

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)No.3032 of 2012

1.N.Balachandiran

2.Deivani

.. Petitioners

Vs.

1.Karuppana Gounder

2.Chinnammal

..Respondents

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the fair and final order dated 15.06.2012 made in I.A.No.491 of 2011 in O.S.No.32 of 2007, on the file of the First Additional District Judge, Erode.

For Petitioners : Mr.Suraj Govindaraj

For Respondents : Mr.V.S.Kesavan (for R1)

ORDER

The plaintiffs are the revision petitioners and they filed a suit for partition and separate position and permanent injunction against the respondent herein in O.S.No.32 of 2007 on the file of the Additional District Judge, Erode. The said suit was dismissed for default for non-appearance of the plaintiffs on 03.12.2009. When the suit was posted for trial on 03.12.2009, the 1st plaintiff severely attacked with virus fever and bed ridden and therefore he could not appear before the court and also failed to give instruction to his counsel. After recovery, the plaintiffs filed application to restore the suit under Order 9 Rule 9 CPC along with condone delay application with a delay of 573 days in restoring the suit in I.A.No.491 of 2011.

2.The respondent herein resisted the condone delay application by filing counter affidavit and contented that this is not the 1st time the plaintiff allowed the suit to be dismissed for default. Earlier on 10.10.2003 the plaintiff allowed the suit to be dismissed for default and for that they filed petition to restore the suit with a petition to condone delay of 446 days in I.A.No.48 of 2009. The said application was allowed on payment of cost and the suit was restored. Now, again the plaintiffs deliberately allowed the suit to be dismissed for default

and filed the restoration petition with a delay of 573 days and the same cannot be allowed. Further there is no sufficient reason assigned to condone the delay. Hence, the respondent herein prayed this court to dismiss the condone delay application.

3.I have heard Mr.Suraj Govindaraj, learned counsel appearing for the petitioners and Mr.V.S.Kesavan, learned counsel appearing for the 1st respondent and perused all the relevant records.

4.The perusal of records shows that this is the second time the plaintiffs allowed the suit to be dismissed for default. The reason stated by the plaintiffs to condone the delay in the previous application that he suffered with Jaundice and now the reason stated by the petitioner herein is that the 1st petitioner was affected by viral fever and for that he has taken treatment and therefore he was not able to give instruction to his counsel. Hence the suit was dismissed for default on 03.12.2009. For restoring the suit on its file, the revision petitioner filed condone delay application in I.A.No.491 of 2011 seeking to condone the delay of 573 days in filing the restoration application. Earlier the Learned Judge has allowed the Section 5 application by imposing cost.

5.As for as the condonation of delay is concerned, there is no second opinion for this court to permit the parties to adopt delaying tactics for allowing the suit to be decreed ex-parte or allowing the suit to be dismissed for default. At the same time the right of the parties also should not be deprived of with ex-parte order.

6.In this context, it is useful to refer the Judgment reported in **2011(1) TLNJ 516 (civil)** in the case of **Sarpudeen v. Pitchai and others**, wherein in para 12 it is held as follows:

“12. This Court aptly points out the decision of the Honourable Supreme Court in N.Balakrishnan -Vs- M.Krishnamurthy reported in (1998) 7 SCC 123, whereby and whereunder, it is laid down as follows:

‘Rules of limitation are not meant to destroy the rights of the parties and they are meant to see that the parties did not resort to dilatory tactics, but seeking their remedy promptly and the object of providing a legal remedy is to repair the damage caused by reason of legal injury’.

7.The present case the suit is for partition, in the suit for partition the plaintiff will be construed as the defendant, and the defendants are the plaintiffs. By considering the overall circumstances of the case on hand, to meet the ends of justice, one more opportunity to be given to the plaintiff / revision petitioner to conduct the suit and get a contested decree on merits after full pledged trial. At the same time because of the delay on the part of the revision petitioners the inconvenience caused to the respondent herein to be compensated by way of cost. Accordingly this revision petition is allowed by imposing cost of Rs.15,000/- to be paid by the revision petitioner to the respondent herein directly.

8.In the result:

(a) this civil revision petition is allowed, by setting aside the order passed in I.A.No.491 of 2011 in O.S.No.32 of 2007, on the file of the I Additional District Judge, Erode, on condition that the petitioner should pay a sum of Rs.15,000/- as cost to the respondent herein directly within a period of four weeks from the date of receipt of a copy of this order;

(b) on production of payment of cost memo, the trial

Court is directed to number the set aside application and pass orders within a period of one month by giving notice to both parties;

(c) on passing orders in the set aside petition, the trial court is directed to take up the suit on day to day basis, without giving any adjournments to either parties and dispose of the suit within a period of two months thereafter. Both the parties are hereby directed to co-operate for early disposal.

31.01.2017

Note: Issue order copy on 24.05.2017

Internet: Yes

Index: Yes

vs

To

The I Additional District Judge,
Erode.

M.V.MURALIDARAN, J.

VS

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