitioner/defendant was not able to trace out his counsel, but at that time only the petitioner/defendant came to know that the previous counsel by namely Mr.S.Y.Raguraman was left the practice. Therefore, he has engaged the present counsel M/s.S.Rajendiran and Mr.K.Ponnar.

5. After engaging the present counsel they got back the case bundle from the previous counsel office and handed over the present counsel and they came to know the ex parte decree was passed on 10.02.2005 against this petitioner/defendant. Therefore, the present counsel were advised this petitioner/defendant to file petition for setting aside the ex parte decree dated 10.02.2005. But, for filing the set aside application under Order 9 Rule 13 of CPC, there is a delay of 1643 days was occurred.

6. The petitioner/defendant further states that the delay is neither willful nor wanton but, due to the above said bonafide reasons, it was happened. Hence, it is just and necessary that the ex parte preliminary decree is to be set aside and if the above suit is not decided on merits for the purpose of preliminary decree, then it will give more sufferings to them. If the delay of 1643 days is not condoned, they will be put irreparable hardship and therefore they prayed the trial Court namely XV Assistant Judge, City Civil Court, Chennai to condone the delay of 1643 days in filing the petition under Order 9 Rule 13 of C.P.C.

7. A counter affidavit has been filed by the respondents and they denied the entire allegations set out by the petitioner in his affidavit.

At the time of the exparte decree, on 27.05.2002, when the property was taken up for auction sale, after the exparte decree on 10.02.2005, the respondents have filed two applications in I.A.Nos.19102 and 19103 of 2008. In the said applications, this petitioner/defendant has filed vakalath and took time for filing counter, but in respect of several adjournments given by the Court, this petitioner has not chosen to file counter and he just left the matter. Finally, the petitioner was set exparte and the case was posted for orders on 20.07.2009. The petitioner came out with two applications, one to re-open the I.A.No.19202 of 2009 and other to peruse the records. In spite of his strong objections, both the applications were allowed.

8.It is also stated by the respondent is that his previous counsel Mr.S.Y.Raguraman was entrusted with the matter and that he was under the fond hope that he would keep track of the above suit conduct the trial of the suit and certainly he would call on the petitioner, if their presence of assistance was necessary are far from convincing. It is the duty of the petitioner to keep the track of the proceedings. Already an exparte decree was passed. Therefore, the petitioner/defendant ought to have been all to more cautious and diligent in their case. He cannot shift the blame on the counsel for

the petitioner's negligence.

9.The respondent also come forward by saying that apart from this, the petitioner/defendant has not given any valid reason and this Court and the Hon'ble Apex Court clearly held that each and every day delay should be explained by the parties. But, in this case, the petitioner has not given any valid reason except the reason for his previous counsel has left the practice and the counsel was not informed to the petitioner/defendant. Therefore, the respondents/plaintiffs prayed for dismissal of the application.

10.Considering both side arguments, the learned XVI Assistant Judge, City Civil Court, Chennai, was pleased to dismissed the application on the ground that this petitioner/defendant has not given any valid reason, since the suit was set exparte and exparte decree was passed on 10.02.2005. Apart from this, the learned Judge also states that earlier the petitioner/defendant was set exparte and exparte decree was passed on 19.07.2001 and thereafter the exparte order was set aside by an application in I.A.No.9258 of 2002 filed by the petitioner. But, the petitioner/defendant has not shown their interest to conduct the case. Therefore, he again set exparte, on 10.02.2005 exparte decree was passed.

11.The learned Judge also states that the petitioner has given a reason stating that his counsel Mr.S.Y.Raguraman, was left the practice, but the same has not produced any documents. Therefore, the reason for the huge delay of 1643 days, this petitioner has not given any proper and valid reasons. Accordingly, the learned Judge dismissed the petition on 23.08.2011. Challenging the order, this petitioner/defendant has filed the present civil revision petition.

12.I heard Mr.K.Rajasekaran, learned counsel appearing for the petitioner. There was no representation on behalf of the respondents.

13.Admittedly, the suit filed for redemption of mortgage, the respondents/plaintiffs have ready to pay the mortgaged amount of Rs.3,40,000/-. Though, initially the petitioner/defendant was set exparte on 19.07.2001 on the first occasion and the said exparte was set aside by the very same Court by his order in I.A.No.9258 of 2002. Thereafter, it is the bounden duty of the petitioner to take care of his case and he should very diligent to pursue his case.

14.In fact, in a case reported in **2016 3 MWN (Civil) 606**, I very clearly held that it is the bounden duty of the parties to approach

the counsel and appear in Court without absenting themselves. They also should not blame the counsel for non informing the hearings of the case. Therefore, the said judgment is squarely applicable to the present case in hand.

15. Apart from this, the petition filed in I.A.1725 of 2009 to condone the delay of 1643 days, which is huge delay. In fact, the Hon'ble Apex Court in a recent Judgment in Civil Appeal No.(S).3777 of 2015 it is held that there was a delay of 882 days delay in preferring an appeal suit and the said petition was dismissed by this Court by order dated 05.06.2013 in CRP(NPD)No.266 of 2011 and an appeal was filed before the Hon'ble Apex Court in Civil Appeal No.(S).3777 of 2015 in which the Hon'ble Apex Court has passed an order as follows:

“Leave granted.

This appeal arises out of an order dated 5th June, 2013, passed by the High Court of Judicature at Madras whereby CRP(NPD)No.266 of 2011 filed by the appellant has been dismissed and the order passed by the first appellate court declining condonation of 882 days in the filing of the appeal by the appellant affirmed.

We have heard learned counsel for the parties at some length. We are satisfied that in the facts and circumstances of the case, the first appellate court could and indeed ought to

have condoned the delay in the filing of the appeal. Since, however, the delay is fairly inordinate, we are inclined to direct condonation subject to payment of costs.

We accordingly allow this appeal, set aside the orders passed by the High Court and that passed by the first appellate Court with the direction that upon deposit of a sum of Rs.50,000/- (Rupees fifty thousand) towards costs before the first appellate court within six weeks from today, the delay in the filing of the appeal shall stand condoned. The first appellate court shall hear and dispose of the first appeal filed by the appellant expeditiously and as far as possible within a period of six months from the date the costs are deposited by the appellant. The amount of costs shall be paid to the respondent.

The appeal is allowed in the terms and to the extent indicated above.”

16.The Hon'ble Apex Court has allowed the Civil Appeal No.(S).3777 of 2015 on condition that the appellant shall pay a sum of Rs.50,000/- as cost to the respondent in the said appeal. But, in the present case on hand, the delay is 1643 days, which is huge delay, but the reason given by the petitioner is that his previous counsel Mr.S.Y.Raguraman is left the practice, but there was no evidence produced by the petitioner except the affidavit filed by the petitioner.

17. Apart from this, the petitioner as a Benefit Fund Limited, they must have care in their cases, they should not simply through the allegations against their counsel by stating that the counsel was not informed the hearings. On the other hand, being the party to the case, he must have oftenly enquired his counsel about his case, but, his case, there are 1643 days delay in filing the set aside petition i.e. almost more than 4 years, this petitioner has not cared about his case and not made any enquiry with their counsel.

18. The Hon'ble Apex Court and this Court has held in many number of cases that lenient view should be shown in the condone delay application, but the case in hand, which is huge delay of 1643 days, which is more than 4 years, the petitioner has not approached either the Advocate or the Court to know about his case, but simply he has given reason stating that without any evidence to show his previous counsel is left his practice. Therefore, the petitioner/defendant cannot simply filed an application by blaming his Advocates that the previous counsel is left the practice and for that the delay of 1643 days in filing the set aside application is occurred. Therefore, the very order of rejecting the petition filed by the petitioner in I.A.No.1725 of 2009 is not warranting interference by this Court. Accordingly, this civil revision petition is liable to be

dismissed.

19.In the result, this civil revision petition is dismissed by confirming the order order passed in I.A.No.1725 of 2010 in O.S.No.2093 of 2001, dated 23.09.2011, on the file of the XVI Assistant Judge, City Civil Court, Chennai. No costs. Consequently, connected miscellaneous petitions are closed.

01.06.2017

Index:Yes
Speaking Order

vs

To

The XVI Assistant Judge,
City Civil Court, Chennai.

M.V.MURALIDARAN, J.

VS

**Pre-Delivery order made in
CRP(NPD)No.1346 of 2013 and
M.P.No.1 of 2013 and
M.P.No.1 of 2015**

**01.06.2017
<http://www.judis.nic.in>**