

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.03.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.2306 of 2012
and
M.P.No.1 of 2012**

1.Dhalidevi

2.Dharmichand

.. Petitioners

Vs.

Mahaveer

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decretal orders dated 21.10.2011 made in I.A.No.328 of 2011 in O.S.No.83 of 2011, on the file of the Court of the Subordinate Judge, Hosur.

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For Petitioners : Mr.M.V.Krishnan

For Respondent : Mr.S.Sathish Rajan

ORDER

The defendants 1 and 2 in O.S.No.83 of 2011 are the Civil Revision Petitioners before this Court, challenging the order passed in I.A.No.328 of 2011 in O.S.No.83 of 2011, dated 21.10.2011, on the file of the learned Sub Judge, Hosur.

2.The case of the respondent/plaintiff is that he has filed the suit against these petitioners, who are the defendants 1 and 2 for specific performance. The said suit, these petitioners who are the defendants in the suit were filed their written statement denying the allegations set out in the plaint.

3.The said suit was set exparte and the exparte decree was passed on 22.11.2002. Challenging the said exparte decree, these petitioners, who are the defendants 1 and 2 were filed a petition for setting aside the exparte decree filed under Order 9 Rule 13 of C.P.C. and Section 151 of C.P.C. along with the condone delay applications in I.A.No.328 of 2011.

4.It is the case of these petitioners/defendants 1 and 2 that on receipt of the summon in the suit, they were engaged one Mr.A.Sathyanarayanan, Advocate, to contest the suit on their behalf and he had assured that he will take care of the case and inform whenever the presence of the petitioners is required.

5.After engaging the counsel Mr.A.Sathyanarayanan, Advocate, these petitioners did not receive any information from the previous counsel, but recently the petitioners were received notice in REP.No.305 of 2010 in O.S.No.83 of 2001 and thereafter only the petitioners were came to know that the suit was decreed exparte on 22.11.2002, on their absence.

6.These petitioners further states that if they received any information from the previous counsel, they might have contested the suit, since they have got a good case on merits and failure to get along with the suit was neither willful nor wanton. Therefore, they filed the petition under Order 9 Rule 13 of C.P.C. for setting aside the exparte decree.

7.As per the Limitation Act, the petition should be filed within a

period of 30 days from the date of exparte decree, but by abundant caution, these petitioners were filed a petition in I.A.No.328 of 2011 for condoning the delay of 3100 days in filing the petition to set aside the exparte decree. Therefore, they prayed the Court below to allow the condone delay petition.

8.On receipt of the notice in I.A.No.328 of 2011, the respondent/plaintiff has filed a counter affidavit stating that the petition is false, frivolous and not maintainable under law and seeking dismissal of the petition with costs. The respondent also denied the averments made in the affidavit.

9.The respondent/plaintiff states that he has filed the suit on 16.04.2001, against these petitioners, who are the defendants 1 and 2 for specific performance and though the petitioners were appeared through their counsel and dragged on the proceedings till 22.11.2002, and on the said date they were not appeared and hence, the suit was set exparte.

10.The respondent/plaintiff also states that they have not received any information from their counsel. When they have engaged

their counsel, it is the duty of the petitioners to follow the matter with the counsel and Court. The respondent also states that these petitioners could reach the office of the advocate in 10 minutes walk from their house, which is only within 100 meters. The petitioners cannot sleep over the matter for over 3230 days and not 3100 days and the petitioners cannot say that they are not aware of the decree.

11. The respondent also states that the respondent met the petitioners on several occasions with middlemen and demanded execution of the sale deed in terms of the decree, but the petitioners have been seeking time to executing the sale deed. The respondent was constrained to file the execution petition. The petitioners were well aware of the proceedings and they were no cause is shown in the affidavit. As per the orders of the Hon'ble Apex Court, the petitioners ought to have explain the reason for each and every day delay, but except the reason assigned by the petitioners that their counsel was not informed them and there is no legal acceptable reason is stated in the affidavit. Therefore, if the petition is allowed, the respondent will be put to prejudiced and the respondent cannot be compensated by the petitioners/defendants 1 and 2. Therefore, he sought for dismissal of the condone delay petition.

12.Considering both side arguments, the learned Sub-Judge, Hosur, dismissed the application filed in I.A.No.328 of 2011 on 21.10.2011, on the ground that though the petitioners/defendants 1 and 2 were given the reason stated that originally they engaged the counsel Mr.A.Sathyanarayanan, but he has not informed about the proceedings are all false. The reason assigned by the petitioners are false, because they are not contact their previous counsel for more than 9 years.

13.The learned Judge also states that it is not the case of the petitioners/defendants 1 and 2 that they were prevented by reasons beyond their control that they could not meet their previous advocate for all these years and the reason stated in the affidavit does not inspire confidence and it appears to be unbelievable. The learned Judge also states that the application for condone delay, the reason for the delay alone deserves to be considered, and not the length of the delay. But, in the petitioners case that the reason stated is that the advocate did not inform as to when to meet him, with regard to the case.

14.The learned Judge pointed out that it is not the duty of the litigant to keep in touch with the counsel on record to know the stage and status of the proceedings. Therefore, the reason given by the petitioners in the affidavit is unbelievable, and as such this Court considered that there are no reasons or grounds to allow this petition. Therefore, the learned Judge dismissed the said petition. Challenging the said order, the present Civil Revision Petition has been filed.

15.I heard Mr.M.V.Krishnan, learned counsel appearing for the petitioners and Mr.S.Sathish Rajan, learned counsel appearing for the respondent and perused the entire records.

16.It is admitted fact that the respondent/plaintiff has filed the suit for specific performance. Time and again, this Court and the Hon'ble Apex Court has categorically held that the suit for specific performance, for declaration and other suits should not be decided exparte.

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17.The learned counsel appearing for the respondent has produced two judgments rendered by this Court as follows:

(1) ***Sivakumar and another v. R.Sengodan*** reported in

2007 (4) CTC 506

"Limitation Act, 1963 (36 of 1963), Section 5 –
Condonation of delay – Sufficient Cause – Liberal view
does not mean to consider in equity – Duty of Court –
Court must take a liberal view but at same time, as far as
condonation of delay is concerned, Court should not do so
on exercising equity – It if is done, it would be nothing but
extension of limitation which is not available to a party
under an enactment – Absence of sufficient and convincing
reasons – Court should not excuse delay."

(2) ***Subbulakshmi v. 1.Punjab and Sind Bank, represented
by its Manager, No.165, Thambu Chetty Street, Chennai-600
001, 2.The Debt Recovery Tribunal II, Anna Salai, Chennai-600
002, 3.The Recovery Officer, Debt Recovery Tribunal II, Anna
Salai, Chennai-600 002*** reported in **2010 (5) CTC 786.**

"Limitation Act, 1963 (36 of 1963), Section 5 –
"Sufficient cause" - Delay of 1923 days in filing Application
to set aside *ex parte* final order – Relevant considerations
– Court should keep in mind that when substantial justice
and technical consideration are pitted against each other,

cause of substantial justice deserves to be preferred –
Other side cannot claim to have vested right in injustice
being done because of non-deliberate delay – Expression
“sufficient cause” should receive a liberal construction –
Court must see as to whether party approaching Court for
condonation of delay had acted with reasonable diligence –
Test to find out diligence on service of notices, as real test
would be knowledge of proceedings.”

18.I have also considered for the several cases that the suit like
specific performance should not be decided *exparte*, but the case in
hand, though the suit was filed in the year 2001, the *exparte* decree
was passed on 22.11.2002. But, after 9 years i.e. in the year 2011,
the petitioners, who are the defendants 1 and 2 were approached the
Court and filed the petition under Order 9 Rule 13 of C.P.C. for setting
aside the *exparte* decree along with the delay of 3100 days in filing the
set aside application.

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19.The Hon'ble Apex Court has held in several cases that the
Court must have approached liberally while considering the condone
delay petition, but the case in hand, would not an ordinary delay, but it

is the huge delay of 3100 days. In fact, after exparte decree, these petitioners were approached the Court after 9 years which should not be looked with liberal approach.

20. Apart from this, the petitioners/defendants 1 and 2 were given reason that their counsel Mr.A.Sathyanarayanan, has not informed about the case details, but it is the duty of the petitioners to approach the counsel or the Court. Though the proceedings of the suit for the year 2001 and exparte decree was passed on 22.11.2002, but the petitioners were slept over the matter for more than 3230 days. It is the duty of the litigant to keep in touch with the counsel on record to know the stage of the case, which was considered by me in the case of ***Sathyanarayana v. T.J.Dhanakoti @ Koti (CRP(NPD)No.4663 of 2013)***

“29. The Hon’ble Supreme Court in the above referred cases, it is made clear that the Hon’ble Supreme Court hold that in this context the maxim, vigilantibus non dormientibus jura subveniunt (law assists those who are vigilant and not those who sleep over their rights) aptly applies to the case on hand, the petitioner/defendant had simply by throwing the blame on the previous counsel by

stating that he was died before 2 years and therefore, the delay of 1114 days was occurred, for filing re-presenting the application is totally false.

30.It is common knowledge that by delaying a matter, evidence relating to the matter in dispute may disappear and very often the party concerned may think that preserving the relevant records would be unnecessary in view of the fact that there was no further proceedings. If a litigant chooses to approach the Court long after the time prescribed under the relevant provisions of the law, he cannot say that no prejudice would be caused to the other side by the delay being condoned. The other side would have in all probability destroyed the records thinking that the records would not be relevant as there was no further proceeding in the matter. Length of the delay is a relevant matter to be taken into account while considering whether the delay should be condoned or not. It is not open to any litigant to fix his own period of limitation for instituting proceedings for which law has prescribed periods of limitation."

21.The petitioners should not throw the blame on their counsel that they were not informed about the suit proceedings, but it is the bounded duty of the petitioners, who are the litigant before the Court, should always keep in touch with the case and know about the case proceedings. Therefore, the reason assigned by the petitioners, which is not acceptable one and the orders passed by the learned Sub-Judge, Hosur, is well considered order and not requires interference by this Court. Accordingly, this Civil Revision Petition is liable to be dismissed.

22.In the result, this Civil Revision Petition is dismissed, by confirming the order passed in I.A.No.328 of 2011 in O.S.No.83 of 2011, dated 21.10.2011, on the file of the Court of the Subordinate Judge, Hosur. No costs. Consequently, connected miscellaneous petition is closed.

08.03.2017

Note:Issue order copy on 22.08.2017

Index:Yes

Internet:Yes

vs

To

The Subordinate Judge,

Hosur.

M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
CRP(NPD)No.2306 of 2012
and
M.P.No.1 of 2012

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