

IN THE HIGH COURT OF JUDICATE AT MADRAS

Dated: 10.01.2017

CORAM

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

CRP(NPD)No.2721 of 2013

and

M.P.No.1 of 2013

Kasthuri

... Petitioner

Vs

Gunasekaran (Died)

1.Valarmathi

2.Santhakumar

3.Vijayavarman

4.Gunasunderi

5.Gopinath

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the fair and decreetal orders dated 27.06.2013 passed in I.A.No.43 of 2003 in O.S.No.592 of 1996, on the file of the Additional District Munsif Court, Chengam.

Petitioner : Mr.P.Mani

Respondents:Mr.K.A.Ravindran

O R D E R

The 2nd defendant is the civil revision petitioner before this Court, challenging the order in I.A.No.43 of 2003 in O.S.No.592 of 1996, dated 27.06.2013, on the file of the Additional District Munsif Court, Chengam.

2.The respondents/plaintiffs have filed the suit against this petitioner/2nd defendant and the 1st defendant, who is the mother of the 2nd defendant. During the pendency of the suit, the 1st defendant namely the 2nd defendant's mother was died and no steps were taken. Therefore, the suit was dismissed against the 1st defendant. Later on, the suit was posted for trial on 09.08.1999, but due to this petitioner/ 2nd defendant suffering from frequent illness from the month of July 1999, she was unable to contact her Advocate regularly. After some time, when she came to know that she was suffering from Jaundice and hence, she was taken treatment on various places like Vaniyambadi, Arcot, Vellore and etc. Therefore, she was unable to contact her counsel and could not able to follow the stages of the suit.

3. When the petitioner later on came to know about the stage of the suit by contacting her counsel, she was informed by her counsel that the suit was set exparte on 09.08.1999 and the exparte decree was passed. Therefore, her counsel advice the petitioner to file petition to set aside the exparte decree.

4. Though, the suit was set exparte on 09.08.1999 and the petition filed to set aside the exparte decree, ought to have filed within a period of 30 days from the date of receipt of the order. But, due to the above said reason, the illness and suffering from Jaundice and taking treatment on various places, she filed the set aside application under Order 9 Rule 13 of CPC along with the delay of 995 days in filing the set aside application. Therefore, she prayed the trial Court namely the Additional District Munsif Court, Chengam, to allow the said condone delay application.

5. On receipt of the notice, the respondents/plaintiffs were filed their counter denying the entire allegations set out in the affidavit for the condone delay.

6.The respondents/plaintiffs were stated that the petitioner/ 2nd defendant has created the false story for her non appearance, since the petitioner has very well known about the suit proceedings that the suit was listed for the month of August in the year 1999 itself.

7.When the case was listed for the month of August 1999, she has not filed the application to remove the case from the special list through her Advocate. But, she has given a false story that she has taken native treatment in Arcot, Thiruvannamalai and Vellore. But, the respondents very well known for the Jaundice, the native treatment has given only at Wallajah Town and not in other places. Therefore, the natural treatment are utterly false since attended various marriages and Government offices for her work during the year 1999 to 2002.

8.The respondents/plaintiffs also stated that the petitioner/2nd defendant was also remanded in Jail in respect of a prohibition case at Tiruvannamalai. Though, she had four sons, but her sons were not disclosed the facts to her Advocate. Therefore, the delay calculated at 995 is totally wrong, but the total delay is 999 days in filing the set aside application.

9.The respondents were also stated that the petitioner/2nd defendant must have given reason for each and every day delay for non filing the petition within the stipulated period of time and hence, the respondents/plaintiffs prayed the Court below for dismissal of the condone delay petition.

10.Considering both side arguments, the learned Judge has dismissed the condone delay petition on the ground that though the petitioner/ 2nd defendant has given the reason for huge delay for 995 days that she suffering from Jaundice from the month of July 1999 and taking treatment in various places but she has not produced any record for taking treatment in those places. Apart from this, the learned Judge also consider the judgments cited by the respondents/plaintiffs held as follows:

"1.*Pundlik Jalam Patil (D) by Lrs -Vs- Exe. Eng. Jalgaon Medium Project and another* reported in *2009 (2) MLJ Page 1047 (SC)*

In this case, for the public interest condone delay of 1724 days the Petition filed and dismissed for reason no sufficient cause shown and incorrect statements given by

applicants.

2. *Shanmugam -Vs- Chokkalingam* reported in **2009 (8) MLJ page 581**

In this case, after receiving execution proceedings notice, the petitioner filed set aside exparte decree petition with delay of 332 days is not condoned. (This Judgment is not applicable facts and circumstances of the petition)

3. *Ramakrishnan -Vs- Lakshmiammal* reported in **1997 MLJ page 642**

In this case, the application for condone the delay of 198 days for reason stated she was suffering from typhoid and jaundice, no medical evidence produced, Defendant not examining herself as witness to establish her case is unsustainable."

11. The petitioner/2nd defendant has produced three judgments as follows:

"1. ***Devi and 6 others -Vs- K.Jayaraman*** reported

in **2001 (3) CTC 67**

In this case, the Petition for condone delay, Absence of counsel due to illness, it is amounts to sufficient cause to condone the delay and Petition allowed.

2.Naubat Ram Sharma -Vs- Add. District Judge and others reported in **AIR 1987 SC Page 1352,**

Limitation Act Section 5, condone the delay-court should liberal approach, while dealing such petitions.

(The facts and circumstances of the above said cases are not applicable for present case)

3.N.Balakrishnan -Vs- M.Krishnamurthy reported in **1998 (II) CTC page 533**

In this case, the word sufficient cause should receive liberal construction to advance substantial justice. Explanation for delay should receive utmost consideration if such explanation does not smack of mala fides or is not part of dilatory tactics. Court should while condoning delay due to laches on the part of applicant shall compensate opposite party for his loss."

12.The learned Judge also states that she has not given any oral evidence and and not produced any documentary evidence to show that she was taking treatment for Jaundice and hence he dismissed the said application. Challenging the said order of dismissal dated 27.06.2013, this petitioner/2nd defendant has filed the present civil revision petition before this Court.

13.I heard Mr.P.Mani, learned counsel appearing for the petitioner and Mr.K.A.Ravindran, learned counsel appearing for the respondents and perused the entire records and judgments produced by both the parties.

14.It is admitted fact that the suit was filed by the respondents/ plaintiffs for declaration, declaring the plaintiffs' title and also for permanent injunction.

15.Though, this petitioner/2nd defendant has filed the written statement and the 1st defendant, who is the mother of the 2nd defendant also died. The suit was set exparte on 09.08.1999, but after huge delay, this petitioner/2nd defendant has filed the present

application for setting aside the exparte decree along with the petition for set aside the exparte decree.

16.Though, the petitioner/2nd defendant has given various reasons including she was suffering from Jaundice. But admittedly, she has not produced any document to show that she was taking treatment in various places. But, on the other hand, for taking native treatment for the Jaundice, there is no proof produced by the petitioner/2nd defendant.

17.Though, this Court and the Hon'ble Apex Court in various cases clearly held that each and every day delay must be explained, but the huge delay of 995 days, there was no proper reasons was given by the petitioner/2nd defendant, but this Court in the interest of justice to give one opportunity to this petitioner/2nd defendant, since this is the first occasion she was set exparte to prove her case before the trial Court, this condone delay petition is liable to be allowed.

18.On both sides produced the judgments were passed by this Court and the Hon'ble Apex Court, but some cases, this Court and the Hon'ble Apex Court held in favour of the petitioner/2nd defendant and

in other cases held against the respondents/plaintiffs, but in the interest of justice, to give one opportunity to this petitioner/2nd defendant to put forth her case, I am inclined to set aside the order passed by the learned Additional District Munsif, Chengam, dated 27.06.2013. Accordingly, this civil revision petition is liable to be allowed by setting aside the order passed by the trial Court, but the petitioner/2nd defendant must have compensate the huge delay of 995 days to the respondents/plaintiffs.

19. In the result:

(a) this civil revision petition is allowed by setting aside the order passed in I.A.No.43 of 2003 in O.S.No.592 of 1996, dated 27.06.2013, on the file of the Additional District Munsif Court, Chengam, on condition that the petitioner should pay a sum of Rs.25,000/- as cost to the respondents/plaintiffs or their counsel within a period of two weeks from the date of receipt of a copy of this order, failing which this civil revision petition will be dismissed automatically without further reference to this Court;

(b) on production of the payment receipt within the time stipulated by this Court, the learned Additional District

Munsif, Chengam, is hereby directed to number the set aside application and to pass orders within a period of 15 days, by giving notice to both sides;

(c) on passing the order in the set aside application, the trial Court namely the Additional District Munsif Court, Chengam is directed to take up the suit on day to day basis, without giving any adjournments to either parties and dispose of the same on merits within a period of 30 days. Both the parties are hereby directed to give their fullest cooperation for early disposal of the suit, since the suit is for the year 1996;

(d) on disposing the said suit, the learned Additional District Munsif Court, Chengam is hereby directed to report the same to this Court within a period of 15 days from the date of the judgment. Consequently connected miscellaneous petition is closed.

vs

10.01.2017

Note: Issue order copy on 01.06.2017

Index: Yes

Internet: Yes

To

The Additional District Munsif Court,
Chengam.

M.V.MURALIDARAN,J.

VS

**CRP(NPD)No.2721 of 2013
and
M.P.No.1 of 2013**

10.01.2017

C.R.P.No.2721 of 2013**M.V.MURALIDARAN,J.**

Today this case is posted under the caption "for being mentioned" at the instance of the learned counsel appearing for the petitioner.

2. The learned counsel appearing for the petitioner submitted that this Court has imposed the condition on the petitioner that the petitioner shall pay a sum of Rs.7,000/- to the respondents or their counsel but, in the order dated 10.01.2017, the said amount has been wrongly mentioned as Rs.25,000/-. Further, he submitted that the suit is for the year 1996, but in the said order, in para 19(c), the year has been wrongly mentioned as "1991". Hence, he prayed for necessary corrections in the said order.

M.V.MURALIDARAN, J.

ari

3. Accordingly, the relevant portions of paragraph Nos.19(a)(c) read as follows:-

19(a): "the petitioner shall pay a sum of Rs.7,000/- to the respondents/plaintiffs or their counsel".

19(c): "since the suit is for the year 1996".

29.06.2017

ari

Issue order copy on **05.07.2017**

Note: Registry is directed to carry out necessary corrections in the order dated 10.01.2017 and issue fresh order copy to the parties concerned.

CRP(NPD) No.2721 of 2013
and
M.P.No.1 of 2013

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