

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).No.4011 of 2016
and C.M.P.No.20264 of 2016

Tmt.Rani (died)

- 1.Tmt.V.Selvi
- 2.Tmt.V.Pushpam
- 3.Tmt.Amudh

...Petitioners

Vs

- 1.M.Duraivel
- 2.Tmt.S.Kantha
- 3.S.Sasikumar
- 4.S.Arunkumar
- 5.Tmt.B.Devi

...Respondents

Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decretal order dated 30.09.2016 in I.A.No.7349 of 2015 in O.S.No.7164 of 2012 on the file of the learned VII Assistant City Civil Court, Chennai.

For Petitioners : Ms.Sudharshana Sunder

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 30.09.2016 in I.A.No.7349 of 2015 in O.S.No.7164 of 2012 on the file of the learned VII Assistant City Civil Court, Chennai.

2.At the time of admission, argument of the learned counsel for the petitioners is heard in length.

3.The first respondent, who is the Junior paternal uncle of the petitioners filed a suit in O.S.No.7164 of 2012 for separate possession and 1/3rd share in the suit property and also injunction restraining the defendants not to encumber the suit property till the disposal of the final decree. The first respondent has stated that the property has been allotted by the Slum Clearance Board in favour of one Pappammal, wife of Manickam, who is none other than the mother of the plaintiff/first respondent herein. The said Pappammal has three sons namely, Varadan, Srinivasan and Duraivel. Since Pappammal died intestate, the first respondent has filed a suit for

partition and separate possession against the legal heirs of his deceased brothers viz., Varadan and Srinivasan. As none of the defendants filed the written statement, after service of summons, exparte decree was passed on 02.07.2014. Immediately, the first respondent has filed an application in I.A.No.437 of 2014 for passing final decree proceedings based on preliminary decree. Then the petitioners herein have filed an application in I.A.No.7349 of 2015 under Section 5 of Limitation Act, to condone the delay of 276 days in filing the petition to set aside the exparte decree. The trial Court after hearing both sides dismissed the application, against which, the present revision is preferred by the petitioners/defendants 1 to 4.

4.Learned counsel for the petitioners would submit that the mother of the petitioners died on 15.06.2014. After receipt of notice in final decree proceedings alone, they came to know about the exparte decree passed on 02.07.2014. Immediately, they filed an application for setting aside the exparte decree along with a petition to condone the delay in filing the application. As the mother of the petitioners died on 15.06.2014, they were unable to appear before the Court on 02.07.2014. They have valid defence and a fair chance

of success in the suit. The respondents have no right over the suit property, they had already relinquished the property and received money from the father of the petitioners. Therefore, he prays for allowing the revision.

5. On perusal of the typed set of papers, it reveals that the first respondent as a plaintiff filed a suit in O.S.No.7164 of 2012 for partition and separate possession of 1/3rd share in the suit property and for permanent injunction restraining the defendants from alienating or selling the suit property to any third party till the disposal of the final decree. The plaintiff stated that the suit property has been allotted by the Slum Clearance Board in favour of one Pappammal, who is the paternal grand mother of the petitioners. She has three sons viz., Varadan, Srinivasan and Duraivel (plaintiff). The first son Varadan died on 06.04.2008 leaving behind the legal heirs, who are defendants 1 to 4/petitioners herein. The second son Srinivasan died on 30.01.1995 leaving behind the legal heirs, who are defendants 5 to 8/respondents 2 to 5 herein. The suit was filed in the year 2012. But none of the defendants filed the written statement. Therefore, on 02.07.2014, ex parte decree was passed.

6.It is not the case of the petitioners that they were not aware of the pendency of the suit. Since they are parties to the suit, they may very well file a petition through their counsel to set aside the exparte decree in time. But they did not do so. The petitioners kept quite all along and after filing final decree application, they have come forward with an application for condonation of delay of 276 days in setting aside the exparte decree.

7.As per the dictum of the Apex Court reported in ***AIR 1998 SC 3222 (N.Balakrishnan v. M.Krishnamurthy)***, it was specifically held that if the length of delay is immaterial, sufficient cause for condonation of delay has to be explained. It is appropriate to extract para-9 to 11, which read as follows:

"9. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the

superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior Court would be free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammelled by the conclusion of the lower Court.

10.The reason for such a different stance is thus:The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11.Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. "

8. In the judgment of the Apex Court reported in **2011 (4) SCC 363 (Lanka Venkateswarlu (Dead), rep. by legal heirs) Vs. State of Andhra Pradesh and others**, in para-19, 23, 28 and 29, it was held as follows:

"19. We have considered the submissions made by the learned counsel. At the outset, it needs to be stated that generally speaking, the courts in this country, including this Court, adopt a liberal approach in considering the application for condonation of delay on the ground of sufficient cause under Section 5 of the Limitation Act. This principle is well settled and has been set out succinctly in Collector, Land Acquisition v. Katiji (1987) 2 SCC 107.

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23. The concepts of liberal approach and reasonableness in exercise of the discretion by the Courts in condoning delay, have been again stated by this Court in Balwant Singh v. Jagdish Singh (2010) 8 SCC 685 as follows:- (SCC p.696, paras 25-26)

"25. We may state that even if the term 'sufficient cause' has to receive liberal construction,

it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of 'reasonableness' as it is understood in its general connotation.

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise (sic a lis). These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly"

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28. We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as "liberal approach", "justice oriented approach", "substantial justice" can not be employed to jettison the substantial law of limitation. Especially, in cases where the Court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any lis between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms.

29. The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. Whilst considering applications for condonation of delay under Section 5 of the Limitation Act, the Courts do not enjoy unlimited

and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers."

It is well settled dictum of the Apex Court that for condonation of delay, the discretion has to be exercised in a systematic manner informed by reason and justice must be done to both parties. Further, the condonation of delay is only a discretion that too judicial discretion and while exercising the judicial discretion, the Court should consider the loss caused to the opposite party.

9. In para-2 of the affidavit filed in support of the application under Section 5 of the Limitation Act, mother of the petitioners namely, Rani/first defendant died on 15.06.2014. The ex parte decree was passed on 02.07.2014. Therefore, they can very well approach the counsel and enquire about the facts of the case. But they kept quite all along and they have come forward with the

application only after filing of final decree application. Furthermore, the petitioners have not assigned any valid reason to condone the delay. So it clearly shows that the petitioners with a malafide intention to prevent the decree holder to enjoy the fruits of the decree, have come forward with the petition for condonation of delay. Therefore, applying the dictum laid down in Balakrishnan and Lanka Venkateshwarlu cases, I am of the view that the delay of 276 days has not been properly explained by the petitioners and hence, I am not inclined to condone the delay. So I do not find any illegality or irregularity in the fair and decreetal order passed by the trial Court and therefore, it is hereby confirmed. Consequently, the Civil Revision Petition stands dismissed.

10. In the result, this Civil Revision Petition shall stand dismissed by confirming the fair and decreetal order passed by the trial Court in I.A.No.7349 of 2015 in O.S.No.7164 of 2012. No costs. Consequently, connected Miscellaneous Petition is closed.

04.01.2017

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To

VII Assistant City Civil Court, Chennai.

R.MALA,J.

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