

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.06.2018

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(NPD).No.1366 of 2018and C.M.P.No.7342 of 2018

1. R.Thankesan

2. R.Santhi

.... Petitioners

Vs.

1. Rajalingam

2. Rani

3. Athimoolam

4. Minor Santhoshkumar

Rep. through mother Rani

5. Sadasivam

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order made in I.A.No.11 of 2009 in O.S.No.5 of 2008 dated 20.12.2017 on the file of the learned Subordinate Judge, Harur.

For Petitioners : Mr.S.Vijayakumar

ORDER

The relief sought for in this revision petition is to set aside the order made in I.A.No.11 of 2009 in O.S.No.5 of 2008 dated 20.12.2017 on the file of the learned Subordinate Judge, Harur.

2. Originally, the revision petitioner filed a suit in O.S.No.76 of 1999 on the file of the Sub Court, Dharmapuri for partition against the respondents in

which the preliminary decree was passed on 12.12.2002. Subsequently, the suit was transferred to the file of Sub Judge, Harur and renumbered as O.S.No.5 of 2008. When the suit is pending for final decree, the respondents filed an application in I.A.No.11 of 2009 in O.S.No.5 of 2008 for condoning the delay of 1965 days in filing the application to set aside the exparte preliminary decree. After enquiry, the trial Court allowed the application. The reason stated for allowing the application is that if the application is not allowed, the petitioner would take the matter for revision and keep it pending for many more years and it will lead to drag on the proceedings.

3. Aggrieved against the said order dated 08.03.2011, the present revision petitioner filed a revision petition in C.R.P.(PD).No.4557 of 2011 before this Court wherein this Court allowed the revision petition by setting aside the order of the trial Court in I.A.No.11 of 2009 in O.S.No.5 of 2008 on the file of the Subordinate Judge, Harur and remitted back the case to trial Court for disposal of the I.A.No.11 of 2009 in O.S.No.5 of 2008 afresh in accordance with law within a period of twelve weeks.

4. Subsequently, the matter was taken up by the trial Court and once again heard and allowed the application. Since the respondent taken a plea

that after filing the suit, there was a compromise entered into between the parties by executing the Muchalika. But he was under the impression that the respondent would not proceed with the case further. Later on, when he received notice in the final decree application, he approached his counsel. After verifying the records, he told that since the petitioners did not appear before the trial Court on 12.12.2002 an exparte decree was passed against them. The respondent given the particulars regarding the compromise and Muchalika that was marked in I.A.No.11 of 2009 during the enquiry. The trial Court found that the genuineness of the Muchalika and execution of the Muchalika could be decided only after examining the parties and not in the interlocutory application. Therefore, the trial Court satisfied with the reason given by the respondents/defendants allowed the applications.

5. Aggrieved against the said order dated 20.12.2017, once again the revision petitioner filed the present revision petition for the very same relief.

6. The learned counsel for the petitioners submitted that in the earlier occasions, this Court found that the reason given by the trial Court is flimsy in nature, therefore it was set aside. The trial Court once again committed the very same error and has not given any sufficient reasons to condone the delay. Therefore, the order of the trial Court is liable to be set aside once again.

7. Heard the learned counsel for the petitioners and perused the materials available on record.

8. It is not in dispute that the revision petitioners filed a suit against the respondents for partition and they were set exparte on 12.12.2002. Subsequently, he filed an application in I.A.No.11 of 2009 to condone the delay of 1965 days in filing the petition under Order IX Rule 13 of C.P.C the said application was allowed by the trial Court and condoned the delay. The reason is that there was a Muchalika has been entered into between the parties. After receiving the notice in final decree application, they came to know that the respondents ignored the panchayat Muchalika and proceeded further by way of final Decree application. It is to be stated that whether the Muchalika is valid or it was forged behind the back of the respondent can be decided only at the time of trial, but not in this application.

9. The Hon'ble Supreme Court and this Court time and again reiterated that the length of the delay is not a matter and valid reason has to be assigned for condoning the delay. In this case, admittedly, the delay in filing application to condone the delay of 1965 days to set aside exparte decree is

not a short time. However, as held by this court and the Hon'ble Supreme Court, the reason assigned in the affidavit has to be taken into consideration, the main reason stated in the affidavit is that he filed the document and marked as Ex.P3 which shows he entered into Muchalika and the matter was compromised. This was denied by the respondents. Whether during the pendency of the suit there was a compromise? As to whether the Joint Muchalika has been executed between the parties in the presence of a common men? That could be decided only in the suit after the trial. But after examining the witnesses, the trial Court held that the reason stated in the affidavit to condone delay is sufficient. It is a discretionary power of the trial Court to condone the delay. If the delay is sufficiently explained and there is no matter regarding length of the delay, this Court while exercising power under Article 227 of Constitution of India, has to see whether any irregularity or illegality has been committed by the trial Court while passing the order.

10. No doubt while exercising the jurisdiction of revision, this Court has to see whether the trial Court exercised its discretionary jurisdiction Judicially or arbitrarily. This Court has not found any arbitrariness in the order passed by the Trial Court.

11. Under these circumstances, this Court finds there is no valid reason

to interfere with the order passed by the trial Court and finds no merits in this revision petition.

12. However, it is left open to both the parties to take their defence in the main suit during the course of trial. Since the suit is of the year 2002, the trial Court is directed to dispose of the suit in O.S.No 5 of 2008 within a period of four months from the date of receipt of a copy of this Order. Further, both the parties and respective counsel are directed to co-operate for earlier disposal of the case.

13. With the above direction, this Civil Revision petition is dismissed. Consequently, connected Miscellaneous petition is closed. No costs.

26.06.2018

Index:Yes/No

Speaking order / Non speaking order

vum

To

The Subordinate Judge,
Harur.

WEB COPY

P.VELMURUGAN, J.,

vum



C.R.P.(NPD).No.1366 of 2018

and C.M.P.No.7342 of 2018

WEB COPY

26.06.2018