



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.06.2018

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THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (NPD) (MD) No.157 of 2015
and M.P. (MD) No.1 of 2015

Nalli Ponnusamy

... Revision Petitioner/Plaintiff
-vs-

Kumbakonam Municipality

Rep. by its Commissioner,

Patel Building, Dr.Murthy Road,

Kumbakonam, Thanjavur District. ... Respondent/Defendant

PRAYER: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, praying to set aside the fair and decreetal order dated 15.09.2014 made in I.A.No.107 of 2011 in O.S.No.50 of 2003 on the file of the learned I Additional District Munsif, Kumbakonam and allow the Civil Revision Petition.

For Petitioner : Mr.B.Jameel Arasu

For Respondent : Mr.M.Rajarajan
Govt. Advocate

O R D E R

The revision petitioner is the plaintiff in O.S.No.50 of 2003 on the file of the learned I Additional District Munsif, Kumbakonam and in the suit, the plaintiff sought for the relief of declaration to declare the assessment in respect of the plaintiff's properties as illegal, etc. The suit was dismissed for default on 06.12.2005 on account of his non appearance. Therefore, the revision petitioner/plaintiff has filed an application in I.A.No.107 of 2011 for condoning the delay of 1825 days in filing a petition for restoration of the suit and the said application came to be dismissed by the Trial Court, on the ground that no proper reasons were assigned for the delay. Aggrieved by such dismissal, the revision petitioner is before this Court.

2. It is the case of the revision petitioner that he had been paying the house tax to the Municipality regularly without any default and since the tax demanded for the subsequent year was high and not admitted by the plaintiff, he had not paid the tax. Subsequently, the defendant issued a lawyer's notice to the plaintiff calling upon him to pay the tax and though a reply was sent on the side of the plaintiff, without considering the same, paper publication was effected for initiation of proceedings as per Revenue Recovery Act and therefore, the plaintiff was constrained to file a suit against the defendant. It is the further case of the



petitioner that pursuant to his ill-health, he was forced to move to Chennai for better treatment and therefore, he could neither be able to contact his Advocate nor appear in Court. Contending that his non appearance before the Trial Court is neither wanton nor wilful and no prejudice would be caused to other side, in the event of condoning the delay, it is prayed that the order of the Trial Court is liable to be set aside.

3. Learned Government Advocate appearing for the respondent has contended that despite several opportunities being given to the petitioner, he had not chosen to appear before the Trial Court, rather he has come up with a plea of ill-health, that too, with a delay of 1825 days. It is further contended that the petitioner has not adduced any reasons for such delay and as per the judgment of this Court in the case of *M/s. Gulf Air Company, Chennai vs. V.M. Rajalingam*, reported in (2005) 4 MLJ 676, the party filing the petition for condoning the delay has to show sufficient cause or bona fide for the delay, in absence of which, it can be inferred that the party has no interest in prosecuting the case and in such an event, the delay cannot be condoned. Therefore, the respondent sought for dismissal of the petition at the threshold.

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

5. It is stated by the petitioner that he had filed an affidavit before the Trial Court, explaining the reasons for the delay and the Trial Court has not taken into account the said affidavit and dismissed the petition in a biased manner. It is the claim of the respondent / defendant that inspite of sending several notice to the plaintiff, he had not paid the tax, which was the main reason for initiation of necessary action against him.

6. It is appropriate to state here that as repeatedly held by this Court, in the matter of condonation of delay, a lenient view should be taken to condone the delay. This Court, on earlier occasion in the case of *G. Krishnamoorthy vs., Arulmighu Sri Pataleeswarar Devasthanam*, rep. by its Executive Officer, Cuddalore, reported in 2010 (1) MWN Civil 837, has clearly held that the petition for condonation of delay can be allowed, if it is proved that the party could not be able to contact the lawyer in respect of his/her case.

7. In the present case on hand, it has been repeatedly reiterated by the petitioner that pursuant to his ill-health, there was no communication between him and his Advocate and therefore, the delay of 1825 days has occurred in filing petition to restore the suit, which is an acceptable ground to consider the case of the petitioner. Accordingly, upon hearing the submissions of both sides and finding merits in contention raised by the petitioner, this Court is of the view that the order dated 15.09.2014 made in *S. No. 111 in O.S. No. 50 of 2003* by the learned I Additional District Munsif, Kumbakonam, is liable to be set aside, but on payment of costs.



8. In the result,

(a) this Civil Revision Petition is allowed and the order dated 15.09.2014 made in I.A.No.107 of 2011 in O.S.No.50 of 2003 by the learned I Additional District Munsif, Kumbakonam, is hereby set aside, subject to the condition that the petitioner shall pay a sum of Rs.1,00,000/- (Rupees One Lakh only) to the respondent, within a period of three weeks from the date of receipt of a copy of this order;

b) the Trial Court, upon production of receipt in proof of payment of costs within time, is directed to restore the suit and dispose of the same within a period of four months thereafter, by conducting the trial on day-to-day basis without giving any unnecessary adjournments to either parties and both the parties are directed to give their fullest cooperation for early disposal of the suit within the time stipulated by this Court as above.

No costs. Consequently, connected M.P.(MD) No.1 of 2015 is closed.

Sd/
Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar (CS-IV)

To:

1. The I Additional District Munsif,
Kumbakonam.
2. The Record Keeper, VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1cc to Mr.M.RAJARAJAN, Advocate, SR.No. 67796

+1cc to Mr.B.JAMEEL ARASU, Advocate, SR.No.67753

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