

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2017

CORAM :

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

C.R.P.(NPD) No.2190 of 2012
and
M.P.No.1 of 2012

1. Karthikeyan
2. Ethiraj

.. Petitioners

Vs.

Vellai

.. Respondent

PRAYER: Petition under Section 115 of the Code of Civil Procedure against the fair and final order passed on 20.2.2012 in I.A.No.495 of 2011 in O.S.No.193 of 1998 on the file of the Principal District Munsif Court, Vandavasi.

For Petitioners : Mr.N.Anand Venkatesh

For Respondent : No Appearance

ORDER

The petitioners have filed this civil revision petition calling into question the fair and final order passed on 20.02.2012 in I.A.No.495 of 2011 in O.S.No.193 of 1998 on the file of the Principal District Munsif Court, Vandavasi.

2. The petitioners are the defendants in the suit filed by the respondent/plaintiff.

3. The petitioners herein filed an application under Section 5 of the Limitation Act to condone the delay of 1997 days in filing an application under Order IX Rule 13 of the Code of Civil Procedure to set aside the ex parte decree passed on 23.09.2005.

4. According to the petitioners, they engaged a counsel from Cheyyar, who, in turn, engaged a counsel from Vandavasi, which was unknown to the petitioners, and the petitioners were under the impression that the counsel for the petitioners had been following up the suit. It is stated that since the counsel did not file the written statement, an ex parte decree was passed on 23.09.2005. It was also pleaded that the petitioners had gone out of station searching for greener pastures and reposed trust on their counsel. It is further stated that only on service of summons in O.E.P.No.1 of 2011, the petitioners came to know about the ex parte decree and hence, they filed the application for condonation of delay, as stated supra.

5. The above said application was resisted by the respondent/plaintiff stating that the suit was decreed after almost 14 years from the date of filing and, at least at this belated stage, he should be permitted to enjoy the fruits of the decree.

6. The Court below, vide the order under challenge, held that the reason set out by the petitioners could not be termed as bona fide and accordingly, dismissed the application to condone the delay of 1997 days.

7. Assailing the said order, the present civil revision petition is filed for the relief stated supra.

8. The learned counsel appearing on behalf of the petitioners submitted that the respondent had filed the suit for permanent injunction seeking title over larger extent of the property for which he had no title or right and the said factor was not considered by the Court below, more particularly, when the boundaries of the suit schedule property have not been clearly stated in the suit.

9. He further submitted that the petitioners had no knowledge of

the passing of the ex parte decree on a prior occasion and that only on service of summons in O.E.P.No.1 of 2011, they had knowledge about the ex parte decree and, therefore, the delay which occurred on account of non filing of written statement by the counsel cannot be put against the petitioners.

10. There is no representation on behalf of the respondent, even though notice was served on him.

11. I heard Mr.N.Anand Venkatesh, learned counsel for the petitioners and perused the documents and gave my anxious consideration to the issue raised.

12. The delay in filing the application to set aside the ex parte decree is 1997 days and the said application filed under Section 5 of the Limitation Act has been dismissed by the trial Court.

13. 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.

14. It is the specific case of the petitioners that even though the written statement was prepared, the counsel appearing on their behalf, failed to file the same in the Court due to his elevation and, therefore, the said inaction on the part of the counsel for the petitioners should not be put against them. That apart, it is stated that they had gone in search of greener pastures.

15. It is stated in the order under challenge that on an earlier occasion the suit was dismissed for default on the part of the respondent to adduce evidence and to restore the suit, the respondent had filed application and the same was allowed, after notice to the petitioners. Even prior to that, it is stated that the petitioners were set ex parte in the suit. Referring to the said facts, the Court below stated

that the petitioners had knowledge of the proceedings. The Court below, taking into consideration of the said factor, i.e., the petitioners were set ex parte even prior to the dismissal of the suit for default, ought to have given an opportunity to the petitioners to put forth their case, as it is the specific grievance of the petitioners that the suit property of a larger extent has been knocked off by the respondent without any title over the same and that even the boundaries of the suit schedule property have not been stated properly by the respondent.

16. In this factual backdrop, let us analyse whether the petitioners have 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, I am of the firm view that the trial Court has not given substantial credence to the plea of delay on account of elevation of the counsel appearing for the petitioners and the fact of the petitioners going in search of greener pastures. This Court is of the considered opinion that this is a fit case where the petitioners should be given an opportunity to put forth their case as it is specifically alleged that major extent of property is being knocked off by the respondent without any title or right over the property.

19. In the result:

- a) The civil revision petition is allowed by setting aside the order 20.02.2012 in I.A.No.495 of 2011 in O.S.No.193 of 1998 on the file of the Principal District Munsif Court, Vandavasi, on condition that the petitioners pay a sum of Rs.5,000/- as costs to the Hon'ble Chief Justice Relief Fund within a period of four weeks from the date of receipt of a copy of this order;
- b) On compliance of the said direction, the Court below is directed to number the set aside application and pass orders within a period of one month, of course, after giving notice to both sides.
- c) The Court below is directed to dispose of the suit within a period of three months thereafter.
- d) No costs. Consequently, M.P.No.1 of 2012 is closed.

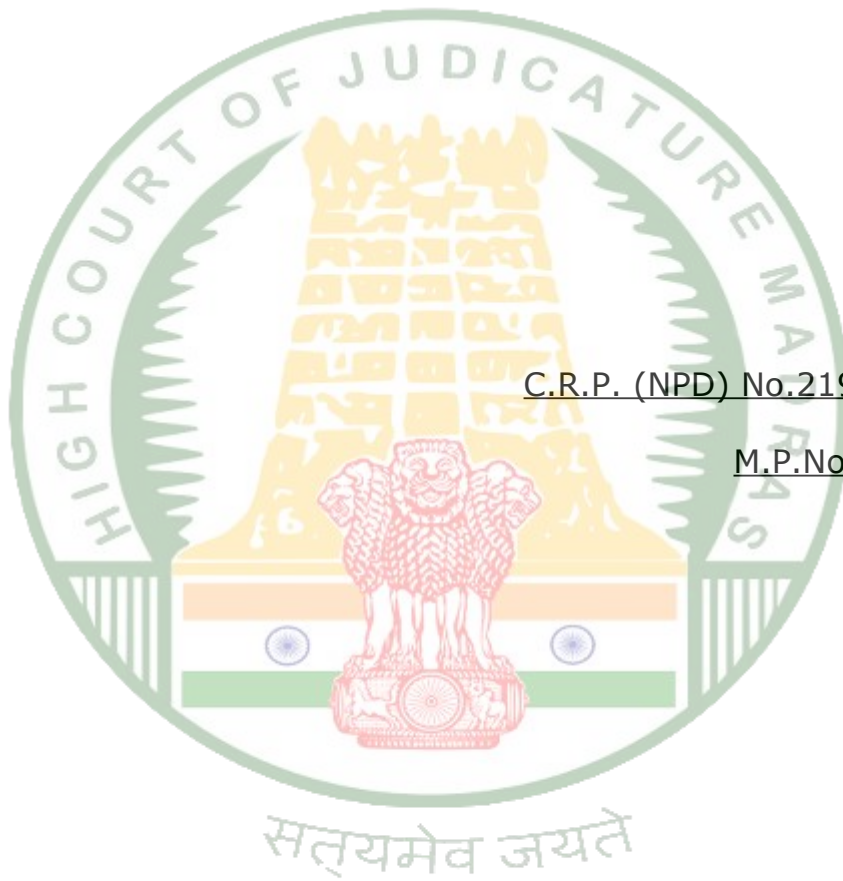
Note: Issue order copy on 19.03.2018
Index : Yes/No
Internet : Yes/No

To
The Principal District Munsif
Vandavasi.

06.01.2017

M.V.MURALIDARAN,J.

VS



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