

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (NPD) No.3310 of 2012

1.Jayalakshmi
2.Kanagavalli
3.Shanthi

.. Petitioners

vs

1.The Tahsildar,
Tahsildar Office,
Kudavasal,
Thiruvarur Town,
Thiruvarur Taluk,
Thiruvarur District.

2.The District Collector,
Collectorate Office,
Thiruvarur Town,
Thiruvarur Taluk and Munsifi.

.. Respondents

Revision filed under Article 227 of Constitution of India against the order passed in I.A.No.112 of 2011 in O.S.No.12 of 2011 dated 12.3.2012 on the file of the District Munsif Court, Thiruvarur.

For Petitioners : M/s.Raja Ramani

For Respondents : No Appearance

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ORDER

This revision is directed against the order of the District Munsif Court, Thiruvarur in I.A.No.112 of 2011 in O.S.No.12 of 2011, dismissing the application filed by the petitioners under Section 5 of the Limitation Act, to condone the delay of 61 days in filing the application under Or.9, Rule IX of Code of Civil Procedure, 1908 seeking to restore the suit, which was dismissed for default on 01.11.2011. The petitioners are the plaintiffs and the respondents are the defendants in the suit.

2. The first plaintiff is the wife of deceased Govindaraj and plaintiffs 2 and 3 are daughters of the first plaintiff. The plaintiffs have filed the suit seeking to declare them as legal representatives of the deceased Kaveri Ammal, wife of Jambulingam. According to the petitioners, Jambulingam pre-deceased Kaveri Ammal. After the demise of Jambulingam, Kaveriammal was under the care and maintenance of the petitioners. The deceased Jambulingam is the brother of Govindaraj. Jambulingam and Kaveriammal died without direct heirs.

3. The case of the petitioners is that the third

petitioner/Shanthi is looking after the case for herself and on behalf of petitioners 1 and 2. The suit was listed on 1.11.2011 for trial. Due to ill-health, the third petitioner could not attend the Court to get on with the trial and the petitioners were called absent. The suit was dismissed for default on 01.11.2011. Thereafter, she filed application to restore the suit along with application to condone the delay of 61 days in filing the restoration application. The delay is neither wilfull, nor wanton. Hence, the petitioners pray for condonation of the delay.

4. Resisting the application, the respondents have filed the counter stating that no medical records have been produced to show that really the third petitioner was not well on 1.11.2011. According to the respondents, the third petitioner has not even given particulars from which date she was suffering ailment. According to the respondents, on the date when the trial was fixed, plaintiffs 1 & 2 were hale and healthy and nothing prevented them from appearing before the Court when the matter was listed for trial. The application has been filed with incorrect particulars and prayed for dismissal of the same.

5. Upon consideration of the submissions of both sides, the

trial Court dismissed the application holding that the third petitioner alone has filed the application and petitioners 1 & 2 have not filed any application to restore the suit and therefore, the application is not maintainable. The trial Court further observed that the third petitioner has not stated any reason in her affidavit filed in support of the application as to why she has not filed restoration petition in time and the delay of 61 days has not been properly explained.

6. Aggrieved by the order of the trial Court, the petitioners have preferred the present revision.

7. I heard Mr.Raja Ramani, learned counsel appearing for the petitioners. No representation for the respondents. Perused the documents on record.

8. Learned counsel for the petitioners would submit that the trial Court erred in not exercising the discretion vested with it properly and that the trial Court failed to see that the delay had occurred due to the ill-health of the third petitioner, who is conducting the case on behalf of all the petitioners. Learned counsel further submitted that there is no impediment in law that all the petitioners must file affidavit

for restoration of the suit.

9. The point arises for consideration in this revision is whether the trial Court was right in dismissing the application to condone the delay of 61 days in filing the restoration application.

10. In her affidavit, the third petitioner stated that due to ill-health, she could not represent before the Court and the suit was dismissed for default and, therefore, there was delay of 61 days occurred in filing the restoration application.

11. The objections raised by the respondents before the trial Court are that the petitioners have not shown sufficient cause and the application has been filed by the third petitioner alone.

12. The trial Court held that the third petitioner alone has filed the application and the other two petitioners have not filed any restoration application and, therefore, the same is not maintainable. It was further held that as the other two petitioners were aware of the hearing date, they could have very well attended the Court and participated in the trial. In my considered opinion, such an approach

adopted by the trial Court is not acceptable, as it has been categorically stated that the third petitioner had taken up the responsibility of conducting the case on behalf of petitioners 1 and 2.

13. This Court totally unsatisfied with the order passed by the learned District Munsif in I.A.No.112 of 2012 in O.S.No.12 of 2011, dated 12.03.2012, since it is very meagre delay of 61 days in filing the restoration of the suit. In a similar situation I rendered a Judgment that for the petition filed under Order 9 Rule 9 of C.P.C. for restore the suit, the Courts below should be in liberal approach in deciding the petition. In the case in Kaliyaperumal & another v. Lakshmiammal & others reported in 2016 5 L.W. 634, it is held as follows:-

"17.This Court and the Hon'ble Apex Court on various cases clearly held that the suit should not be let it decided for simple reason of non appearance of the parties, but the case like declaration should be decided only on merits and fair opportunity should be given to both the parties and that would be the ends of justice. Accordingly, restoring the suit would not be taken away the legal rights of the defendants, but in the interest of justice, it is just and necessary to give opportunity to the petitioners to decide the case on merits, in fact, that would be helpful to decide the case on merits in respect of both the parties. Accordingly, I am inclined to allow the civil revision petition

by setting aside the order passed both in I.A.No.162 of 2010 in O.S.No.146 of 1999 dated 05.10.2010, on the file of the District Munsif Court, Panruti and C.M.A.No.9 of 2010 dated 31.01.2012, on the file of the Subordinate Court, Panruti.”

Due to the dismissal of the petition in I.A.No.112 of 2012 in O.S.No.12 of 2011, this Civil Revision Petition has been filed in the year 2012 and the same is pending for the past 5 years. The Courts below must have apply their mind while considering the petitions filed under Section 5 of the Limitation Act.

14. In catena of decisions, the Apex Court held that while considering the scope of expression "*sufficient cause*" within the meaning of Section 5 of the Limitation Act, the said expression "*sufficient cause*" is to receive liberal construction so as to advance substantial justice.

15. It is settled law that there is no presumption that delay in approaching the Court is always deliberate. Generally delays in preferring application to condone the delay in filing the application to restore the suit and/or to set aside the ex parte decree are required to be condoned in the interest of justice, where no gross negligence or deliberate inaction or lack of *bona fide* is imputed to the party seeking

condonation of delay. It is also trite that while considering the delay condonation application, the Court has to see the merit of the case also as the law of limitation is not meant to take away the right of Appeal. The Courts are known for imparting justice and not to scuttle the process of justice on technicalities.

16. Having regard to the short range of delay, in my considered view, the the trial Court ought to have condoned the delay of 61 days in filing the application under O.9, Rule IX C.P.C. If the said shorter range of delay is condoned, no prejudice would be caused to the respondents. The reasons given by the trial Court in dismissing the application are not correct and unsustainable in law. The delay of 61 days in filing the restoration application is liable to be condoned.

17. Hence, this Court warranting interference in the order passed in I.A.No.112 of 2012 in O.S.No.12 of 2011, dated 12.03.2012, on the file of the learned District Munsif Court, Thiruvavarur, and the same is liable to be set aside.

18. In the result:

(a) this Civil Revision Petition is allowed and the order of the trial Court in I.A.No.112 of 2012 in O.S.No.12 of 2011 dated 12.03.2012, on the file of the learned District Munsif Court, Thiruvarur, is set aside;

(b) the trial Court is directed to number the application filed under Order 9, Rule 9 C.P.C. and dispose the same within a period of 15 days from the date of receipt of a copy of this order;

(c) on passing order in the restoration petition, the trial Court is directed to dispose of the suit within a period of two months thereafter, on day-to-day basis without giving any adjournment to either parties. No costs.

01.02.2017

Note: Issue order copy on 29.01.2018
vs

Index : Yes/No
Internet : Yes/No

To

The District Munsif Court,
Thiruvarur.

Office to note :-

Send order copy (along with records, if any)
to the trial Court, forthwith.

M.V.MURALIDARAN, J.

VS



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