



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 14.06.2018

DELIVERED ON : 03.08.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No.517 of 2018

and

CMP(MD)No.2264 of 2018

R.P.K.Selvakumar

.. Petitioner/Petitioner/Defendant

vs

Riyalul Jinan alias Arafi Madarasa
attached to Mohamathu Nainar Pallivasal,
Mohamathu Nainar Pallivasal Shannathi Street,
Pettai, Tirunelveli
through its Secretary

.. Respondent/Respondent/Plaintiff

Prayer: Revision Petition filed under Section 115 of C.P.C., against the fair and decretal order dated 02.02.2018 passed in I.A.No.529 of 2017 in O.S.No.135 of 2010 on the file of the Principal Subordinate Court, Tirunelveli.

For Petitioner
For Respondent

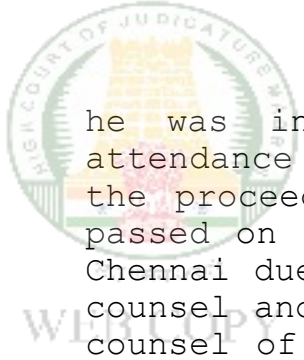
: Mr.H.Arumugam
: Mr.S.Balasubramanian

ORDER

This Civil Revision Petition has been filed under Section 115 of C.P.C., to set aside the fair and decretal order passed in I.A.No.529 of 2017 in O.S.No.135 of 2010 on the file of the learned Principal Subordinate Court, Tirunelveli dated 02.02.2018 by allowing this Civil Revision Petition.

2.The learned counsel for the petitioner submitted that the respondent herein filed a suit for permanent injunction in O.S.No.135 of 2010 on the file of the learned Principal Subordinate Court, Tirunelveli restraining the petitioner from constructing any building in S.No.214 of Tirunelveli Town.

3.The case of the respondent/plaintiff is that some portion of the above S.No.214 is his exclusive property and the remaining portion in the survey number is a common lane. The Petitioner has filed written statement and contested the suit. One Selvaraj, who is the building contractor, was looking after the suit proceedings and



he was instructed to inform this petitioner as and when his attendance is required before the Trial Court but he did not attend the proceedings and also failed to inform and ex-parte decree was passed on 26.04.2016. As the Petitioner was constrained to stay in Chennai due to his business he was not in a position to contact his counsel and update the suit status. On receipt of a notice from the counsel of the respondent, he came to know the ex-parte decree and immediately filed the petition to set-aside the ex-parte decree along with a petition in I.A.No.529 of 2017 to condone the delay of 159 days. But the Court below dismissed the petition, without considering the fact properly that the Contractor Selvaraj was entrusted to look after the suit proceedings and he failed to intimate the petitioner with regard to the status of the suit.

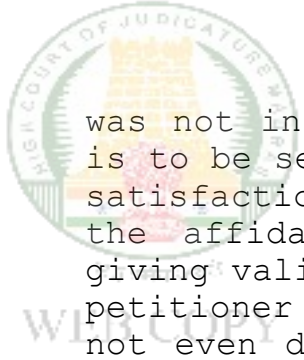
4.The learned counsel for the petitioner reiterated that there is no wilful or wanton delay and immediately on knowing the ex-parte decree, through the legal notice issued by the respondent the petition was filed and the reason for delay is genuine and now the respondent has filed execution petition for demolition saying that the construction was put up as if after the decree, even though the decree itself only for permanent injunction, taking advantage of dismissal of condone delay petition. He has further submitted the valuable right of the petitioner will be lost if the delay is not condoned.

5.The learned counsel for the respondent has submitted that the delay is not explained properly and the execution petition has been filed since taking advantage of the non-extension of interim injunction, during pendency of the suit the petitioner has put up construction, hence the EP was filed and therefore the delay cannot be condoned.

6.I heard Mr.H.Arumugam, learned counsel appearing for the petitioner and Mr.S.Balasubramanian, learned counsel appearing for the respondent and perused the entire materials available on record.

7.It is an admitted fact by the respondent that the construction was put up taking advantage of non-extension of interim injunction. When admittedly the interim injunction was not extended there is no bar for doing anything and the petitioner cannot be faulted for making construction. Having obtained an ex-parte decree for permanent injunction the respondent cannot maintain execution for demolition, that too when he admits that the construction was pending suit and when the interim order was not extended. Be that as it may the issue in the revision is only with respect to the condonation of delay of 159 days and the Court has to see that the delay is satisfactorily explained.

8.The Court below has given a finding that despite many adjournments the petitioner did not come forward to defend the suit. The Court below has not even considered the reason for non-appearance and well as the reason stated by the petitioner that he



was not informed about the suit proceedings by the Contractor. It is to be seen that the Court below has not stated anything about the satisfaction or dissatisfaction of the reason for delay explained in the affidavit but it has simply dismissed the petition without giving valid reasons. This Court finds that the reason stated by the petitioner is genuine and acceptable and in fact the respondent has not even denied the stay of petitioner at Chennai but stated that the stay at Chennai has no relevance to contest the suit at Tirunelveli.

9.The learned counsel for the petitioner relied upon the judgment of Hon'ble Supreme Court in B.S. Sheshagiri Setty v. State of Karnataka, reported in (2016) 2 SCC 123, which has held as follows :

"(1) Ordinarily a litigant does not stand to benefit by lodging an appeal late.

(2) Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

(3) 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

(4) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

(5) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

(6) It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

10.The learned counsel for the petitioner cited a judgment of this Court, in Jayakani and others -Vs- M.Sivasami case reported in 2017 (1) MWN (Civil) 393 considered the case of delay of 1155 days and considering the issues arose for adjudication raised in the written statement condoned the delay.

11.The learned counsel for the petitioner also submitted that the judgment of the Hon'ble Supreme Court in Improvement Trust, Ludhiana - vs- Ujagar Singh and others reported in 2010 (6) SCC 786, wherein the Hon'ble Supreme Court has held unless malafide is writ
<https://hcservices.ecourts.gov.in/hcbservices/>
 large on the conscience of party, as a normal rule delay should be condoned and the attempt should always be made to allow the matter to be decided on merits rather than through it out on technicalities.



12. Considering all the above judgments, this Court is of the view that the meritorious issue raised in the written statement cannot be thrown away on the ground of delay alone. In the present case the delay is only 159 days and the same is satisfactorily explained and thus the delay should be condoned.

13. In the result:

(a) the Civil Revision Petition is allowed by setting aside the fair and decretal order passed in I.A.No.529 of 2017 in O.S.No.135 of 2010 on the file of the learned Principal Subordinate Court, Tirunelveli dated 02.02.2018;

(b) the learned trial Judge namely, Principal Subordinate Court, Tirunelveli, is directed to number the set aside petition filed under Order 9 Rule 13 of C.P.C. and dispose of the same within a period of four weeks from the date of receipt of a copy of this order;

(c) after passing the order in the set aside petition, the learned Principal Subordinate Court, Tirunelveli is directed to dispose of the suit on merits within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar (CS-III)

To

The Principal Subordinate Court, Tirunelveli.

+1cc to M/S.H.ARUMUGAM, Advocate SR.No. 77484

order made in
C.R.P. (MD) (PD) No.517 of 2018
and
CMP (MD) No.2264 of 2018
03.08.2018

VSV

JM/KAK/SAR 3/28.08.2018/4P/3C