

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:14.12.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP (NPD) No.1843 of 2006
and
C.M.P.No.20834 of 2017

1.E.N.Mani
2.E.N.Chandran

.. Petitioners

Vs.

M.Natarajan

... Respondent

Prayer: Civil Revision Petition filed under 115 of Civil Procedure Code, against the fair and decreetal order dated 02.02.2006 made in E.A.No.(unnumbered) of 2005 in E.P.No.98 of 2002 on the file of Additional Subordinate Court, Chengalpet, in O.S.No.7255 of 1989 on the file of III Assistant City Civil Court, Chennai.

For Petitioners : Mr.Kandavadivel Duraisamy

For Respondents : No Appearance

O R D E R

This petition is filed against the fair and decreetal order dated 02.02.2006 made in E.A.No.(unnumbered) of 2005 in E.P.No.98 of 2002 on the file of the learned Additional Subordinate Judge, Chengalpet, in O.S.No.7255 of 1989 on the file of III Assistant City Civil Court, Chennai.

2. To set aside the ex-parte decree, the revision petitioner has filed an application in E.A.No.(unnumbered) of 2005 with a delay of 722 days. The revision petitioner has averred in the affidavit filed in support of the condone delay application that this petition came up for further orders on 06.03.2003 before this Court to sell the attached property in public auction. But the same was already dismissed for default as "my previous counsel not paid batta for issue of sale notices in the above E.P." In the meantime, the revision petitioner received notice in the execution proceedings.

Thereafter, only he came to know that an ex-parte decree was passed against her in the said suit. Then, he filed an application to set aside the ex-parte decree with a delay of 722 days.

3. The revision petitioner stated that the delay is neither willful nor wanton, but the same is beyond his control and without his knowledge. Hence, he prayed to condone the delay of 722 days in seeking to set aside ex-parte decree.

4. The case of the respondent in lower court is that the petitioners have not given any valid reason for the huge delay of 722 days in filing the appeal since a huge delay should not be condoned for the simple reason, the petitioners have not explained each and every day delay. Considering the case of both sides, the learned Judge dismissed the petition filed by the petitioner. Challenging the said order, the present Civil Revision Petition has been filed.

5. I heard Mr.Kandavadivel, learned counsel appearing for the petitioner and there was no representation on behalf of the respondent and perused the materials available on record.

6. Admittedly, the petitioners have filed E.A.No. (unnumbered) of 2005 for condoning the delay of 722 days in filing the appeal, but the same was dismissed on 02.02.2006, on the ground that the petitioners have not given any valid reason for the huge delay in filing the appeal.

7. The Hon'ble Supreme 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."

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.

8. Therefore, applying the said judgment though the petitioners have not given any valid reason for each and every day delay, the revision petitioner has averred in the affidavit filed in support of the condone delay application that this petition came up for further orders on 06.03.2003 before this Court to sell the attached property in public auction. But the same was already dismissed for default as "my previous counsel not paid batta for issue of sale notices in the above E.P." Hence, there is a delay of 722 days in filing the appeal. Therefore, by giving one more opportunity to these petitioners, this civil revision petition has to be allowed by setting aside the order passed in I.A.No.717 of 2003, but the petitioners should compensate the respondent.

9. In the result:

(a) this civil revision petition is allowed by setting aside the order passed in I.A.No.717 of 2003, on condition that the petitioners should pay a sum of Rs.5,000/- as cost to the Headmistress Government Hobart Muslim (Girls) Higher Secondary School, Whites Road, Royapettah, Chennai - 600 014, within a period of three weeks from the date of receipt of a copy of this order;

(b) on production of payment receipt within the time stipulated by this Court, the trial Court viz. the learned Additional Subordinate Judge, Chengalpet, is hereby directed to number the appeal and dispose of the same within a period of three months, by giving notice to either parties;

(c) The learned Additional Subordinate Judge Chengalpet, is directed to take up the appeal on day to day basis, without giving any adjournments to either parties. Both the parties are hereby directed to give their fullest co-operation for early disposal of the appeal.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The learned Principal District Judge,
Villupuram.

2.The Additional Subordinate Judge,
Chengalpattu

3.The III Assistant Judge
City Civil Court,
Chennai

4.The Headmistress Government Hobart
Muslim girls Higher Secondary School
Whites Road, Royapettah
Chennai-600 014

5.The Section Officer
VR section
High Court, Madras

+1 cc to M/s.Muthumani Doraisamy Advocate sr 89300

CRP.No.1843 of 2006

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