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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.09.2018

PRONOUNCED ON: 10.10.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

Rev.Application (MD) No.42 of 2018

CMP(MD) 3467 of 2018

in

C.M.P. (MD) No.2676 of 2017

in

C.R.P. (MD) No.SR46848 of 2016

P.Thangavelu Thevar

... Applicant

Vs.

1.Avudaiparvathi

2.Ramachandran

3.Vellaithai

... Respondents

Prayer: Review Application filed under Order XLVII Rule 1 & 2 of C.P.C., to review the order dated 12.09.2017 in C.M.P.(MD)No.2676 of 2017 in C.R.P.(MD) No.SR46848 of 2016 on the file of this Court.

Prayer in CMP(MD)2676 of 2017:

Petition filed under Section 5 of limitation Act, praying this Court to condone the delay of 144 days in preferring the CRP(MD)SR 46848 of 2016.

Prayer in CRP(MD)SR.46848 of 2016:

Petition filed under Section 115 of Code of Civil Procedure, to set aside the fair and decreetal order, dated 12/04/2016, passed in I.A No.164 of 2015 in O.S.No.39 of 2010 on the file of the Subordinate Judge, Virudhunagar.

For Applicant

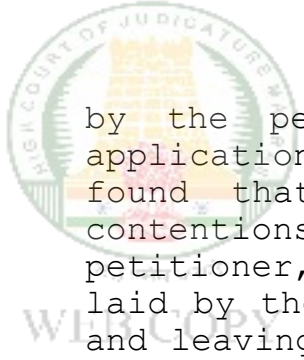
: Mr.S.Subbiah, SC

for M/s. P.Jessi Jeeva Priya

O R D E R

The Review Application is directed to review the Order dated 12.09.2017 passed in C.M.P.(MD) No.2676 of 2017 in CRP.(MD) No.SR46848 of 2016.

2. The petitioner has suffered an exparte decree in the partition suit laid by the first respondent in O.S.No.39 of 2010 on the file of the Subordinate Court, Virudhunagar, and seeking to setaside the abovesaid exparte decree passed against him on 30.04.2013, it is found that, the petitioner has laid an application to set aside the same, and inasmuch as, there is a delay of 454 days in filing the said application, the application has been preferred

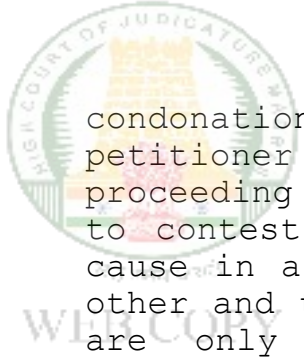


by the petitioner to condone the abovesaid delay. The said application was contested by the respondent and accordingly, it is found that the Court below on an appreciation of the rival contentions put forth by the respective parties and finding that the petitioner, despite having knowledge about the pendency of the suit laid by the first respondent having chosen not to contest the same and leaving the same to go for exparte and further, the petitioner having not adduced sufficient cause to condone the enormous delay as abovestated, accordingly, dismissed the aforesaid application preferred by the petitioner for the condonation of delay. Meanwhile, it is also noted that the first respondent has moved the Court for passing the final decree in terms of the preliminary decree passed in the partition suit.

3. Challenging the order of dismissal of the petition laid by him to condone the delay of 454 days, it is found that the petitioner has levied the Civil Revision Petition in the High Court. Inasmuch as the petitioner has not come forwarded with the Civil Revision Petition in time and on the other hand, there is a day of 144 days in filing the Civil Revision Petition, accordingly, the petitioner has laid the Civil Miscellaneous Petition No.2676 of 2018 to condone the abovesaid delay. The said application was contested by the first respondent.

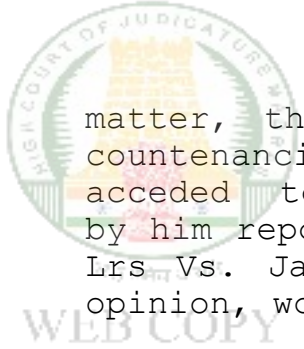
4. This Court after considering the rival contentions put forth by the respective parties in the abovesaid delay condonation application, noting that the petitioner has not given any valid cause at all for the delay occasioned and accordingly, the reason given by him is also found to be not true and further noting that the only aim of the petitioner is to procrastinate the proceeding in the partition suit one way or the other, accordingly, noting that right from the inception, the petitioner has not evinced interest to contest the matter duly in time and on the other hand, been delaying the proceeding one way or the other by filing application after application without assigning any sufficient cause with reference to the same, accordingly, determining that the tactics had been employed by the petitioner only to delay the proceeding in the suit, with a view to cause hardship to the first respondent, accordingly finding that the cause projected by the petitioner for the condonation of delay not being a sufficient cause and cannot be accepted, resultantly, dismissed the petition to condone the delay of 144 days in preferring the Civil Revision Petition by the order dated 12.09.2017. Seeking to review the said order, the present revision petition has come to be laid by the petitioner.

5. In the Review Petition, the petitioner's counsel again reiterated the same reasons as put forth on behalf of the petitioner for the condonation of delay and contended that the Court has not taken into consideration the cause projected by the petitioner in the right perceptive and erred in dismissing the petition to condone the delay. However, when this Court had already noted that no sufficient cause had been projected by the petitioner for the



condonation of delay and further, this Court had noted that the petitioner right from the inception, had been delaying the suit proceeding one way or the other, without making any serious endeavor to contest the same and accordingly, unable to project sufficient cause in accepting the application preferred by him one way or the other and the attempts of the petitioner in filing the applications are only aimed to cause hardship to the first respondent, accordingly, determining that the cause projected by the petitioner would not fall within the meaning of sufficient cause as contemplated under law, accordingly, dismissed the petition filed to condone the delay. In such view of the matter, when this Court had considered all the aspects of the matter by taking into consideration, the rival contentions put forth by the respective parties in the correct perceptive, both on factual matrix as well as on legal aspects, in such view of the matter, the contention of the petitioner that this Court erred in dismissing the application filed to condone the delay and therefore the said order requires to be reviewed as such cannot be countenanced in any manner. As abovenoted earlier, the petitioner by way of the review application is only making another attempt to reagitate the same cause as projected by him before the Court while deciding the main application and inasmuch as the order sought to be reviewed is found to be perfect in order and there being no mistake or error apparent on the face of the record and the petitioner has also not projected any other sufficient cause or reason for entertaining the review application, it is found that the review application is devoid on merits.

6. During the course of arguments, the argument has been put forth by the learned Senior Counsel appearing for the petitioner that the first respondent has committed a fraud on the Court in obtaining the decree passed in his favour in the main suit and accordingly, inasmuch as the said plea had been raised by the petitioner earlier, on that ground, it is his contention that the review application requires to be accepted. The mere plea with reference to the same, may not constitute proof. Further, if really, the abovesaid cause projected by the petitioner i.e., the respondent having committed a fraud on the Court in obtaining the decree in his favour, is genuine, the petitioner would have endeavoured in all seriousness to contest the partition suit laid by the respondent one way or the other in the manner known to law and on the other hand, it is found that right from the inception, the petitioner has not at all shown any inclination to defend the partition suit laid by the first respondent in the manner known to law and on the other hand, despite knowing the pendency of the said suit, left the matter to go for exparte and even thereafter not having chosen to set aside the exparte decree passed against him within the time allowed by law and on the other hand, he taking his own time in filing application after application without showing sufficient cause to stall the proceeding one way or the other with the sole aim of causing hardship and inconvenience to the first respondent only to ensure that she does not reap the benefits of the decree passed in her favour in the main suit, in such view of the



matter, the abovesaid cause projected by the senior counsel for countenancing the review application as such cannot be readily acceded to. In such view of the matter, the decision relied upon by him reported in 1994 (1) SCC [S.P. Chengalvaraya Naidu (Dead) by Lrs Vs. Jagannath (Dead) By Lrs and Others], in my considered my opinion, would not be applicable to the facts of the case at hand.

7. As abovenoted, the review application is sought to be projected to review the order passed by the Court in refusing the application preferred for the condonation of delay in filing the civil revision petition. When with reference to the same, the petitioner has not made out any cause to review the order impugned and when the order impugned does not on the face of it, point out any mistake or error and when the abovesaid reason projected by the petitioner is found to be not germane for deciding the review application as such and also not in any manner relevant for the determination of the delay condonation application, it is seen that absolutely no merit is noted in the Review application for entertaining the same.

8.The Review Application is found to be not in consonance with the principles relating to review jurisdiction as outlined by the Apex Court in the decision reported in 2013 (8) SCC 320 [Kamalesh Verma Vs. Mayawati and Others]

9.In the light of the abovesaid factors, the Review Application is found to be devoid of merits and accordingly, the same is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/
Assistant Registrar(CS-III)

/True copy/

Sub Assistant Registrar(CS-I)

+1cc to Mr.P.JESSI JEEVA PRIYA, Advocate, SR.No.90123
+1cc to Mr.J.VIJAYARAJA, Advocate, SR.No.92160
+1cc to M/s.Special Government Pleader,SR.No. 91779

Order made in
Rev.Application (MD) No.42 of 2018

MFA
KK/RP/SAR-1/30.11.2018/4P-4C