



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.04.2018

Pronounced on : 02.08.2018

CORAM

WEB COPY

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

C.R.P. (MD) (NPD) No.831 of 2018

Seeniappan (Died)

1.S.Balasubramanian

2.S.Arumugam

3.S.Mallika

4.S.Selvi

.. Petitioners/Plaintiffs

(Petitioners 1 to 4 are substituted as
LRs of the deceased sole petitioner
Seeniappan vide Court order dated
26.07.2018 made in CMP(MD)No.6528/18
in CRP(MD)No.831 of 2018)

vs.

Kannimuthal (died)

Ramachandran (died)

1.Chellathai

2.Subbiah alias Chinna Subbiah

3.A.Selvam

4.S.Muthuvijayan

5.Kaliappan

6.V.Nagaraj

7.V.Jeyaraj

8.J.Munusamy

9.J.Eswari

10.Pandiyarajan

11.Gnanammal

... Respondents/Defendants

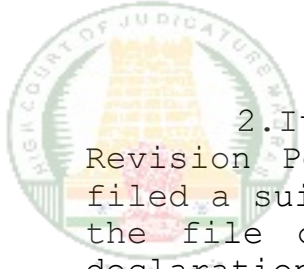
PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decretal order dated 04.12.2017 made in I.A.No.525 of 2014 in O.S.No.345 of 2006 on the file of the District Munsiff Court, Virudhunagar.

For Petitioner : Mr.C.Meenakshi Rama Prabhu

For Respondents : Mr.K.Rajeshwaran

O R D E R

That the instant Civil Revision Petition is filed by the Plaintiff in the suit in O.S.No.345 of 2006, as against the dismissal of his I.A.No.525 of 2014 dated 04.12.2017 which was filed to condone the delay of 246 days in restoring the suit which was dismissed for default on 19.12.2013.



2. It is the submission of the learned counsel for the Revision Petitioner that the Revision Petitioner as plaintiff has filed a suit against the respondents herein in O.S.No.345 of 2006 on the file of the learned District Munsif Court, Virudhunagar for declaration and permanent injunction. According to the learned counsel, the Revision Petitioner is aged about more than 81 years and he is having so many old age ailments and because of his health condition he was not in a position to appear before the Trial Court to give the instruction to his counsel on 19.12.2013 when the suit was posted for trial. The Revision Petitioner came to know about the same subsequently. Thereafter he filed the above I.A.No.525 of 2014 to condone the delay of 246 days in restoring the suit on file.

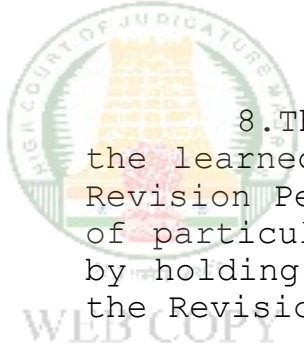
3. The said application was resisted by the Respondent/Defendant contenting that though the Revision Petitioner stated that because of his old age ailment, he was not able to appear before the Court on the date when the suit was posted for Trial and subsequently he filed the above application to condone the delay, however to substantiate the same he has not produced any medical certificate. Further there is no acceptable, proper and sufficient reason was given by the Revision Petitioner to condone the delay of 246 days in restoring his suit. As regards the condonation of delay is concerned, each and every day delay should be explained properly. In this case the Revision Petitioner has not assigned any valid reason to condone the delay of 246 days and hence he prayed to dismiss the application.

4. The Trial Court after considering rival submission on either side was pleased to dismiss the application, holding that the Revision Petitioner purposely delayed the case, even for taking steps the above suit was adjourned from 2011 to 2012. Challenging the same, the present Civil Revision Petition is filed.

5. The Learned counsel for the petitioner requested this Hon'ble Court that the petitioner herein may be given one opportunity to get the decree on merits and he is prepared to pay cost for the delay on his part. On the other hand, the learned counsel for the respondent submitted that no leniency could be shown to the petitioner herein in condoning the delay, since he has not assigned any reason at all for each and every day delay. Hence, he prays to dismiss the Civil Revision Petition.

6. I heard Mr.C.Meenakshi Rama Prabhu, learned counsel for the petitioners and Mr.K.Rajeshwaran, learned counsel for the respondents and the entire materials available on record are perused.

7. The revision petitioner Mr.Seeniappan was died. Therefore, the petitioners 1 to 4 who are the legal heirs of Seeniappan were brought on record as per the orders of this Court in CMP(MD)No.6528 of 2016 in CRP(MD)No.831 of 2018 dated 26.07.2018.



8. The perusal of the impugned order would show that though the learned Trial Judge wanted to give one more opportunity to the Revision Petitioner to contest the suit on merits, because of bereft of particulars for the delay, dismissed the condone delay petition by holding that after 19.12.2013 no single reason was assigned by the Revision Petitioner to condone the delay of 246 days.

9. It is true that the Revision petitioner has not assigned any proper or acceptable or sufficient reason to condone the delay of 246 days to restore the suit. This Court also accepted the view expressed by the Trial Court; however the parties should not be divergent to further litigation because of their fault in projecting their case and non-furnishing of proper reason. In this case, admittedly the Plaintiff has allowed the suit to be dismissed for default and he has assigned the reason for delay was only due to his old age and its allied ailment. It is true that the suit filed by the Plaintiff was dismissed for default and by allowing the Plaintiff to peruse his own suit to continue further, no prejudice would be caused to the Respondents. At the same time, this Court would also consider the hardship and mental agony caused to the Respondents herein because of the delay and they are also unnecessarily traversed to the Court and the same shall be compensated adequately by directing the Revision Petitioner to pay cost.

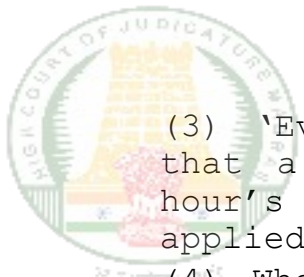
10. In this regard it is useful to refer the Judgment of the Hon'ble Supreme Court in "B.S. Sheshagiri settee and others -Vs- State of Karnataka and others" case reported in 2016 (2) SCC 123 has held that when justice is at stake, technical or pedantic approach should not be adopted by courts to do justice when there is miscarriage of justice caused to public litigant.

In Para No.21 of the judgment, the Hon'ble Supreme Court has reiterated the earlier judgment which read as follows:

"21. The learned counsel appearing on behalf of the appellants, Mr H. Chandra Shekhar, on the other hand, contends that the High Court erred in setting aside the order of the Minister of Cooperation, Government of Karnataka in the revision petition on the ground that it was barred by limitation. The learned counsel places reliance upon the case of Collector (LA) v. Katiji, wherein this Court has laid down the following principles to be applied while condoning delay: (SCC p. 108, para 3)

"(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."

11. In view of the foregoing reason and in the light of the decision cited supra, this court is of the considered opinion that the Plaintiff/Revision Petitioner should be given one more opportunity to get the contested decree on merits by considering his old age. Therefore, this Court, in the interest of justice, equity and fair play deem it fit and proper to condone the delay of 246 days on condition that the Plaintiff/Revision petitioner shall pay a sum of Rs.10,000/- towards cost to be paid to the Respondents 7 and 8 herein, each are entitled to Rs.5,000/-.

12. In the result:

(a) this Civil Revision Petition is allowed and the order and decree made in I.A.No.525 of 2014 in O.S.No.345 of 2006 dated 04.12.2017 on the file of the learned District Munsif Court, Virudhunagar is hereby set aside;

(b) the Revision Petitioner/Plaintiff is directed to pay cost of Rs.5,000/- each to the Respondents 7 and 8 herein (in total Rs.10,000/- towards costs) within a period of two weeks from the date of receipt of a copy of this order and;

(c) the Learned District Munsif, Virudhunagar is directed to number the restoration application and to allow the same within a period of two weeks from the date of payment of cost of Rs.10,000/- made by the Plaintiff and the Learned Judge is further directed to dispose of the suit within a period of four months thereafter.

Sd/-

Assistant Registrar (CS-I)

/True Copy/



To

The District Munsif, Virudhunagar.

+1cc to M/S.C.Meenakshi Rama Prabhu, Advocate SR.No. 76690

+1cc to M/S.K.Rajeshwaran, Advocate SR.No. 77068

order made in
C.R.P. (MD) (NPD) No.831 of 2018

02.08.2018

vsv

JM/RP/SAR 3/04.09.2018/5P/4C