

**IN THE HIGH COURT OF JUDICATE AT MADRAS**

**Dated: 20.02.2017**

**CORAM**

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

**CRP(PD)No.3973 of 2012**

**and**

**M.P.No.1 of 2012**

Joghee

... Petitioner

Vs

Susheela

... Respondent

**Prayer:** Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and final order order dated 02.08.2012 made in I.A.No.236 of 2012 in O.S.No.45 of 2005, on the file of the District Munsif Court, Udhagamandalam.

Petitioner : Mr.N.Damodaran

Respondent:Mr.H.M.Ayyadurai(No Appearance)

**ORDER**

The plaintiff in the suit is the civil revision petitioner before this Court, challenging the order in I.A.No.236 of 2012 in O.S.No.45 of 2005, dated 02.08.2012, on the file of the District Munsif Court, Udhagamandalam.

2.The case of the petitioner/plaintiff is that he has filed the suit in O.S.No.45 of 2005, on the file of the District Munsif Court, Udhagamandalam, for declaration and for permanent injunction.

3.The petitioner/plaintiff further states that he is the absolute owner of the property in 25 cents of land in R.S.No.49/3 (old) and 870/1 (new) of Kakkuchi Revenue Village, situated in Banacombai with specific boundaries East-Property of G.Sivan; West-Road leading to Kgguchi; North-Property of ILK Bhojan, South-Property of R.Lingan. The said property was purchased from one Mr.J.Sivaraj on 28.04.1997 in a registered Document No.742/1997, on the file of the Sub Registrar of Assurances, Kotagiri.

4.He also stated that in the month of February 2004, when the plaintiff was out of station for some time, the respondent/defendant had illegally and in a hurried manner put up a construction

encroaching into an extent of 2 cents of plaintiff's land and also obtained the document in favour of the respondent/defendant. Therefore, he has filed the suit for declaration and for permanent injunction against this respondent/defendant.

5.On receipt of summon, the defendant has filed her written statement through her counsel stating that this respondent/defendant has purchased two cents of land in the said Survey number from one J.Thippan on 30.11.2001 with specific boundaries as follows: East by land belonging to R.Lingan; West by land belonging to Krishnan; North by land belonging to Bhojan and South by common road and from that day onwards, she was in absolute possession of the property. Therefore, the claim of the plaintiff was totally false. The said suit was decreed on 12.01.2007. Therefore, he prayed the Court for dismissal of the suit.

6.Challenging the said exparte decree dated 12.01.2007, the respondent/defendant has filed an application for setting aside the exparte decree along with the condonation of delay in I.A.No.236 of 2012 to condone the delay of 1838 days in filing the set aside application.

7.The respondent/defendant in her affidavit stated that though the case was posted on 12.01.2007 since she was suffering from severe arthritis and jaundice and therefore, she was away from the Kerala for availing Ayurvedic treatment, she was unable to attend the Court on 12.01.2007 and the exparte decree was passed on the said date.

8.Though the exparte decree was passed on 12.01.2007, an application should be filed within a period of 30 days from the date of decree, but this respondent has filed the present application with a delay of 1838 days in filing the set aside application. Therefore, he prayed for allowing the said application. For the said condone delay application, this petitioner has filed his counter stating that though the respondent/defendant has received Execution Petition as early as October 2011 and has entered appearance through her counsel on 06.12.2011 and if the respondent/defendant was in vigilant in her case she should have filed necessary application for setting aside the exparte decree passed long back on 12.01.2007 within a stipulated period of time, but purposely without filing the said application in time, has filed the present application with a delay of 1838 days. Therefore, he prayed for the dismissal of the application.

9.Considering both side cases, the learned District Munsif Court, Udhagamandalam has allowed the application on condition that the respondent/defendant to pay a sum of Rs.500/- as cost to the respondent on or before 08.08.2012, on the ground that to give an opportunity to the respondent/defendant and to do substantial dispose, the Court comes to the conclusion, this delay can be condoned and allowed the said application. Challenging the said order, the present civil revision petition has been filed by the petitioner before this Court.

10.I heard Mr.N.Damodaran, learned counsel appearing for the petitioner and perused the documents. No representation on behalf of the respondent.

11.It is admitted fact that the respondent/defendant has filed the set aside application with a delay of 1838 days, which is inordinate delay. The petitioner/plaintiff to support his case for allowing this Civil Revision Petition has produced several judgments passed by this Court and the Hon'ble Apex Court is as follows:-

(i) ***Sivakumar and another v. R.Sengodan*** reported in **2007 (4) CTC 506**

(ii) ***Mahabir Singh v. Subhash and others*** reported in **2008**

**(1) CTC 173**

(iii) ***Oriental Aroma Chemical Industries Ltd. V. Gujarat Industrial Development Corporation and Another*** reported in ***(2010) 4 MLJ 141 (SC)***

(iv) ***H.Dohil Constructions Company Private Limited v. Nahar Exports Limited and another*** reported in ***(2015) 1 Supreme Court Cases 680.***

12.All the above judgments produced by the learned counsel appearing for the petitioner/plaintiff, this Court and the Hon'ble Apex Court has considered the condone delay application and the same was dismissed. The Hon'ble Apex Court held that though same yardstick should be applied for deciding the applications for condonation of delay filed by private individuals and the State and its agencies, certain amount of latitude is not impermissible in the latter case and there is no plausible/tangible explanation for the long delay of more than 4 years in filing of appeal and when the applicant has not approached the Court with clean hands, the delay petition shall not be considered and the same should be dismissed.

13.This Court came to know that in an unreported Judgment rendered by the Hon'ble Apex Court in Civil Appeal No.(S).3777 of 2015 it is held that there was a delay of 882 days delay in preferring an appeal suit in the said case was dismissed by this Court by order dated 05.06.2013 in CRP(NPD)No.266 of 2011 and an appeal was filed before the Hon'ble Apex Court in Civil Appeal No.(S).3777 of 2015 in which the Hon'ble Apex Court has passed an order as follows:

“Leave granted.

This appeal arises out of an order dated 5<sup>th</sup> June, 2013, passed by the High Court of Judicature at Madras whereby CRP(NPD)No.266 of 2011 filed by the appellant has been dismissed and the order passed by the first appellate court declining condonation of 882 days in the filing of the appeal by the appellant affirmed.

We have heard learned counsel for the parties at some length. We are satisfied that in the facts and circumstances of the case, the first appellate court could and indeed ought to have condoned the delay in the filing of the appeal. Since, however, the delay is fairly inordinate, we are inclined to direct condonation subject to payment of costs.

We accordingly allow this appeal, set aside the

orders passed by the High Court and that passed by the first appellate Court with the direction that upon deposit of a sum of Rs.50,000/- (Rupees fifty thousand) towards costs before the first appellate court within six weeks from today, the delay in the filing of the appeal shall stand condoned. The first appellate court shall hear and dispose of the first appeal filed by the appellant expeditiously and as far as possible within a period of six months from the date the costs are deposited by the appellant. The amount of costs shall be paid to the respondent.

The appeal is allowed in the terms and to the extent indicated above.”

14.The Hon’ble Apex Court stated that the delay is clearly inordinate that the Hon'ble Apex Court inclined to allow the condone delay application subject to payment of cost. Therefore, by applying the above Judgment in the case on hand, the petitioner/plaintiff was prayed this Court for allowing of the civil revision petition.

15.Though the delay is huge and the said condone delay petition is allowed by the trial Court with cost of Rs.500/-, there is no necessity for warranting interference by this Court, but while

confirming the order passed in I.A.No.236 of 2012 for the long delay of 1838 days, the respondent/defendant, who is the petitioner in I.A.No.236 of 2012 should compensate the petitioner/plaintiff, since the judgment rendered by the Hon'ble Supreme Court in Civil Appeal No.(S).3777 of 2015, though there is a delay of 882 days, but the Hon'ble Apex Court imposed the cost of Rs.50,000/- for allowing the said condonation delay.

16.Apart from this, the suit is for declaration and there is a claim of the defendant is that the property in 2 cents was purchased by her from the erstwhile owner, therefore, the stand should be decided only on merits by appearance of the both parties since Court already had that the suit like declaration should be decided only on merits. Therefore, in the interest of justice and giving an opportunity to the defendant to do complete and substantial justice to the parties, I am inclined to dismiss the civil revision petition by confirming the order passed in I.A.No.236 of 2012. But, the respondent/defendant should have pay a cost of Rs.50,000/- instead of Rs.500/- to the petitioner/plaintiff.

17.The Hon'ble Apex Court in the said reason unreported judgment rendered in Civil Appeal No.(S).3777 of 2015 is very clearly

held that though the delay is inordinate, but that can be condoned subject to the payment of the heavy cost. Applying the said judgments, though the petitioners/defendants have not given sufficient reason for the delay, but in the interest of justice, I agreed the reason assigned by the petitioner for the condoning of the delay, but that should be allowed on heavy cost. Therefore, the order passed by the learned District Munsif Court, Udhagamandalam is not warranting interference by this Court and the civil revision petition is liable to be dismissed.

18.In the result:

(a) the civil revision petition is dismissed, by confirming the order passed in I.A.No.236 of 2012 in O.S.No.45 of 2005, dated 02.08.2012, on the file of the District Munsif Court, Udhagamandalam, on condition that the respondent should pay a sum of Rs.50,000/- as cost to the petitioner/plaintiff instead of Rs.500/- as ordered by the trial Court within a period of 4 weeks from the date of receipt of the order;

(b) on production of the payment receipt, the trial Court namely the District Munsif Court, Udhagamandalam, is hereby 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 the order in the set aside petition, the trial Court is directed to dispose of the suit within a period of two months, on day to day basis, without giving any adjournment to either parties, since the suit is for the year 2005. Both the parties are hereby directed to give their fullest cooperation for early disposal of the suit. No costs. Consequently connected miscellaneous petition is closed.

**20.02.2017**

vs

Index:Yes

Internet:Yes

To

The District Munsif Court, Udhagamandalam.

**M.V.MURALIDARAN,J.**

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