IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.10.2018

Delivered on : 11.12.2018

Coram

THE HONOURABLE MS. JUSTICE P.T. ASHA

C.R.P.(NPD).No.2956 of 2007

C.S. Benefit Fund Limited,
Represented by its Managing Director,
21, Venkataswami Road,
R.S.Puram, Coimbatore. ...Petitioner/Petitioner / Defendant

Versus

1. C.S. Shanmugasundaram (Deceased)
2. Mr. S. Balakrishnan
3. Mrs. Shanthi
4. Mrs. Jayanthi
5. Mrs. Pushpavalli
6. Mrs. Lakshmi Prabha ...Respondents/ Respondents/Plaintiffs

Prayer: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure against the fair and final order dated 06.03.2007 made in I.A.No.1714 of 2005 in O.S.No.2273 of 1998 on the file of the learned Principal District Munsif, Coimbatore.

For Petitioner : Mr. S. Thangavel

For Respondents : Mr. V.G. Suresh Kumar for R2
No appearance for RR3 to 5
Not ready in notice for R6

ORDER

This Civil Revision Petition is filed, challenging the order dated 06.03.2007 of the learned Principal District Munsif, Coimbatore made in I.A.No.1714 of 2005 in O.S.No.2273 of 1998. The defendant, Managing Director, ICS Benefit Fund, Coimbatore, is the Revision Petitioner before this Court.

2. The brief facts, which are essential for disposing of the this Civil Revision Petition, are as follows:-

a) The Respondent herein had filed a suit in OS.No.2273 of 1998 on the file of the learned Principal District Munsif, Coimbatore to declare that Clause 14(a) of the Mortgagee Deed, dated 30.05.1996 executed by the Respondent to the Revision Petitioner is extinguished and consequently, to grant an injunction to restrain the defendant and their men from effecting sale under Section 69A, without recourse to public sale.

b) The case of the Respondent was that he had approached the Management of the Revision Petitioner for a loan of Rs. 2,00,000/- (Rupees Two lakhs only) in order to help his son for starting a business. The Management of the Revision Petitioner had insisted upon the Respondent to execute a Mortgage Deed, mortgaging the Petitioner's house property and had insisted on the same being registered on 30.05.1996. The Mortgage Deed for the said loan was executed and as per the terms of the same, a sum of Rs.7,166/- per month was payable towards interest and principal and the time for repayment was 4 years. The last payment of installment agreed to be paid was Rs.7,198/-. The Deed further stipulated that the respondent shall pay a default interest of Rs.1.50 p.m. for R.100/- The plaintiff had paid in all a sum of Rs.3,03,062/- and a sum of Rs. 13,386/- under various ministerial heads as demanded by the Management of the Revision Petitioner.

c) Despite having paid more than the amount borrowed, the Revision Petitioner was attempting to exhort more money from the Respondent and had threatened to invoke Section 69A of the Transfer of Property Act and to sell the suit property by public auction. A notice was received by the Respondent on 21.09.1998, wherein the Management of the Revision Petitioner had demanded a payment of a sum of Rs. 3,60,284/- towards installments and default interest. This notice was duly replied by the Respondent on 25.09.1998.

d) The Revision Petitioner has no right to sell the suit property under mortgage in a private sale, as the said sale would not fetch true value for the property. Therefore, the Revision Petitioner was constrained to file the suit.

e) Though the Management of Revision Petitioner had initially entered appearance, however, subsequently, since there was no representation, the Management of Revision Petitioner was set exparte and an Exparte Decree was passed on 12.10.2000.

f) In the month of June 2005, the Management of the Revision Petitioner had filed IA.No.1714 of 2005, on the file of the Principal District Munsif, Coimbatore, seeking to condone the delay of 1254 days in filing the application, for setting aside the Exparte Decree dated 12.10.2000.

g) In the affidavit filed in support of the said application, the Managing Director of the Revision Petitioner would submit the following reasons for having permitted an Exparte Decree to be passed in the suit and the delay in filing the necessary application to set-aside the Exparte Decree:-

(i) They had been served with the summon in the above suit 06.01.1999 and the company had engaged one Mr.Purusothaman, Advocate to defend their case and said Advocate had filed his vakalat on 10.06.1999 and the matter was posted for filing a written statement on 19.09.2000.

(ii) Thereafter, there was a criminal complaint lodged by

M/s.Sakthi Sugars Limited, against the Management of Revision Petitioner and the family members and on 16.03.2000 they were arrested and only on 04.07.2000 they were granted bail on condition.

(iii)The complaint filed by the said M/s. Sakthi Sugars in CC.No.212/2003 before the Chief Judicial Magistrate was for a sum of Rs.15,00,000/-(Rupees Fifteen lakhs only) and the Petitioner had approached his legal counsel to take steps to collect the outstanding from their Management of Revision Petitioner debtors.

(iv)Therefore, in the course of collecting these details, the Revision Petitioner had asked her son to contact the Respondent and on 10.05.2005, when the Revision Petitioner's son had contacted the Respondent, they were very evasive and therefore, the Revision Petitioner was constrained to issue a legal notice dated 25.05.2005, calling upon the Respondent to pay his dues. He sent a reply dated 03.06.2005, wherein the Respondent had mentioned about the decree in the suit and it was only on 03.06.2005 that the Management of Revision Petitioner had come to know about this exparte decree and immediately they have come forward with this petition.

Since all the documents were seized by the Police Officers on 16.03.2000 he was not aware of the decree, the delay had occasioned only on account of the above and the same is neither willful nor wanton and therefore, the same should be condoned.

(h) The Respondent had filed a detailed counter, inter-alia, contending that the reasons given in the affidavit were totally false. The Management of Revision Petitioner was a company, a juridical person registered under the Indian Companies Act and not dependant on an individual. Therefore the absence of one person does not cause any kind of an impediment to proceed with the case. Even according to the Revision Petitioner, he had been released on bail on 04.07.2000. The written statement in the suit ought to have been filed on 19.09.2000 and since the written statement was not filed, the Management of Revision Petitioner was set exparte and ultimately the exparte was passed only on 12.10.2000. Therefore, there was no explanation for not having appeared before the court on 19.09.2000, when admittedly he had been released on bail two months earlier. The Revision Petitioner therefore contended that the reasons given in the affidavit are absolutely false.

(i) The learned Principal District Munsif, by his order dated 06.03.2007, was pleased to dismiss the said petition, by taking note of the fact that no documents had been filed by the Management of the Revision Petitioner to show the number of days that the Managing Director/Defendant of the affidavit had stayed in Chennai in compliance of the bail conditions. Challenging the said order, Management of the Revision Petitioner has approached this Court by filing this Civil Revision Petition.

3. This Court heard Mr. Thangavel, learned counsel for the Revision Petitioner.

4. The learned counsel for the Revision Petitioner would contend that the Management of Revision Petitioner had shown sufficient reasons for his absence before the court and non filing of the written statement, which had not been taken note of by the Court below. He would further submit that the learned Judge has not considered the documents that had been filed by the Revision Petitioner and had mechanically dismissed the application.

5. The learned counsel had filed the documents, which were exhibited in the petition impinged before this Court. He would also rely upon the following judgments to submit that where sufficient cause has been provided, the Court should generally condone the delay and a liberal interpretation has to be adopted.

6. In the Judgment reported in **2001 [9] SCC 106 [Vedabai @ Vaijayanatabai Baburao Patil Vs. Shantaram Baburao Patil and others**], the Hon'ble Supreme Court has held as follows:-

> *"5. In exercising discretion under Section 5 of the Limitation Act the courts should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case, no such consideration may arise and such a case deserves a liberal approach. No hard-and-fast rule can be laid down in this regard. The court has to exercise the discretion on the facts of each case keeping in mind that in construing the expression " sufficient cause", the principle of advancing substantial justice is of prime importance. In our view in this case, the approach of the learned Additional District Judge is wholly erroneous and his order is unsustainable. It is evident that the discretion under Section 5 of the Limitation Act is exercised by the Additional District Judge in contravention of the law laid down by this Court, that the expression "sufficient cause"*

should receive liberal construction, in a catena of decisions (see State of W.B. v. Administrator, Howrah Municipality((1972) 1 SCC 366)and Sandhya Rani Sarkar v. Sudha Rani Debi((1978) 2 SCC 116)). The High Court in exercising its jurisdiction under Section 115 CPC failed to correct the jurisdictional error of the appellate court."

7. In the judgment reported in **2002 [3] SCC 195 [Ramnath Sao @ Ram Nath Sahu and others Vs Gobardhan Sao and others],** the Apex Court has held in paragraph No.12 as thus:-

" 12. Thus it becomes plain that the expression " sufficient cause" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fides is imputable to a party. In a particular case whether explanation furnished would constitute " sufficient cause" or not will be dependent upon facts of each case. There con not be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown

and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right ha accrued to the other party which should not be lightly defeated by condoning delay in a routine-like manner. However, by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes of the matter the explanation furnished should not be rejected when stakes are high and /or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates, either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way."

8. This Court vide order dated 25.07.2018 made in **CRP [NPD] No.1804/2009 [Sarojini [deceased] and 10 others Vs. Leelavathi],** has held as follows:-

> *''while exercising discretion under Section 5 of the Limitation Act, the Courts should adopt a pragmatic approach and should only look into the cause that has been put forward by the petitioners and also to bear in mind that the principle of advancing substantial justice is of prime importance.''*

9. Mr.V.G.Suresh Kumar, learned counsel appeared on behalf of the Respondent would contend that the Revision Petitioner has not come forward with valid reasons a sufficient causes for having the delay condoned. On the contrary, the learned counsel for the Respondent would contend that the Revision Petitioner has come forward with false allegations.

10. This court heard the learned counsels on either side and also perused materials placed on record.

11. The reason assigned by the Revision Petitioner for the delay was that the Managing Director and his family had been arrested

in a criminal complaint filed by M/s.Sakthi Sugars Limited and bail had been granted with conditions on 04.07.2000 and it is seen that the suit was adjourned to 19.09.2000 for filing the written statement of the Revision Petitioner. This was two months after the Management of Revision Petitioner had been granted bail. The Management of Revision Petitioner has not given any details as to the dates on which he had to sign before the Police Authorities and for how long the condition imposed was in force.

12. On perusal of Ex.P3, which is the bail order, dated 16.06.2000, it is seen that the Revision Petitioner was directed to remain in Vellore and he should report on alternative days before the Vellore Police Station and the case was posted on 13.06.2000. In another criminal proceedings, bail was granted on 21.06.2000, wherein once again the Management of Revision Petitioner was directed to appear before the Inspector of Police, Economy Offences Wing, on every Thursday and the Petitioner was directed to appear before the Court on 30.06.2000. The Petitioner has not provided any details as to the date on which the bail conditions had come to an end and what happened on the next date of hearing.

13. It is an admitted fact that the Revision Petitioner was aware of the suit since they had been represented by a counsel on 10.06.1999 when Vakalat was filed. From 10.06.1999 till 19.09.2000, no steps have been taken to file the written statement. Even according to the Revision Petitioner, he was arrested only on 16.03.2000. Therefore, there is no explanation given by the Revision Petitioner as to why the written statement was not filed during the period between 10.06.1999 to 16.03.2000. By issuing a legal notice, Ex.P.5 has tried to make it appear as if he had no knowledge of the suit and it appears to be an attempt to make a cause of action for condoning the delay.

14. In the Judgment of the Hon'ble Supreme Court reported in **1998 (II) CTC 533 [N.Balakrishnan Vs. M.krishnamurthy],** the Apex Court has held that where the explanation does not smack of mala fide or is not a part of dilatory tactics, Court should be very cautious when accepting the explanation. In fact, the Hon'ble Supreme court has observed thus:-

> " but when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the Court should lean against acceptance of the explanation.''

15. The Judgments cited on the side of the Revision Petitioner does not advance their case. This court is of the opinion that the sufficient cause has not been provided by the Revision Petitioner for condoning the delay. The Order of the learned Principal District Munsif, Coimbatore does not suffer from any infirmity or illegality. Consequently, this Civil Revision Petition stands dismissed. No costs.

11.12.2018

jrs

Index : Yes/No
Internet: Yes/No

To

The Principal District Munsif,
Coimbatore.

P.T.ASHA, J,

jrs

Pre-Delivery Order in
CRP.(NPD).No.2956 of 2007

11.12.2018