

IN THE HIGH COURT OF JUDICATURE AT MADRAS**Dated : 23.02.2017****CORAM****THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN**

CRP(PD)No.3177 of 2013
and
M.P.No.1 of 2013

Krishnaveni

.. Petitioner

Vs.

Sekar

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decree dated 13.06.2013 made in I.A.No.342 of 2012 in O.S.No.212 of 2010, on the file of the learned District Munsif Court, Sholinghur.

For Petitioner : Mr.A.Gouthaman

For Respondent : No Appearance

ORDER

The petitioner has filed this Civil Revision Petition to set aside the fair and Decreetal order of the District Munsif Court, Sholinghur, dated 13.06.2013 in I.A.No.342 of 2010 in O.S.NO.212 of 2010.

2.The case of the revision petitioner is that he as plaintiff filed the above Suit and in the said suit in O.S.No.212 of 2010 for Partition and Separate possession as against the respondent herein and few others. In the said suit, since the respondent herein failed to file his Written Statement in time, an Ex-parte Decree was passed against him on 20.04.2011.

3.Being the fact remains as such, the respondent herein after a lapse of about 411 days from the date of the Ex-parte Decree, filed an Interlocutory application in I.A.No. 342 of 2012 on 15.06.2012 to set aside the above Ex-parte Decree passed against him. The said application contained baseless and unacceptable reasons as to condone the inordinate delay of 411 days.

4.The trial Court however erred in allowing the respondent's Interlocutory application in I.A.No.342 of 2012 by imposing a cost of Rs.500/- to be paid as compensation to this revision petitioner on or before 20.06.2013. The said order of allowing the respondent's application to condone the delay of 411 days in filing the Ex parte set Aside application is impugned herein.

5.The Learned counsel for the revision petitioner contends that the Trial Court has erred in allowing the inordinate delay of 411 days in filing the Ex parte set aside petition. Though the respondent herein failed to explain the reasons behind the delay in filing the set aside application, the Trial Court has mechanically condoned the delay by taking a liberal approach. The order of the trial Court is contrary to the settled law that in case of delay in filing any application, the petitioner is bound to explain each and every day delay in order to condone it. The reasons assigned in the application by the respondent are baseless and unacceptable.

6.It is contended that the respondent since being an Employee of Railway Department and was deployed in Delhi, he was unable to communicate his Advocate and file the Written Statement in time. Further he met with an accident in Railway Track and was hospitalized for some time. Hence the delay is neither wanton nor willful. Only on appreciation of the said facts and satisfied with the bonafide and genuine case of the respondent, the Trial Court has rightly allowed the respondent's application to set aside the exparte decree passed against him.

7.I heard Mr.A.Gouthaman, learned counsel for the petitioner and perused the records. There was no representation on behalf of the respondent.

8.On perusal of the impugned order, this Court finds that the above I.A. is being filed by the respondent by stating reasons behind the delay of 411 days in filing the Ex-parte set aside petition is as following that he being an Employee of railway department and was deployed in Delhi, hence was unable to communicate his Advocate to file the Written Statement in time. Again in the meantime he met with an accident in Railway Track and was hospitalized for some time. The Trial Court satisfied over the cause of the respondent has allowed the delay condonation petition and thereby condoned the delay of 411 days in filing set aside petition.

9.It is relevant to note here that the above I.A.No.342 of 2012 is accompanied with the Written Statement of the respondent herein.

10.At this juncture, it would be useful to refer the following Judgments of our High Court in **2014 (2) CTC 649 in**

Nagarathinammal and others –Vs- Madhammal wherein it is held that:

“Through the other averments that the petitioners were misled by the assurance made by the Respondent / Plaintiff to withdraw the case and that the 4th Revision Petitioner had gone to outstations for the treatment of his ailing mother could be construed to be averments not substantiated and insufficient for condoning the delay, the other reason, namely the suspension of the Advocate by the Bar Council of Tamil Nadu, which was not known to the Revision Petitioners previously, can be held to be a valid reason for seeking an order condoning delay in filing the Application to set aside the ex-parte Preliminary Decree. This Court is of the considered view that, when such is the contention of the Revision petitioner and such is the reason assigned by them, the interest of Justice requires passing of an Order giving the Revision Petitioners one more opportunity to contest the case and get a contested verdict and at the same time, direct the Revision Petitioners to compensate the Respondent/ Plaintiff by a cost of Rs.10,000/-”.

11. In **2016 (5) CTC 117** in **Sarasu v. Ravi**, wherein it is held that

"When a Court of Law deals with an Application to condone the delay filed under Section 5 of the Limitation Act, such Application will have to be generally viewed in a liberal and lenient way to do substantial justice between the parties. By projecting an Application to condone the delay as per Section 5 of the Limitation Act, belatedly, no party will file the same with a mala fide intention. If a party files a Delay Condonation Application belatedly, he or she runs a serious risk.

However, if an Application filed under Section 5 of the Limitation Act is allowed by this Court, to advance the cause of substantial justice, then the maximum that can happen is that a party will be allowed to partake in the main arena of legal proceedings and the main cause can be decided on merits. Per contra, if a meritorious matter is thrown out at the threshold or at early stage the cause of justice will be certainly defeated. In a Condonation of Delay Application filed under Section 5 of the limitation Act, 1963, the length

and breadth of the delay is not a material/ relevant factor”.

12. On perusal of the plaint, Affidavit of the respondent and the averments made in the Written Statement as well, it is seen that it is the specific case of the petitioner that there was already an oral partition was effected in their family, whereas it is denied by the respondent that the plaintiff had no right over the suit properties. In the above circumstance, the trial Court by holding that for complete and effectual adjudication the respondent is liable to be heard, thereupon allowed the respondent's application.

13. Admittedly the decree is an Ex-parte one which came to be passed without touching upon the merits. This Court feels that in a suit for Partition as on hand and in the light of the rival contentions involved in the case, this Court is also of the opinion that substantial justice would be done, only if the matter after keen contest is decided upon merits. The rules of limitation are not meant to destroy the rights of the parties.

14. At the same time it would be appropriate to allow such application on due payment of cost as compensation to the petitioner.

However, the Trial Court has imposed a cost of meager sum of Rs.500/- to be paid to the revision petitioner as compensation for the delay caused by the respondent.

15.For the foregoing factual reasons, this Court finds no material irregularity in the order made by the Trial Court, excepting that the cost is hereby increased from Rs.500/- to 10,000/-.

16.In the result:

- a) the civil revision petition is dismissed by confirming the order passed in I.A.No.342 of 2012 in O.S.No.212 of 2010, on the file of the learned District Munsif Court, Sholinghur, on condition that the respondent/7th defendant should pay a sum of Rs.10,000/- as cost to the petitioner/ plaintiff within a period of two weeks from the date of receipt of a copy of this order;
- b) on production of the payment receipt within the above period, the learned trial Court, is directed to number the set aside application and dispose the same within a period of two weeks from the date of receipt of a copy of the order;
- c) on passing orders, the trial Court is directed to dispose of the

suit within a period of three months thereafter;

d) on failure of payment of cost within a period of two weeks from the date of receipt of a copy of the order by the respondent/7th defendant, the I.A.No.342 of 2012 in O.S.No.212 of 2010, dated 13.06.2013, on the file of the District Munsif Court, Sholinghur is automatically dismissed. Consequently, connected miscellaneous petition is closed.

23.02.2017

vs

Index:Yes/No

Internet:Yes/No

Note : Issue Order copy on 18.04.2018.

To

The District Munsif Court,
Sholinghur.

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M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
CRP(PD)No.3177 of 2013
and
M.P.No.1 of 2013

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