

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2018

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

C.R.P.No. 132 of 2015

S. Kapaleeswaran ..Petitioner

Vs.

Sri Vedantha Desikar Devasthanam

rep. by its Trustee N. Vijayaraghavan,

having office at

Sri Kesava Perumal Sannithi Street,

Mylapore, Chennai □ 4. ..Respondent

Prayer: Civil Revision Petition as against the order dated 14.06.2013 passed in I.A. No. 18401 of 2011 in O.S. No. 9408 of 1992 by the V Assistant City Civil Court, Chennai.

For Petitioner : Mr.M. Balachandar

For Respondent : Mr.Rahul Balaji

O R D E R

The plaintiff is the petitioner herein, who had filed the suit for specific performance in the year 1992. The order under challenge in the present civil revision petition is the rejection of the application filed by him under Section 5 of the Limitation Act to condone the delay of 5453 days to restore the suit, which was dismissed on 12.09.2003. The Court below, while observing that each and everyday's delay has not been explained properly, rejected the said application, by order dated 14.06.2013.

2. The learned counsel for the petitioner submitted that the petitioner herein had assigned proper reasons for the delay in filing the application to restore the suit. According to the petitioner, the suit papers were handed over to his counsel, who had informed him that whenever the suit is posted for trial, he would be contacted by him and on the presumption that the lawyer would contact him, the petitioner had been waiting only to realise later that the suit had been dismissed for default on 12.09.2003. The learned counsel submitted that the Trial Court had not considered the reasoning given by the petitioner. Even otherwise, he would submit that he has a meritorious and an arguable case. According to him, the petitioner had entered into a sale agreement with the respondent temple whereby the entire sale consideration was paid in the year 1981 itself and the temple had, in principle, agreed to sell the property. Owing to contrary decision taken by the next line of trustees, the sale deed was not executed, which constrained him to file the present suit. By relying upon the judgment of the Honourable Apex Court rendered in Esha Bhattacharjee V. Managing Committee of Raghunathpur Nafar Academy and Ors. reported in (2013) 12 SCC 649, the learned counsel for the petitioner submitted that substantial justice should be the paramount consideration and technical considerations should not be given undue emphasis and therefore, submitted that while rejecting the application to condone the delay, the Trial Court ought to have looked into the merits of the case also.

3. The learned counsel for the respondent, on the other hand, submitted that the delay was not only inordinate, but no sufficient cause has been given for the delay in the application filed before the Trial Court. By drawing the attention of this Court to the averments made in the said application, the learned counsel submitted that a mere statement that the petitioner was waiting for his counsel to contact him would not constitute sufficient cause for the purpose of condoning the delay. By countering the submissions made by the learned counsel for the petitioner, it is submitted that even on merits, the petitioner does not deserve any consideration. According to him, the alleged decision taken by the erstwhile trustees was in breach of trust and that the temple has no intention to part away with their valuable properties. It is his submission that the trustees may not be well within their rights to dispose of such properties also and there is a bar for such alienations. He would also rely upon the judgment of the Honourable Apex Court rendered in *Balwant Singh V. Jagdish Singh* reported in (2010) 8 SCC 685 and submit that even if the term "sufficient cause" found in Section 5 of the Limitation Act is applied in a reasonable and pragmatic manner, the reason attributed for the delay cannot be termed to be "substantial cause" and therefore, there is no infirmity in the finding of the Court below.

4. I have given my careful consideration to the submissions made by the respective counsel.

5. Before proceeding with the reasonings of both the counsel, it would be relevant to mention here that the present suit for specific performance, which was filed in the year 1992, came to be dismissed, earlier for default on 10.10.1996. Subsequently, it was restored. The present dismissal is for the second time and as there was a delay in filing the application to restore the suit, I.A. N. 18401 of 2011 was filed to condone the delay. Though the delay is stated to be 5453 days in the said interim application, by recalculating the number of days of delay, it is submitted by the learned counsel for the petitioner, before this Court, that the delay cannot be 5453 days, but only 2938 days.

6. The reason assigned in the application, as pointed out by both the counsel, is that the petitioner was anticipating his lawyer to contact him and was carried away by his lawyer's statement that the suit was pending. The Trial Court had disbelieved the statement and had come to the conclusion that the delay was not properly explained.

7. I do not find any infirmity in such a finding. The delay, whether it is 2938 days or 5453 days, can only be termed as "inordinate delay" and unless and until sufficient cause is adduced for such a delay, it cannot be condoned, in normal circumstances. Sufficient cause alleged in the present case is that the petitioner was waiting for his counsel to contact him. I am unable to comprehend as to how the petitioner, who had already faced an order of dismissal for default, could wait for so many years, for his lawyer to contact him and inform him about the status of the case. As such, the reasoning of the Court below that the delay has not been properly explained does not suffer from any infirmity.

8. The learned counsel for the petitioner, by relying upon the judgment of the Honourable Apex Court reported in 2013 (12) SCC 649, urged this Court to look into the merits of the case also as seen in the pleadings. Admittedly, there is no written sale agreement in the present suit for specific performance. The petitioner herein relies upon two receipts and submits that the entire sale consideration had been paid. There is also a reference to the letter from the respondent temple herein referring to the transaction. The alleged sale amount is referred to as Rs.31,540/-. The letter also informs the petitioner herein that the amount paid by way of sale transaction had been treated as rental advance and refused to execute any sale deed in his favour. It is the submission of the learned counsel for the respondent that as a policy and in view of the bar imposed by the Hindu Religious and Charitable Endowments Department, they are not entitled to sell the suit property also. It is seen that without a proper sale agreement, by relying upon receipts issued in the year 1981, the

petitioner now wants the Court below to render a finding based on these two receipts alone. After a lapse of so many years, it would not be appropriate to permit the Trial Court to record evidence on these flimsy facts and documents. As such, even on merits, I do not feel that the facts, as evidenced in the plaint, should be tested before the Trial Court.

9. Though this Court has given its prima facie view on the merits of the pleadings in the suit, the reason for arriving at the conclusion to reject the present civil revision petition is that the delay of 2938 days is inordinate and the reason assigned by the petitioner in the application to condone the delay, cannot be, by any stretch of imagination, termed to be a "sufficient cause" for condonation.

10. While interpreting the term "sufficient cause", the Honourable Apex Court, in the judgment reported in (2010) 8 SCC 685 had observed as follows:

"25. We may state that even if the term "sufficient cause" has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of "reasonableness" as it is understood in its general connotation.

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.

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34. Liberal construction of the expression "sufficient cause" is intended to advance substantial justice which itself presupposes no negligence or inaction on the part of the applicant, to whom want of bona fide is imputable. There can be instances where the court should condone the delay; equally there would be cases where the court must exercise its discretion against the applicant for want of any of these ingredients or where it does not reflect "sufficient cause" as understood in law.

35. The expression "sufficient cause" implies the presence of legal and adequate reasons. The word "sufficient" means adequate enough, as much as may be necessary to answer the purpose intended. It embraces no more than that which provides a plentitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. The sufficient cause should be such as it would persuade the court, in exercise of its judicial discretion, to treat the delay as an excusable one. These provisions give the courts enough power and discretion to apply a law in a meaningful manner, while assuring that the purpose of enacting such a law does not stand frustrated.

36. We find it unnecessary to discuss the instances which would fall under either of these classes of cases. The party should show that besides acting bona fide, it had taken all possible steps within its power and control and had approached the court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention."

The observations of the Honourable Apex Court are self-explanatory. Though it is held therein that a liberal construction should be given to the expression "sufficient cause", with an intention to advance substantial justice, it has also been held that the parties should prove their bona fides, apart from taking steps to approach the Court without any unnecessary delay. The Honourable Supreme Court has also taken note of the effect of prejudice that could be caused to the other party when a

liberal construction is given to the term "sufficient cause". These ingredients, as evidenced from the facts, are conspicuously missing. As such, this Court is unable to appreciate the grounds raised by the petitioner.

11. In view of the aforesaid reasonings, I do not find any infirmity in the order passed by the Trial Court in rejecting the petitioner's application to condone the delay in filing the application to restore the suit. The civil revision petition is accordingly dismissed. No costs.

09.10.2018

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Index: Yes

To

The V. Asst. City Civil Court,
Chennai.

M.S. RAMESH,J.

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