



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Tuesday, the Third day of January Two Thousand and Seventeen

PRESENT

The Hon`ble Ms.Justice V.M.VELUMANI

CMP(MD) No.7305 of 2016

IN

CRP(MD) No.SR28791 of 2016

MANIKANDAN @ MUTHUMANI

... PETITIONER/PETITIONER.

Vs

PARADESI

... RESPONDENT/RESPONDENT.

Prayer in CMP(MD)No.7305 of 2016:

This CMP filed under Section 5 of Limitation Act, pleaded to condone the delay of 1666 days in filing the above Civil Revision Petition.

Prayer in CRP(MD)No.SR28791 of 2016:

This Civil Revision Petition filed under Section 115 of Civil Procedure Code pleaded to set aside the fair and decreetal order passed in IA NO.264 of 2010 in O.S.No.143 of 2007 on the file of Sub Court, Tuticorin dated 30.09.2011.

ORDER: This CRP coming on for hearing on this day, upon perusing the petition and material papers of this petition and upon hearing the arguments of M/S. M.P.SENTHIL, Advocate for the petitioner and MR.G.PRABHU RAJADURAI, for the Respondent, this court made the following order:-

This petition is field to condone the delay of 1666 days in filing the above Civil Revision Petition.

2. The petitioner is the defendant. The respondent filed O.S.No.143 of 2007 on the file of the Sub Court, Tuticorin, for partition claiming 1/3rd share in the suit schedule property against the petitioner and others. The petitioner did not contest the suit and therefore, he was set ex parte. A preliminary decree was passed on 12.03.2008 allotting 1/3rd share to the respondent. The petitioner filed an application in I.A.No. 264 of 2010 with the delay of 712 days in filing set aside ex parte application. According to the petitioner, he came to know about the ex parte decree only on 28.02.2010, when the Advocate Commissioner came to inspect the suit property and further stated that the suit summons were not served on petitioner and the first respondent / plaintiff knowing fully well that the petitioner will not be available in the morning in the address given in the plaint, sent summons to wrong address.



3. The first respondent filed counter and opposed the said application and stated that the learned Judge dismissed the said application in I.A.No.264 of 2010, dated 30.09.2011, holding that the reasons given by the petitioner is not valid and sufficient to condone the delay. Against that, the petitioner has filed the Civil Revision Petition with this petition to condone the delay of 1666 days in filing Civil Revision petition.

4. According to the petitioner, after dismissal of the application to condone the delay in filing an application to set aside the ex parte decree, the petitioner had negotiation with the first respondent to settle the matter and was willing to purchase the property. Initially, the first respondent, has agreed for the same and subsequently, he did not agree to sell the property. The Advocate Commissioner, in his report, has stated that suit property is indivisible. Therefore, the delay is neither wilful nor wanton, but, due to the reason stated above. The petitioner has given cogent and valid reasons for condoning the delay in filing Civil Revision petition.

5. The learned counsel for the respondent filed counter and submitted that petitioner has filed Civil Revision Petition along with petition to condone the delay only to drag on the proceedings. He has no intention of purchase the share of the respondents and other defendants. Further, the petitioner has not given valid reason for condonation of delay and denied settlement talk between the petitioner and the respondents and prayed for dismissal of the application for condonation of the delay.

6. I have heard the learned counsel appearing on either side and perused the materials available on record.

7. The only reason given by the petitioner to condone the delay in filing Civil Revision Petition after 1666 days is he was negotiating with the respondents for the purchase of the property. The said contention is denied by the respondent. The Civil Revision Petition is filed challenging the order dismissing the application to condone the delay of 712 days in filing the application to set aside the ex parte decree. The said Civil Revision Petition is also filed with present CMP to condone the delay of 1666 days in filing the Civil Revision Petition without giving any valid and sufficient reason for condoning the delay. It is well settled that the length of delay is not the criteria and the reason given for condonation of delay must be bonafide and sufficient to condone the delay. The condonation of delay is the discretion of the Court and the said discretion must be exercised judicially. The Court must be liberal in considering the application to condone the delay and should not shut down the parties at the threshold itself preventing from putting forth their case. At that same time, the Courts must consider whether the reason given by the parties are bona fide or mala fide with a view



to drag on the proceedings. The Courts must also take into consideration any right that would have accrued to the opposite party.

8. In the present case, the petitioner has not given sufficient and valid reason to condone the delay of 1666 days in filing the Civil Revision Petition. Hence, this petition is dismissed. Consequently, the Civil Revision Petition is rejected.

9. The learned counsel appearing for the petitioner submitted that petitioner is willing to purchase share of respondent. According to the learned counsel for the petitioner that Advocate Commissioner has submitted that his report that property is indivisible. In the circumstances, it is open the petitioner to make his offer to purchase the share of the respondent in the final decree application instead of property being sold.

Sd/-

Assistant Registrar(Records)

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO
THE SUBORDINATE JUDGE, TUTICORIN.

+1. C.C. to M/S. G.PRABHU RAJADURAI, Advocate SR.No.512

ORDER DATED : 03.01.2017

COURT MADE ORDER

CMP(MD) No.7305 of 2016
IN

CRP(MD) No.SR28791 of 2016

AM/SV MMS/SAR-3/14.03.2017/3P/3C