



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.06.2018

Pronounced on : 30.07.2018

CORAM

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (NPD) (MD) Nos.840 and 841 of 2018

and

C.M.P. (MD) Nos.3696, 3697, 4294 & 4295 of 2018

Karikadai Balu @ Baluchamy ... Petitioner/Petitioner/Petitioner/
3rd Party in both petitions

-vs-

H.M.D.Khan ... Respondent/Respondent/Respondent/
Petitioner in both petitions

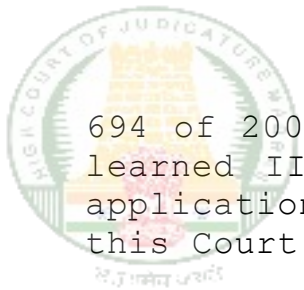
PRAYER IN CRP(NPD)840/2018: Civil Revision Petition filed under section 115 of Civil Procedure code praying to set aside the fair and decreetal order dated 31.07.2017 passed in E.A.No.79 of 2016 in E.A.No.693 of 2008 in E.P.No.65 of 2004 on the file of the 2nd Additional Sub Court, Madurai by allowing this Civil Revision Petition.

PRAYER IN CRP(NPD)841/2018: Civil Revision Petition filed under section 115 of Civil Procedure code praying to set aside the fair and decreetal order dated 31.07.2017 passed in E.A.No.80 of 2016 in E.A.No.694 of 2008 in E.P.No.65 of 2004 on the file of the 2nd Additional Sub Court, Madurai by allowing this Civil Revision Petition.

For Petitioner : Mr.M.Kannan
For Respondent : Mr.V.Nagendran

C O M M O N O R D E R

The respondent herein is the plaintiff in O.S.No.19 of 2002 on the file of the Subordinate Court, Madurai and in the suit, the plaintiff sought for declaration among various other reliefs. An exparte decree was passed on 04.04.2002 and subsequently, the plaintiff had filed an execution petition in E.P.No.65 of 2004 for due execution of the decree granted in his favour. At that juncture, the revision petitioner, claiming to be a third party to the suit had filed E.A.Nos.693 and 694 of 2008 in E.P.No.65 of 2004 before the learned I Additional Sub Court, Madurai for declaration as well as stay of execution proceedings respectively. Both the applications were dismissed for default and thereafter, on coming to know of the dismissal of those application, the revision petitioner has filed E.A.Nos.79 and 80 of 2016 for condonation of delay of 210 day in restoration of E.A.Nos.693 and



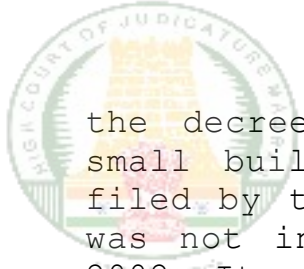
694 of 2008. Since no proper reasons were assigned for the delay, learned II Additional Sub Judge, Madurai has dismissed both the applications and aggrieved by the same, the petitioner is before this Court.

2. It was the case of the revision petitioner that he had purchased the suit schedule property in the year 1972 from one Raman Servai and constructed a house, besides doing mutton stall business in the property for quite number of years. A suit in O.S.No.255 of 1980 was instituted against him by one Balakrishnan Aiyar, which was decreed in favour of the said Balakrishnan and went upto this Court and ended in dismissal against the petitioner. It was the further case of the petitioner that though the said Balakrishnan won the battle, he did not file any execution petition, thereby he continued to reside in the suit schedule property for the last 36 years, namely more than the statutory period prescribed for adverse possession and enjoyment of the suit property.

3. The revision petitioner stated that while that being the case, the plaintiff / respondent herein had filed a suit in O.S.No.19 of 2002 and obtained an exparte decree in his favour, suppressing the earlier judgment and decree passed in O.S.No.255 of 1980 and such factum was known to the petitioner only after filing of E.P.No.65 of 2004 by the respondent herein. When the defendants in O.S.No.19 of 2002 had no title or right over the property, the order of execution passed against them has become invalid and the said order will not in any way bind upon the revision petitioner herein, as the delivery order passed in E.P.65 of 2004 can merely be construed as a paper delivery.

4. The revision petitioner further stated that he has become the owner of the suit schedule property pursuant to the non execution of judgment by the said Balakrishnan, who filed the suit against him in O.S.No.255 of 1980 and therefore, the respondent herein has no rights to claim title over the property. Though he had filed E.A.Nos.693 and 694 of 2008 in time for declaration and stay of execution, the dismissal of those applications was known to him only after the filing of E.A.No.28 of 2016 by the defendants in O.S.No.19 of 2002 for setting aside the exparte order and in the interregnum period, delay had occurred. Contending that he has been in enjoyment of the property for long time by way of adverse possession and the order of execution without hearing him would affect his livelihood, it is prayed that the orders of the Trial Court are liable to be dismissed.

5. The above submission was highly refuted by the learned counsel for the plaintiff / respondent herein, denying the purchase of the property from one Raman Servai by the petitioner was illegal, void and not binding upon the respondent. Pursuant to



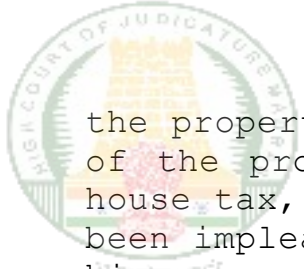
the decree passed in his favour, he had already constructed a small building in the property and therefore, the alleged suit filed by the petitioner against his vendor in O.S.No.255 of 1980 was not in respect of the property in question in O.S.No.19 of 2002. It was further contended that even for the sake of argument, if it is taken that the property involved in the present suit and in O.S.No.255 of 1980 was one and the same, the petitioner did not succeed in the said suit as per his own admission and therefore, the claim of adverse possession cannot be entertained and the petitioner attempts to create sympathy over his own fault.

6. The further contention of the plaintiff / respondent herein was that he had filed E.A.No.562 of 2008 in E.P.No.65 of 2004 for police protection to deliver the property to him, pursuant to which, the property was delivered to him on 21.08.2008. Even after taking delivery of possession, he was not allowed to enjoy the fruits of decree, as the sons of the revision petitioner trespassed into the property and illegally removed the fence and caused damage to the tune of Rs.10,000/-. It was stated that he had also lodged a complaint on 27.09.2008 before Police for taking action against them and therefore, the averments made in the petition that the revision petitioner has been in possession and enjoyment of the property is false and he had already taken delivery of the property as early as on 21.08.2008. Stating that the revision petitioner has no independent rights or title over the property, these petitions have to be dismissed on imposition of heavy costs on the petitioner for wasting the precious time of the Court.

7. Heard the learned counsel on either side and also perused the material documents available on record.

8. A close scrutiny of the entire facts and circumstances of the case would unfold that it is the main grievance of the revision petitioner that the plaintiff / respondent herein, by suppressing the judgment and decree in O.S.No.255 of 1980 had obtained an exparte order in O.S.No.19 of 2002, which affected his adverse possession. Though he had claimed the title over the property only on adverse possession, as the plaintiff in O.S.No.255 of 1980 had not filed any execution petition within 12 years as prescribed under the Statute, he had mainly thrown light upon the fraudulent act of the respondent herein, viz., suppression of the earlier suit. It was not in dispute that the petitioner filed applications for declaration of title and stay well within time, but, however, on account of his non appearance, the applications were dismissed for default and further delay had occurred in restoration of those petitions.

9. It was the counter case of the respondent herein that <https://hdservices.courts.tn.in/hdservices/> was not a successful decree holder and claimed title only by way of adverse possession and the said possession should not curtail a person, who has got a valid decree to enjoy



the property. Both claim that they are in possession and enjoyment of the property, besides placing on record that they are paying house tax, etc. It was the stand of the petitioner that he had not been impleaded as party to the suit and the factum of dealing with his property by the respondent was known to him only after issuance of notice in the application filed by the defendants in O.S.No.19 of 2002.

10. The main issue to be decided in this case is as to whether sufficient cause has been shown to condone the delay or not. Under Section 5 of the Limitation Act, it is only sufficiency of the cause that matters and not the length and breadth of the delay. While dealing with the Section 5 application, the question of diligence or bonafides are to be considered.

11. It is settled law that length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse.

12. In **Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & others**, reported in **2013 (5) CTC 547 (SC) : 2013 (5) LW 20**, the Hon'ble Supreme Court held that there should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an Application for condonation of delay. The Hon'ble Supreme Court referred to its earlier judgments in *G. Ramegowda, Major and others v. Special Land Acquisition Officer, Bangalore*, 1988 (2) SCC 142; *O.P. Kathpallia v. Lakhmir Singh (dead) and others*, 1984 (4) SCC 66; *State of Nagaland v. Lipok AO and others*, 2005 (3) SCC 752; *New India Insurance Co. Ltd. v. Shanti Misra*, 1975 (2) SCC 840; *Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation and another*, 2010 (5) SCC 459, which declared that the Court should be liberal in dealing with condone delay petition. In paragraphs 15 and 16, the Hon'ble Supreme Court held thus:

"15. From the aforesaid authorities the principles that can broadly be culled out are:

(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the Courts are not supposed to legalise injustice but are



(ii) The terms sufficient cause should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

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(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the Counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the Courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the Courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the Courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by



taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

(a) An Application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the Courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

(b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challan manner requires to be curbed, of course, within legal parameters."

13. In yet another case in **Maniben Devaraj Shah v. Municipal Corporation of Brihan Mumbai**, reported in **2012(5) SCC 157**, the Hon'ble Supreme Court held thus:

"24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting



his cause, then it would be a legitimate exercise of discretion not to condone the delay.

(emphasis supplied)“

14. The Hon'ble Supreme Court in the case of Improvement Trust, Ludhiana v. Ujagar Singh and others, reported in **2010 (6) SCC 786**, has held that while considering an application for condonation of delay, no straitjacket formula is prescribed to come to the conclusion, if sufficient and good grounds have been made out or not. It has been further stated therein that each case has to be weighed from its facts and the circumstances in which the party acts and behaves.

15. A two-Judge Bench of the Hon'ble Supreme Court in yet another case in Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation and another, reported in **2010 (5) SCC 459** has observed that the law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. Thereafter, the learned Judges proceeded to state that this Court has justifiably advocated adoption of liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate.

16. A reading of the whole judgments of the Hon'ble Supreme Court (cited supra) would implicitly make us clear that the rights of a party cannot be simply brushed aside or destroyed merely citing the reason of delay and the legal remedy should be kept alive for certain period, but at the same time, Courts should be vigilant enough with regard to the dilatory tactics being adopted by the parties.

17. In the case on hand, it was not the case of the plaintiff / respondent that the revision petitioner was put on notice during trial of the suit in O.S.No.19 of 2002 and the revision petitioner came to know of the adverse order passed against him only after receipt of notice in the application filed by the defendants. Though the revision petitioner did not succeed in the suit filed by his opponent in the year 1980, he claimed titled over the property by way of adverse possession and therefore, this Court feels that the delay of 210 days in these cases is not wanton or wilful and there is no any dilatory tactics being adopted by the petitioner in these cases.



18. Considering the overall facts and circumstances of the case, this Court is of the considered opinion that the revision petitioner, though not a party to the suit, but claims to be in possession, can be given one more opportunity to put forth his defence in respect of the suit property, as his vested rights, if any should not be taut without hearing him. Hence, in my view, the orders dated 31.07.2017 passed in E.A.Nos.79 & 80 of 2016 in E.A.Nso.693 & 694 of 2008 in E.P.No.65 of 2004 on the file of the 2nd Additional Sub Court, Madurai, are liable to be set aside

19. In the result,

a) these Civil Revision Petitions are allowed and the orders dated 31.07.2017 passed in E.A.Nos.79 & 80 of 2016 in E.A.Nso.693 & 694 of 2008 in E.P.No.65 of 2004 by the learned 2nd Additional Sub Court, Madurai, are hereby set aside;

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-II)

To:

1. The 2nd Additional Sub Judge,
Madurai.
2. The Section Officer, (2 copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.M.Kannan, Advocate Sr.No.75778
+1cc to Mr.V.Nagendran, Advocate Sr.No.76044

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ORDER IN
CRP(NPD) (MD) .Nos.840 and 841 of 2018
30.07.2018