

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.03.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.2900 of 2012
and
M.P.No.1 of 2012**

1.Adimoolam
2.Chandrammal
3.Vengappan .. Petitioners

Vs.

1.Ganesan
2.Elumalai
3.Munusamy
4.Arumugham .. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order made in I.A.No.251 of 2011 in O.S.No.218 of 2001, dated 20.09.2011, on the file of the learned District Munsif, Chengalpattu.

For Petitioners : Mr.V.Subramanian

For Respondents : Mr.J.Srinivasa Mohan (for R1 to R3)

No Appearance (for R4)

ORDER

The defendants are the revision petitioners herein. It is the case of the revision petitioners that the respondents herein as plaintiffs filed a suit against the revision petitioners in O.S.No.218 of 2001 for declaration and recovery of possession before the District Munsif Court, Chengalpattu. The said suit was resisted by the defendants/revision petitioners by filing written statement. There was a compromise between the plaintiffs and defendants. Thereafter as per the advice of the plaintiffs, the defendants not conducted the case, since it was promised by the plaintiffs to withdraw the suit. However, the plaintiffs without keeping up their promise have conducted the suit. Since the plaintiffs promised to the defendants that they will withdraw the suit, the defendants under a bonafide impression not appeared before the Court. But the plaintiffs behind the back of the defendants obtained an order of ex-parte decree on 12.12.2007.

2.The further case of the revision petitioners is that they had the knowledge of the above said Ex-parte decree passed against them when they received notice in the execution petition. In the meantime, the 1st defendant who is conducting the case was fallen ill and

bedridden and unable to move. Since the revision petitioners' erstwhile counsel had reported no instruction and allowed the suit to be decreed ex-parte, the revision petitioners could not file application to set aside the ex-parte decree in time. Hence there was a delay of 997 days in filing the application to set aside the ex-parte decree dated 12.12.2007.

3.The above said condone delay application was opposed by the respondents herein/plaintiffs. In the counter affidavit filed by the respondents herein, it is contended that the petitioners herein did not mention the date on which compromise was entered into between the revision petitioners and respondents herein. There is no compromise as alleged by the revision petitioners. The reason assigned by the petitioners is not genuine and therefore the delay of 997 days cannot be condoned. Hence the respondents herein prayed to dismiss the above application.

4.The trial Court after considering the submissions on either side, dismissed the condone delay application by order dated 20.09.2011 on the ground that the delay is more than 3 years and the reason assigned by the petitioners are not acceptable and satisfactory.

Feeling aggrieved over the same, the present Civil Revision Petition is filed by the petitioners herein.

5.I heard Mr.V.Subramanian, learned counsel appearing for the revision petitioners and Mr.J.Srinivasa Mohan, learned counsel appearing for the respondents 1 to 3. There is no representation on behalf of the 4th respondent and perused the entire records.

6.It is seen from the records that the suit filed by the plaintiff is for declaration and recovery of possession. According to the revision petitioner, since there was a compromise between the revision petitioners and the respondents herein and since the respondents herein promised to withdraw the suit, the revision petitioners had not conducted the suit further. However, by giving a go by to the compromise and promise, the plaintiffs get along with the trial of the suit behind the back of the revision petitioners/defendants. Therefore an ex-parte decree came to be passed against the revision petitioners and the same came to the knowledge of the revision petitioners only after receiving notice in the execution petition. Therefore, in order to set aside ex-parte decree an application was filed to condone the delay of 997. However, the learned trial judge was dismissed the said

application by holding that the reason assigned by the revision petitioner is not satisfactory.

7.As stated above, it is to be noticed that the suit is one for declaration and recovery of possession and the right of the parties cannot be curtailed at the threshold itself.

8.In the case of Section 5 of the Limitation application to condone the delay, this Court would likes to emphasis some of the decisions of the Hon'ble Apex Court and this Court wherein it is held as follows:

- i) 2007 (4) TLNJ 565 (Civil) in the matter of Ramakrishnan Vs. The AEEO, Tiruvarur & Ors., wherein it was held that "The term every day's delay should be explained, should not be viewed in pedantic way and the approach of the Court must be in common pragmatic manner."
- ii) 2000-1 L.W.547, In the matter of Amudha -Vs- S.A.Arumugham & Ors., wherein it was held that condonation of delay is a matter of discretion of the Court and Section 5 of the Limitation Act does not say that such discretion can be excersised only if the delay is within

certain time.

- iii) *AIR 1969 SC 575* in the matter of *State of West Bengal Vs. Administrator, Howrah Municipality, Sakuntala Devi Jain Vs. Kuntalkumari*, wherein to ensure substantial justice, the Hon'ble Apex Court had condoned the delay caused in filing an application, by holding that the rules of limitation are not meant to destroy the rights of the parties.

9. As per the above said dictum, the rules of limitation are not meant to destroy the rights of the parties. The said principles of law would squarely applicable to the present case on hand. In the present case, the defendants have suffered ex-parte decree of recovery of possession. If the ex-parte decree is allowed to be executed, the defendants would suffer a lot. At the same time, the respondents should be compensated for the hardship faced by them. For the delay caused by the revision petitioners, they have to compensate the respondents herein by paying a cost of Rs.25,000/-. In this regard it is useful to refer the following Judgment of this Court in 2014 (2) CTC 649 in the case of *Nagarathinammal and others v. 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/- ”.

10. In view of the above dictum laid down by the Hon'ble Apex Court and this Court and for the foregoing factual matrix, this Court is

of the view that the impugned order is liable to be set aside and this Court deems fit to provide the revision petitioners with one more opportunity to get decided the case on hand on merits, after proper appraisal of the oral and documentary evidence let in by either parties.

11. In the result:

a) this civil revision petition is allowed and the order and decree dated 20.09.2011 made in I.A.No.251 of 2011 in O.S.No.218 of 2001 on the file of the District Munsif Court, Chengalpattu, is hereby set aside, on condition that the petitioner should pay a sum of Rs.25,000/- to the respondent within a period of three weeks from the date of receipt of a copy of this order;

b) on production of the payment receipt, within the stipulated period of time as fixed by this Court, the learned District Munsif Court, Chengalput, is hereby directed to number the set aside petition and dispose of the same within a period of one month, by giving notice to both the parties;

c) on passing the order in the set aside petition, the trial Court is directed to dispose of the suit within a period

of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

06.03.2017

Note: Issue order copy on 16.11.2017

vs

Index: Yes

Internet: Yes

To

The District Munsif Court,
Chengalpattu.



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M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
CRP(NPD)No.2900 of 2012
and
M.P.No.1 of 2012

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