

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.2693 of 2013
and
M.P.No.1 of 2013**

Rajinikumari

.. Petitioner

Vs.

1.Ethirajan

2.Mohan Babu

..Respondents

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the order dated 11.07.2013 passed in I.A.No.311 of 2013 in O.S.No.480 of 2004, on the file of the learned Additional District Munsif Court at Poonamallee.

For Petitioner : Mr.P.Thirupathi Raj

For Respondents : Mr.V.Anand (for R1)

R2 - Given up

ORDER

The first defendant in O.S.No.480 of 2004 is the civil revision petitioner before this Court, challenging the order in I.A.No.311 of 2013 in O.S.No.480 of 2004, on the file of the Additional District Munsif Court, Poonamallee.

2.The case of the petitioner/first defendant is that the above suit has been filed by the first respondent/plaintiff in O.S.No.357 of 2000, on the file of the Sub-Court, Poonamallee for declaration of the suit "B" schedule property as his absolute property and for declaration that "D" schedule property as public pathway for mandatory injunction to remove the super structure put up by the petitioner/first defendant on the "B" and "D" schedule property, the suit has been filed against the 2nd defendant, who is Mr.Mohan Babu.

3.It is also stated that along with one Jagatheesan, the above 2nd defendant had sold the "B" and "D" schedule property to the petitioner/1st defendant, the said suit in O.S.No.357 of 2000 was subsequently transferred to the learned Additional District Munsif, Poonamallee, because of the enhancement of pecuniary jurisdiction of

the Court and it was re-numbered as O.S.No.480 of 2004.

4.The petitioner/first defendant also states that she is the bonafide purchaser for valid consideration of the said "B" and "D" schedule properties which was purchased through a power of attorney namely Mohan Babu/the 2nd defendant herein and the said Jagatheesan. After purchasing the suit property, the revenue authorities also issued patta in favour of the petitioner in Patta No.160 and thereafter, the petitioner/first defendant has constructed a house in the 'B' and 'D' schedule of properties in the year 1997 without any intention to encroach upon anybodies property.

5.The petitioner also states that she was a school teacher and she purchased a property / land measuring to an extent of 1296 sq. ft. out of her earnings, on receipt of the summon in the said suit, she was contacted by the 2nd respondent who undertook to defend the case and had filed a written statement on behalf of the petitioner/first defendant. But for quite some time and now the second defendant has not contact her, but later on she received a notice in E.P.No.21 of 2012 that during the months her daughter marriage was undergoing that there was no help from her husband in any of her endeavors.

Therefore, as per the advice of her counsel, she filed the set aside application under Order IX Rule 13 of C.P.C. for seeking to set aside the exparte decree dated 19.11.2004 along with the condonation application in I.A.No.311 of 2013 filed under Section 5 of the Limitation Act with the delay of 783 days, in filing the application to set aside the exparte decree dated 19.11.2010 and prayed for to allow the condone delay application.

6.On receipt of the notice, the first respondent/plaintiff has filed a counter stating that she denied the entire allegations set out in the affidavit. The first respondent/plaintiff in her counter stated that originally in the year 2000, three I.A.s were filed for interim injunction against the defendant, injunction against the defendants 1 and 2 and third I.A. for appointment of Advocate Commissioner. The Advocate Commissioner also filed his report after noting down the physical features of the suit properties. The petitioner/first defendant alone has appeared through her counsel Mrs.Vasanth Renuka and there was no appearance by the 2nd respondent. Since the 2nd respondent has not appeared in the above suit, a publication of notice was done through newspaper 'Malai Murasu' on 27.09.2000 as ordered by the Court and hence the 2nd respondent was called absent and set exparte

on 21.12.2000. The petitioner/first defendant sought several adjournments for filing her counter and written statement through her counsel and the matter was adjourned to 29.03.2001, 07.08.2001, 18.12.2001, 21.12.2002, 28.06.2002, 04.10.2002 and finally on 06.11.2002. Even on 06.11.2002, the first defendant has not filed the written statement, thereafter, she was set exparte and hence on 15.11.2002 she filed an application to set aside the exparte order dated 06.11.2002. Considering her case, the Court below has set aside the order dated 06.11.2002 and later the suit was posted for framing issues. In the meantime, the suit was transferred in the year 2004 from the Sub-Court to the Additional District Munsif, Poonamallee because of the change of pecuniary jurisdiction and the suit was re-numbered as O.S.No.480 of 2004. The respondent/plaintiff was examined as PW1 and the matter was posted for cross examination on several occasions, but the first defendant has not cross examined the plaintiff. Again, she was called absent and the decree was passed on 19.11.2010. Thereafter, the first respondent/plaintiff was filed E.P.No.21 of 2012 before the Principal District Munsif and thereafter notice was served to the Judgment debtors/defendants and an order of delivery of possession, the Court ameen went to the suit property for execution of the warrant with the help of the Taluk Surveyor to identify

the property and it was returned with endorsement by seeking police aid. At that time, the petitioner/first defendant has filed the present application with the delay of 783 days.

7.The first respondent/plaintiff states that for the huge delay of 783 days, there was no reason assigned by the petitioner/first defendant, the Hon'ble Apex Court categorically held that each and every day delay, the reason must be given by the concerned parties. But here, there was no reason given by the petitioner. Hence, the first respondent/plaintiff prayed for dismissal of the application.

8.Considering both side arguments, the learned Additional District Judge, Poonamallee was dismissed the application, since the case has been filed in the year 2000, almost 13 years gone. The petitioner/first defendant was set exparte twice. But, without giving any valid reason, the application in I.A.No.311 of 2013 has filed for condonation of delay of 783 days under Section 5 of the Limitation Act, which is not acceptable. Accordingly, the learned Additional District Munsif, was pleased to dismiss the application, challenging the said order, the present civil revision petition has been filed.

9.I heard Mr.P.Thirupathi Raj, learned counsel appearing for the petitioner and Mr.V.Anand, learned counsel appearing for the 1st respondent.

10.Admittedly, the suit was filed in the year 2000 before the Sub-Judge, Poonamallee and on the pecuniary jurisdiction the suit was transferred to the learned District Munsif, Poonamallee and it was renumbered as O.S.No.480 of 2004. In fact, this petitioner/first defendant has set exparte and later on the exparte order was set aside and infact the first defendant also filed the written statement that the suit was transferred to the learned District Munsif, Poonamallee, the matter was adjourned periodically for cross examination of the plaintiff, but the plaintiff/first defendant has not taken action to cross examined the plaintiff. Therefore, on the 2nd occasion, she was set exparte and the exparte decree was also passed in favour of the plaintiff. Therefore, the petitioner/first defendant filed the present application for setting aside the exparte decree along with the condone delay petition in I.A.No.311 of 2013 for condoning the delay of 783 days in filing the set aside application.

11.Though the learned Additional District Munsif, Poonamallee

has discussed and considered various judgments passed by the Hon'ble Apex Court and by this Court. In support of the petitioner's case, the petitioner has produced the judgment reported in **2002 (1) CTC 769**.

12.Per contra, the respondent/plaintiff has produced the judgment reported in **1997 (3) CTC 453, 2001 (4) CTC 722, 2001 (3) CTC 321, 1997 (1) CTC 651, 1998 (1) CTC 348**. All these judgments were considered that the petitioner/first defendant might have give reason in each and every day delay in respect of filing the condone delay application.

13.This Court came to know that in an unreported Judgment rendered by the Hon'ble Apex Court 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.”

14.The learned District Munsif, Poonamallee has considered all the above judgments and dismissed the above application. The present judgment passed by the Hon’ble Apex Court though it was huge delay of 882 days, but the condone delay application shall allowed on condition that the petitioner should pay a sum of Rs.50,000/-.

15.Therefore, being the lady, the petitioner herein has given the reason stating that the 2nd respondent is the power of attorney, suppressed the entire facts and sold the property to a valuable consideration to this petitioner. As a teacher by profession, the petitioner ought to have gone through the documents in respect of the suit schedule of property. Rightly or wrongly, the petitioner/first defendant has purchased the property by way of valuable consideration from the 2nd respondent power of attorney by namely Mr.Mohan Babu, she also invest the huge amount.

16. In fact the 2nd defendant was set *ex parte*, even in the year 2012 itself, and if he appeared in Court, definitely the very fact of purchase by the petitioner would be come out. Therefore, considering the above facts and circumstances and the order passed recently in the Civil Appeal No.(S).3777 of 2015 dated 05.06.2013 by the Hon'ble Apex Court, I am inclined to allow the application by giving one more opportunity to this petitioner/first defendant and for allowing the condone delay application, the first defendant ought to have pay cost. Accordingly, the order passed in I.A.No.311 of 2013 in O.S.No.480 of 2004 dated 11.07.2013 is liable to be set aside.

17. In the result:

(a) this civil revision petition is allowed by setting aside the order passed in I.A.No.311 of 2013 in O.S.No.480 of 2004 dated 11.07.2013, on the file of the Additional District Munsif Court, Poonamallee, on condition that the petitioner shall pay a cost of Rs.50,000/- for the purpose of removal of SEEMAI KARUVELAM TREES. The said amount shall be credited in favour of the Registrar (Administration), Madurai Bench of Madras High Court, Madurai, (for REMOVAL OF SEEMAI KARUVELAM TREES)

vide Account No.6514082295, IFSC Code IDIB000H040 Indian Bank, High Court Branch, Madurai, within a period of four weeks from the date of receipt of a copy of this order;

(b) on production of the payment receipt, the learned Additional District Munsif, Poonamallee is hereby directed to number the set aside application and to pass orders within a period of 15 days from the date of filing of the said payment receipt, by giving notice to either parties;

(c) on passing the orders in the set aside application, the trial Court is hereby directed to take up the suit on day to day basis without giving any adjournment to either parties and to dispose the same within a period of two months thereafter. Both the parties are hereby directed to give their fullest cooperation for early disposal of the suit. Consequently, connected miscellaneous petition is closed.

03.04.2017

Note:Issue order copy on 02.05.2017.
Speaking Order
Index:Yes

vs

To

The Additional District Munsif Court,
Poonamallee.

M.V.MURALIDARAN, J.

VS

**Pre-Delivery order made in
CRP(NPD)No.2693 of 2013
and
M.P.No.1 of 2013**

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