



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.262 of 2015 (NPD)

and

M.P(MD)No.1 of 2015

Palaniyappan

....Petitioner/Petitioner/Defendant

Vs.

Adaikkan (Died)

1.Thangammal

2.Arukkani

3.Periyakkal

4.Kandhan @ Palaniappan ...Respondents/Respondents/Plaintiffs

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to call for the records pertaining to the petition against the fair and decreetal order, dated 12.12.2014 made in I.A.No.962 of 2010 in O.S.No.292 of 2004 on the file of the District Munsif Court, Musiri and set aside the same.

For Petitioner : Mr.T.Vadivelan

For Respondents : Mr.H.Arumugam

ORDER

The petitioner has filed this Civil Revision Petition to set aside the fair and decreetal order, dated 12.12.2014 made in I.A.No.962 of 2010 in O.S.No.292 of 2004 passed by the District Munsif Court, Musiri.

2.The petitioner is the defendant. The respondents' father filed a suit in O.S.No.577 of 2002 before the Sub Court, Trichy. Subsequently, the suit was transferred to District Munsif, Musiri and renumbered as O.S.No.292 of 2004. The petitioner did not file written statement and he was set ex-party on 02.09.2004. Plaintiff died on 12.09.2003. The legal heirs of the plaintiff were not brought, on record. Therefore, the said suit was dismissed as abated. Subsequently, the suit was restored setting aside the abatement on application filed by the respondents. Subsequently, amended plaint was filed. The petitioner was given time for filing written statement. The



petitioner did not file written statement. Therefore, he was set ex-parte on 09.09.2009 and ex-parte decree was passed on 10.09.2009. The petitioner filed I.A.No.962 of 2010 to condone the delay of 313 days in filing application to set aside the ex-parte decree. According to the petitioner, he was suffering from Asthma and he was taking native treatment. He was under impression that application filed by the respondents in O.S.No.169 of 2001 for stay of said suit till order is passed to try the said suit along with present suit will be decided first and then only present suit will be taken up for hearing. When he met the Advocate, he informed that there is no Presiding Officer in the Court and that case will be taken up later and informed him to come only after receiving information from his Advocate. Subsequently, he was informed that suit was decreed ex-parte on 10.09.2009 and therefore, delay in filing petition is neither willful nor wanton.

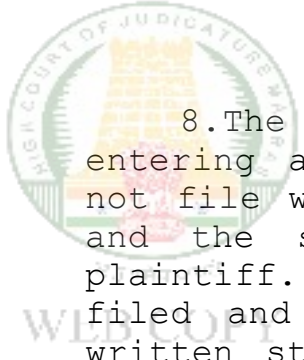
3.The respondents filed counter and opposed the said application and submitted that the reasons given by the petitioner are not valid and sufficient. The petitioner was set ex-parte on 02.09.2004 and from that date onwards, delay has to be counted. The petitioner has not furnished any particulars with regard to his illness and when he met the Advocate and when he came to know about the ex-parte decree.

4.Before the learned Judge, the petitioner examined himself as P.W.1 and marked one document Medical Certificate as Ex.P1. The respondents did not let in any oral and documentary evidence.

5.The learned Judge considering the averments made in the affidavit and counter affidavit and document filed by the petitioner dismissed the application holding that the petitioner has not given any valid reason for condoning the delay.

6.Against the said order of dismissal made in I.A.No.962 of 2010, the petitioner has come out with the present Civil Revision Petition.

7.The learned counsel for the petitioner submitted that the petitioner has given valid reason for condoning the delay and to substantiate his case he has filed Ex.A1 Medical Certificate issued by the Doctor to the effect that petitioner was suffering from Asthma and he was also let in oral evidence. The learned Judge ought to have seen that relief sought for by the respondent is specific performance of agreement of sale, which is discretionary relief and the learned Judge ought to have given an opportunity to the petitioner to put forth his case on merits and to let in evidence to prove his case. This Court and the Hon'ble Apex Court in number of judgments have held that the petition for condonation of delay must be considered liberally and parties should not be shut down at the threshold itself.



8. The learned counsel for the respondents submitted that after entering appearance, after receiving summons the petitioner did not file written statement and he was set ex-parte on 02.09.2004 and the suit was dismissed as abated due to the death of plaintiff. After setting aside the abatement, amended plaint was filed and an opportunity was given to the petitioner to file written statement. Even after taking number of adjournments for filing written statement, the petitioner did not file written statement. Therefore, he was set ex-parte on 09.09.2009 and ex-parte decree was passed on 10.09.2009. The petitioner has not given valid and sufficient reason to condone the delay in filing petition to set aside the ex-parte decree. In the circumstances, the order of learned Judge does not warrant interference by this Court.

9. In support of his contention, the learned counsel for the respondents relied on the judgment reported in **(2005) 4 Supreme Court Cases 480 (Kailash vs. Nanhku and others)** wherein at paragraph 41 it has been held as follows:-

"41. Considering the object and purpose behind enacting Rule 1 of Order 8 in the present form and the context in which the provision is placed, we are of the opinion that the provision has to be construed as directory and not mandatory. In exceptional situations, the Court may extend the time for filing the written statement though the period of 30 days and 90 days, referred to in the provision, has expired. However, we may not be misunderstood as nullifying the entire force and impact-the entire life and vigour-of the provision. The delaying tactics adopted by the defendants in law courts are now proverbial as they do stand to gain by delay. This is more so in election disputes because by delaying the trial of election petition, the successful candidate may succeed in enjoying the substantial part, if not in its entirety, the term for which he was elected even though he may lose the battle at the end. Therefore, the judge trying the case must handle the prayer for adjournment with firmness. The defendant seeking extension of time beyond the limits laid down by the provision may not ordinarily be shown indulgence."

10. The grievance of the petitioner is that the learned Judge failed to consider that the petitioner has given valid reason for condoning the delay and also to substantiate the reason given by him to condone the delay he has let in oral and documentary evidence. The learned Judge has considered the averments made in the affidavit and concluded that the petitioner has not furnished any particulars with regard to his illness and when he met his
<https://hcservices.ecourts.gov.in/hcservices/>
 Advocate to know about the decree. The learned Judge took note of the fact that the petitioner filed Ex.A1 medical



certificate only after filing proof affidavit and obtained Ex.A1 only after his cross examination and rejected the said medical certificate on the ground that the same is filed only to fill in the lacuna.

11.From the materials, it is seen that the petitioner was not diligent enough to put forth his case and has not given any valid and sufficient reason to condone the delay. It is well settled that length of delay is not a criteria but intention of the party must be bonafide. In the present case, the intention of the petitioner is only to drag on the proceedings. In the circumstances, there is no illegality or irregularity in the order of learned Judge warranting interference by this Court.

12.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar (AR)

/True Copy/

Sub Assistant Registrar

To

- 1.The District Munsif Court,
Musiri.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.H.Arumugam, Advocate, SR.No:10713
+1cc to Mr.T.Vadivelan, Advocate, SR.No:10232

Am

AE/SV MMS/08.03.2017/4P/5C

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