

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.506 of 2007
& M.P.No.1 of 2007

1.Rosekan(Deceased)

2.Rajammal

3.R.Palani

4.Anjali

5.Murali

6.Babu

.. Petitioners

(Petitioners 2 to 6 brought on record
first petitioner vide order of Court
dated 27.02.2017, by MVMJ, made in
CMP No.13734/2016 in CRP No.506/2007)

Vs.

1.Sulochana

2.Sankar

3.Janakiraman

4.Devika

5.Kaliya Perumal

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C.,
against the fair and decretal order dated 25.04.2005 made in
I.A.No.781 of 2004 in O.S.No.415 of 1989 on the file of the District
Munsif Court, Tiruvallur.

For Petitioners : Mr.B.Kumaraswamy
For Respondents : Mr.R.Munuswamy

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 25.04.2005 made in I.A.No.781 of 2004 in O.S.No.415 of 1989 on the file of the District Munsif Court, Tiruvallur.

2. One Dhandapani filed O.S.No.415 of 1989 against the defendants for recovery of possession. The first petitioner is the second defendant. The plaintiff/Dhandapani died and the respondents 1 to 5, who are his legal heirs, were impleaded as plaintiffs. The defendants filed written statement on 24.06.1991 and are contesting the suit. The suit was decreed exparte on 01.06.1999. The first petitioner filed I.A.No.781 of 2004 to condone the delay of 1930 days in filing the application to set aside the exparte decree.

3. According to the first petitioner, he engaged one Mr.Deenadayalan, an Advocate, to file written statement, who engaged another Advocate Mr.N.C.Ravichandran to contest the suit. Due to poverty, the first petitioner went to Andhra Pradesh for his

livelihood and he could not contact his Advocate for filing written statement. He was set exparte on 01.06.1999. He came to know about the exparte decree only in the month of December 2003. Immediately, the petitioner has filed the present application. His mother Chinnammal/first defendant died in the year 1996 and she is the owner of the B schedule property. The exparte decree was obtained against the dead person. Therefore, he prayed for condonation of delay of 1930 days in filing the application to set aside the exparte decree.

4. The respondents filed counter affidavit and denied all the averments made in the said application and submitted that they filed I.A.No.1135 of 1989 for interim injunction and in the said application, interim injunction was granted. The first petitioner and other defendants have interfered with the respondents' peaceful possession and enjoyment of the suit property. The respondents filed I.A.No.1571 of 1989 for police protection. The said application was allowed on 03.08.1989. The injunction was made absolute by order dated 09.01.1996. As against the order passed in I.A.No.1571 of 1989, the first petitioner has not filed any appeal. The suit was posted in the special list on 01.06.1999. On 01.06.1999, the first

petitioner and other defendants did not appear and the suit was decreed exparte. The first petitioner did not inform the death of his mother to the Court. From 1996 onwards, the first petitioner did not file any memo to the Court and no notice was served by him to the other legal representatives with regard to the death of his mother. Though the first defendant/Chinnammal died in the year 1996, the amended plaint was filed on 08.01.1999. The first petitioner and other defendants did not file any additional written statement and even at that time, the first petitioner and other defendants did not inform the Court about the death of the first defendant/Chinnammal. The first petitioner had not given any reason for such a huge delay of 1930 days. Thus, he prayed for dismissal of the said application.

5. The learned Judge considering the admission of the first petitioner in his deposition that he used to come to his native place to see his mother and his brother/3rd defendant is residing in the same village, the fact that the first petitioner came to know about the exparte decree only in the year 2001 and filed the present application only in the year 2004, dismissed the application for condonation of delay. The learned Judge also took note of the fact

that the first petitioner had filed written statement and the contention that the first petitioner was set exparte for non filing of the written statement is not correct.

6. Against the said order of dismissal dated 25.04.2005 made in I.A.No.781 of 2004 in O.S.No.415 of 1989, the present civil revision petition is filed by the first petitioner/second defendant. During pendency of the civil revision petition, the first petitioner/second defendant died and his legal heirs were impleaded as petitioners 2 to 6 vide order of this Court dated 27.02.2017 made in C.M.P.No.13734 of 2016.

7. Heard both sides and perused the materials available on record.

8.The learned counsel for the petitioners in support of his contention, relied on the following judgments, in which, it has been held as follows:

(i) **2012 (1) CTC 688 (Abdul Ghafoor and another v. State of Bihar);**

"5. The law of limitation is intended to allow things to finally settle down after a

reasonable time and not to let everyone live in a state of uncertainty. It does not permit any one to raise claims that are very old and stale and does not allow anyone to approach the higher tiers of the judicial system for correction of the lower Court's orders or for redressal of grievances at ones own sweet will. The law of limitation indeed must get due respect and observance by all Courts. We must, however, add that in cases of conviction and imposition of sentence of imprisonment, the Court must show far greater indulgence and flexibility in applying the law of limitation than in any other kind of case."

(ii) **1998 (II) CTC 533 (N.Balakrishnan v. M.Krishnamurthy);**

"12. 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. Law of limitation fixes a life span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit.

During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the Courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae up sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

13. A Court knows that refusal to condone delay would result in foreclosing a suitor from putting fourth his cause. There is no presumption that delay in approaching the Court is always deliberate. This court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide **Shakuntala Devi Jain v. Kuntal Kumari, AIR 1969 SC 575 and State of West Bengal v. The Administrator, Howrah Municipality, AIR 1972 SC 749... ..** "

9. The learned counsel for the respondents in support of his contention, relied on the judgment reported in **CDJ 2008 SC 1820 (Pundiik Jalam Patil (D) by legal heirs, v. Exe. Eng. Jalgaon Medium Project and another)**, in which, it has been held that the question for consideration is whether the averments disclosed any sufficient cause to condone the inordinate delay of 1724 days in filing the appeals. It is further held that the High Court gravely erred and exercised its discretion to condone the inordinate delay of 1724 days though no sufficient cause has been shown by the applicants.

10. The contention of the learned counsel appearing for the petitioners is that after engaging advocate to file written statement, due to poverty, the first petitioner went to Andhra Pradesh for his livelihood. He could not give any instruction to the Advocate to file written statement. This contention is contrary to the fact that when the first petitioner deposed before the learned Judge, he stated that he filed written statement and as the first petitioner and other defendants did not appear before the Court, when the suit was taken up for trial, exparte decree was passed. Before the learned Judge, the first petitioner also deposed that he used to go to his village and meet his mother and he came to know about the exparte

decree in the year 2001. Even at that time, he did not file any application for condonation of delay in filing the application to set aside the exparte decree.

11. From the records, it is seen that the first petitioner filed application only in the year 2004 for condonation of delay of 1930 days in filing the application to set aside the exparte decree. In the affidavit filed in support of the said application, the first petitioner stated that he came to know about the exparte decree only in the month of December 2003, which is not correct. The first petitioner has admitted before the learned Judge that his Advocate informed about the exparte decree on 21.01.2001 and his wife received the said communication. The first petitioner has not explained as to why he has not taken any steps at that time itself. Except the first petitioner, other defendants had not filed any application to set aside the exparte decree. According to the first petitioner, his mother died in the year 1996 and the decree was passed on 01.06.1999 against the dead person. It is pertinent to note that the first petitioner and other defendants have not filed any memo informing to the Court as well as to the learned counsel for the respondents about the death of the first petitioner's mother, who is first defendant in the suit.

12. It is a well settled that application for condoning the delay must be considered liberally and length of delay is not a criteria. The Courts must see whether the parties given acceptable and valid reason and the intention of the parties is bonafide and not malafide. The parties should not be shut down at the threshold itself and they must be given an opportunity to put forth their case on merits.

13. In the present case, the first petitioner after entering appearance through Advocate, did not appear and contest the suit. In view of the above facts, the petitioners have not given any sufficient cause for condonation of delay and the judgments relied on by the learned counsel for the petitioners are not applicable to the facts of the present case.

14. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
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V.M.VELUMANI, J.

dm/kj

To

The District Munsif, Tiruvallur.



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