

IN THE HIGH Court OF JUDICATURE AT MADRAS

Dated: 30.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.2922 of 2012
and
M.P.No.1 of 2012**

1.K.Gopal

2.G.Saraswathi

3.Murugesan

.. Petitioners

Vs.

1.C.Venugopal

2.C.Rasathi

..Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, aggrieved by the order of dismissal dated 02.02.2012 passed in I.A.No.283 of 2011 in O.S.No.215 of 2009, on the file of the learned District Munsif, Tiruppur filed under Section 5 of the Limitation Act for condoning the delay of 265 days in filing the Petition to set aside the exparte decree dated 28.04.2010.

For Petitioners : Mr.K.Vignesh Karthick

For Respondents : M/s.M.Revathi Ramachandran

ORDER

The petitioners have filed this Civil Revision Petition to set aside the order dated 02.02.2012 passed in I.A.No.283 of 2011 in O.S.No.215 of 2009, on the file of the learned District Munsif, Tiruppur.

2.The case of the revision petitioners is that they are the defendants in the suit in O.S.No.215 of 2009 on the file of the District Munsif Court, Tiruppur. The above suit came to be filed by the respondents herein praying to set aside a sale deed dated 11.06.2007 standing in favour of the revision petitioners, and also for permanent injunction in respect of suit schedule property. Originally the suit schedule property belong to the respondents herein and the same was purchased by the revision petitioners for a valuable sale consideration vide a registered sale deed dated 11.06.2007. Thereupon the revision petitioners were put on possession by the respondents. Subsequently all the documents and the electricity service commission stood in the

name of the respondents were transferred in the name of the revision petitioners. Thus the revision petitioners held a valid title and absolute possession over the suit schedule of property.

3. Thereafter the suit property was sold to one Nagarajan, who now hold a valid title and possession of the suit schedule properties. The respondents have vacated the suit property in December 2008 itself, however the above suit in O.S.No.215 of 2009 came to be filed by the respondents as if they are in possession over the suit property and further alleging as if the above sale deed standing in favour of the revision petitioners was executed by them only as a collateral security for a loan raised by them from the revision petitioners to the tune of Rs.1,00,000/-. The said suit was filed with a fraudulent intention to extract money from the revision petitioners.

4. On receipt of summon in the above said suit the 1st revision petitioner engaged a counsel to conduct and defend the suit on his behalf and on behalf of revision petitioners 2 and 3. Thereupon the 1st revision petitioner was entrusted by the revision petitioners 2 and 3 to look after the suit. However misfortunately the 1st revision petitioner fell ill in the last week of March 2010 and lost appetite and on medical

examination he was found suffering out of jaundice. Further he was advised to take bed rest for a period of 6 months. Therefore he was not in a condition either to appear before the Court or to communicate his counsel. Being so the revision petitioners on receipt of a notice in a suit in O.S.No.25 of 2011 filed by the respondents for the relief of delivery of possession of the suit schedule property, came to know that due to the non appearance of the revision petitioners and their counsels on 28.04.2010 the earlier suit in O.S.No.215 of 2009 stood dismissed by the trial Court. Whereupon the revision petitioners immediately filed written statement in O.S.No.215 of 2009 as well as filed an application to set aside the ex-parte decree dated 28.04.2010. Since there was a delay of 265 days in filing the application to set aside the ex parte decree, beyond the prescribed period of limitation of 30 days from the date of decree, the revision petitioners filed an application in I.A.No.283 of 2011 under Section 5 of the Limitation Act praying to condone the delay of 265 days in filing the application to set aside the ex-parte decree. However, the Learned Trial Judge without appreciation of the above facts dismissed the revision petitioners' application in I.A.No.283 of 2011. The said order is challenged in this Civil Revision.

5.I heard Mr.K.Vignesh Karthick, learned counsel appearing for the petitioners and M/s.M.Revathi Ramachandran, learned counsel appearing for the respondents and perused all the records.

6.The learned counsel for the revision petitioners would submit that the delay of 265 days caused in filing the application to set aside the ex-parte decree is neither willful nor wanton. The 1st revision petitioner who was entrusted upon to look after the suit, since suffered out of jaundice was not in a position to appear before the Court on 28.04.2010. Further because of his illness and physically weak condition he was unable to communicate their counsel. The above suit is filed with a malafide intention to extract money from the revision petitioners, which is unlawful. On receipt of a notice in a suit in O.S.No.25 of 2011 filed by the respondents for the relief of delivery of possession of the suit schedule property, came to know that due to the non appearance of the revision petitioners and their counsel on 28.04.2010 the earlier suit in O.S.No.215 of 2009 stood dismissed by the trial Court. However, the learned trial judge adopting a mechanical and pedantic approach has dismissed the revision petitioners' application and the same is warranted interference by this Court.

7. Per contra, the learned counsel for the respondents would submit that the above sale deed standing in favour of the revision petitioners was executed by them only as a collateral security for a loan raised by them from the revision petitioners to the tune of Rs.1,00,000/-. However, when the respondents offered to repay the loan and demanded cancellation of sale deed executed in favour of the revision petitioners, the same was refused. Whereupon the above said suit was filed by the respondents. Further the reason stated by the revision petitioners for the delay caused is utter false and the same was invented for the purpose of filing an application under Section 5 of Limitation Act. The said delay of 265 days is inordinate and abnormal. There is no sufficient cause or reason put forth by the revision petitioners to condone the delay caused, only on precise appreciation of the fact, the learned trial judge has rightly dismissed the revision petitioners' application.

8. On perusal of the impugned order it is seen that the trial Court has held that though the 1st revision petitioner claimed illness from March 2010 for a period of 6 months, it would have ended by September 2010 and he could have approached his counsel thereafter, whereas the present petition came to be filed after 5 months, in the

month of February 2011, therefore the trial Court has dismissed the revision petitioners' application.

9. At this juncture it is useful to refer the following Judgments dealing with the issue of condone delay application:

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”.

- i) **2007(4) TLNJ 565 (Civil)** in the matter of **Ramakrishnan v. 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 v. 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 exercised only if the delay is within certain time. The Court has to take into consideration that interests of justice require that the delay must be condoned.

10. On perusal of the typed set of papers it is seen that the above suit in O.S.No.215 of 2009 was filed for a relief to cancel a registered

sale deed that stood in the name of the revision petitioners. According to the revision petitioners the suit schedule property stands alienated to some 3rd persons and they are in actual possession, whereas the later suit in O.S.No.25 of 2011 is being filed for delivery of possession in support of the ex-parte decree dated 28.04.2010. Therefore, this Court is of the opinion that the issue involved in the suit requires proper appreciation of facts and complete adjudication upon the rights and liabilities of the parties thereto. Further only such findings on due appraisal of oral and documentary evidence would render justice to the parties. It is needless to say that the right of the parties shall not be curtailed and they should be given one more opportunity to put forth their case to get a decree after full-fledged trial. However, the revision petitioners are liable to pay cost to the respondents herein for the unnecessary delay caused by them.

11.In view of the discussion made above, this Court is of the considered opinion to allow the revision to render substantial justice to the parties.

12.In the result:

a) this civil revision petition is allowed on condition

that the petitioners shall pay a sum of Rs.3,000/- to the respondents towards cost within a period of two weeks from the date of receipt of copy of this order.

b) the trial Court is directed to number the set aside application and dispose the same within a period of two months, by giving notice to both sides. Consequently, connected miscellaneous petition is closed.

30.01.2017

Note: Issue order copy on 10.08.2017

Internet: Yes

Index: Yes

vs

To

The District Munsif,
Tiruppur.

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M.V.MURALIDARAN, J.

VS



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