

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.4151 to 4153 of 2015
& M.P.Nos.1 to 1 of 2015

A.Srinivasan

.. Petitioner in
C.R.P.No.4151/2015

V.Parvathy Ammal

.. Petitioner in
C.R.P.No.4152/2015

M.M.Vedathiri

.. Petitioner in
C.R.P.No.4153/2015

Vs.

Adivaram Choultry,
Thirukalukundram
Rep. By its Fit Person
cum Executive Officer,
Arulmighu Vedagarieswarar
Thirukoil, Thirukalukudram

.. Respondent
in all C.R.Ps.

COMMON PRAYER: Civil Revision Petitions filed under Section 115 of C.P.C against the fair and decretal orders dated 06.02.2015 made in I.A.Nos.364 to 366 of 2011 in O.S.Nos.118, 114 and 122 of 2000 on the file of the Additional Subordinate Court, Chengalpattu.

For Petitioners : Mr.R.Natarajan

For Respondent : No appearance

COMMON ORDER

These Civil Revision Petitions are filed against the fair and decretal orders dated 06.02.2015 made in I.A.Nos.364 to 366 of 2011 in O.S.Nos.118, 114 and 122 of 2000 on the file of the Additional Subordinate Court, Chengalpattu.

2.The respondent and the issues involved in all the Civil Revision Petitions are one and the same and therefore, they are disposed of by this common order.

3.The petitioners are the defendants and respondent is the plaintiff respectively in O.S.Nos.118, 114 and 122 of 2000 on the file of the Additional Subordinate Court, Chengalpattu. The respondent herein filed the above suits for recovery of possession. In all the three suits, the petitioner received suit summons. The petitioner in C.R.P.No.4151/2015 received suit summon and entered appearance and filed written statement on 24.11.2000. Subsequently, he did not contest and exparte decree was passed on 31.03.2003. He filed I.A.No.364 of 2011 in O.S.No.118 of 2000 to condone the delay of 3075 days in filing the petition to set aside the exparte decree dated 31.03.2003. According to the petitioner, when

the suit was posted for cross examination of P.W.1, he was bedridden and therefore, he could not contact his Advocate and give instructions. When he contacted his Advocate after recovering from illness, he came to know that exparte decree was passed on 31.03.2003 and filed present application to condone the delay of 3075 days in filing the petition to set aside the exparte decree.

4.As far as C.R.P.Nos.4152 and 4153 of 2015 are concerned, the petitioners in the above said C.R.Ps filed I.A.Nos.365 and 366 of 2011 to condone the delay of 3247 days and 3923 days respectively in filing the petitions to set aside the exparte decrees dated 10.10.2002 and 30.11.2000. According to them, after receiving summons, the petitioners in C.R.P.Nos.4152 and 4153 of 2015 met one Kannimuthu and handed over vakalat as he also purchased the property from respondent and he made the petitioners to purchase the suit property. The said Kannimuthu informed that he will take care of the suits on their behalf also. The said Kannimuthu died in the year 2003. The petitioner could not trace out the bundle given to Kannimuthu. During 2010, the petitioners came to know about the exparte decree, when the respondent came to take possession of the property and also contended that the respondent filed

altogether five suits. One of the defendant, Kumaresan contested the suit and the suit was decreed. The first appeal filed by the said Kumaresan was allowed. The Second Appeal and S.L.P filed by the respondent herein were dismissed. The respondent has no right over the suit property. The petitioners have got good case on merits and no prejudice will be caused to the respondent in allowing the applications filed to condone the delay of 3247 days and 3923 days in filing the petitions to set aside the exparte decrees dated 10.10.2002 and 30.11.2000.

5.The respondent filed separate counter affidavits and contended that the petitioners were aware of the exparte decree, but did not take steps to set aside the same. They awaited for the result of the appeals filed by the said Kumaresan. The reasons given by the petitioners are not valid to condone the delay and prayed for dismissal of the applications.

6.The learned Judge considering the averments in the affidavits, counter affidavits, oral and documentary evidence, dismissed the applications holding that petitioners have not given any sufficient reason to condone the delay of 3075 days, 3247 days

and 3923 days in filing the petitions to set aside the exparte decrees dated 31.03.2003, 10.10.2002 and 30.11.2000.

7. Against the said orders of dismissal dated 06.02.2015 made in I.A.Nos.364 to 366 of 2011 in O.S.Nos.118, 114 and 122 of 2000, the petitioners have come out with the present three Civil Revision Petitions.

8. The learned counsel for the petitioner relied on the judgment reported in **2016 (1) CTC 481 (Kottar Chettu Nainar Desika Vinayagar Devaswom Trust, rep. By its Trustee 2 to 5 and others vs. The Assistant Commissioner, HR & CE Department, Nagercoil, Vadiveeswaram Village, Agatheeswaram Taluk, Kanyakumari District and others):**

"17..... On the other hand, if the Court below refuses to condone the delay and such an Order is challenged, certainly the role of the Revisional or Appellate Court is not limited to ascertain as to whether such Order exhibits any perversity alone. On the other hand, such Revisional or Appellate Court has to necessarily go into the totality of facts and circumstances of the case and find out as to whether such refusal to condone the delay has resulted in miscarriage of justice. It is to be borne in mind if an

Application for condoning the delay in filing the Appeal is dismissed, rights of the parties on the merits decided by the Trial Court become final and conclusive without allowing the Appellate Court to decide on merits the correctness or otherwise of the Judgment and the Decree passed by the Trial Court. Therefore, refusal to condone the delay would seriously affect the parties whereas it is not so in the case where the delay is condoned. Moreover, the Appellate Court, undoubtedly, is also a fact finding Court. Therefore, it is all the more necessary for the Appellate Court to go into the totality of the facts and circumstances of a particular case, while considering the Application for condoning the delay, in order to find out as to whether certain facts or question of law decided by the Trial Court are required to be considered on merits once again, so as to see that failure of justice, does not result in, merely on the technical ground of delay in filing the Appeal. At this juncture, I would like to rely on a decision of the Apex Court reported in Laxmibai V. Bhagwantbuva, 2013 (1) MWN (Civil) 446 (SC): 2013 (4) SCC 97, wherein the Apex Court has observed at Paragraph 49 as follows:

"49.... When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred and the Courts may, in the larger interests of administration of

justice may, execute or overlook a mere irregularity or a trivial breach of law for doing real and substantial justice to the parties and pass Orders, will serve the interest of justice best."

and contended that the facts are also to be analysed while deciding the application filed to condone the delay in filing the petition.

9. Heard the learned counsel for the petitioners and perused the materials available on record. Though notice has been served on the respondent and their name is printed in the cause list, there is no representation either in person or through counsel.

10. As far as the petitioner in C.R.P.No.4151 of 2015 is concerned, he has stated that he met with an accident and suffering from illness and was bedridden and therefore, could not contact the Advocate and contest the suit. The petitioner has not given nature of illness, when he recovered and he contacted his Advocate. The petitioner has made vague allegations for the delay in filing the application.

11. As far as the petitioners in C.R.P.Nos.4152 and 4153 of

2015 is concerned, according to them, after receiving summons, they gave vakalat to one Kannimuthu, who informed them that he would look after the case on their behalf. The said Kannimuthu died in the year 2003 and they could not follow the case. From the materials available on record, it is seen that the exparte decree was passed on 10.10.2002 in C.R.P.No.4152 of 2015 and 30.11.2000 in C.R.P.No.4153 of 2015. The exparte decree against the petitioners in C.R.P.No.4152 of 2015 is long before the death of Kannimuthu in road accident in the year 2003. The petitioners failed to follow up the case after giving vakalat to him. Even after the death of Kannimuthu, they have not found the stage of the suit and did not file the applications to condone the delay in filing the applications to set aside the exparte decree till 2010. The reasons given by the petitioners for the delay in filing the application for ten years and eleven years are not valid and sufficient to condone the delay.

12.It is well settled law that application for condoning the delay must be considered liberally and length of delay is not a criteria. The Courts must see whether the parties have given acceptable and valid reason and the intention of the parties is bonafide and not malafide. The parties should not be shut down at

the threshold itself and they must be given an opportunity to put forth their case on merits. At the same time, the other party should not be seriously prejudiced. In the present case, the petitioners have not given any valid and sufficient reason to condone the delay. The intention of the petitioners is not bonafide. In the circumstances, the judgment relied on by the learned counsel for the petitioners is not applicable to the facts of the present case. In the circumstances, there is no illegality or irregularity warranting interference by this Court with the orders of the learned Judge dated 06.02.2015 made in I.A.Nos.364 to 366 of 2011 in O.S.Nos.118, 114 and 122 of 2000.

13.In the result, these Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

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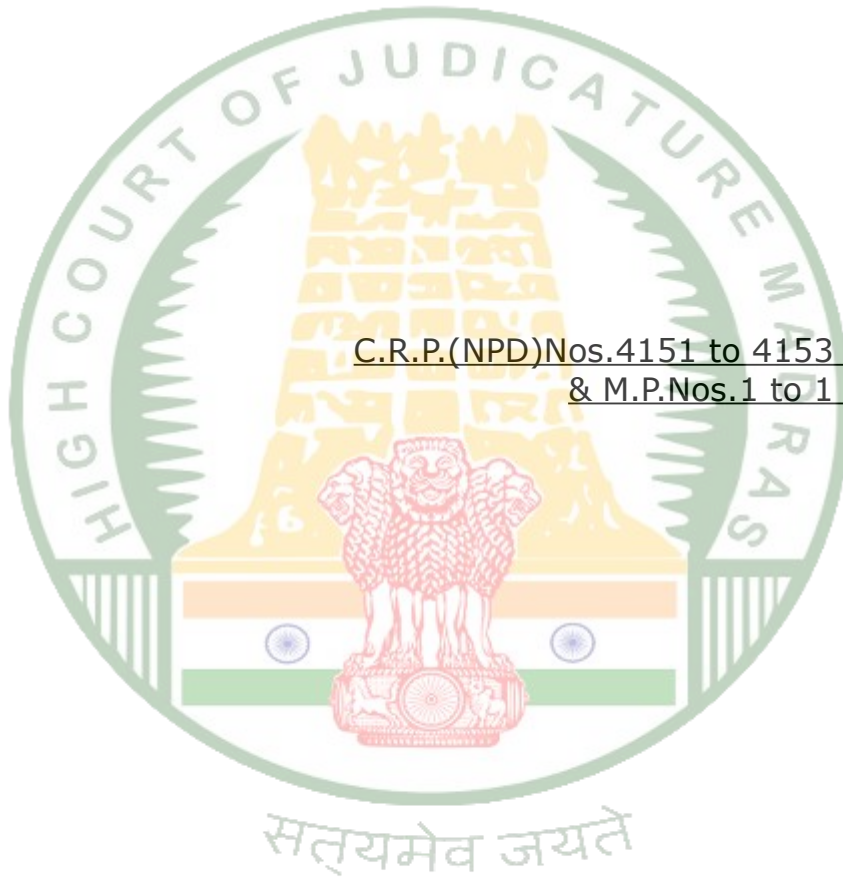
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V.M.VELUMANI, J.

To

The Additional Subordinate Judge,
Chengalpattu.



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& M.P.Nos.1 to 1 of 2015

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