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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 12.04.2018
DELIVERED ON : 02.08.2018
CORAM

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

C.R.P. (MD) (NPD) No.2413 of 2015

1.Kanchiraj @ Kangeyaraj
2.Chellayee .. Petitioners/Petitioners/Defendants
vs

Pappathi .. Respondent/Respondent/Plaintiff

Prayer: Revision Petition filed under Section 115 of C.P.C., against the order dated 20.02.2015 passed in I.A.No.524 of 2014 in O.S.No.32 of 2009 on the file of the District Munsif Court, Thuraiyur.

For Petitioner : Mr.S.Anand Chandrasekar
for M/s.Sarvabhauman
Associates

For Respondents : Mr.S.Shankar Ganesh

ORDER

This Civil Revision Petition is directed against the order dated 20.02.2015 passed in I.A.No.524/2014 in O.S.No.32/2009 on the file of the District Munsif Court, Thuraiyur, dismissing the petition filed by the petitioners under Section 5 of the Limitation Act. The petitioners are the defendants in the suit.

2. The plaintiff has filed the suit for declaration to declare that the suit properties belongs to her and for possession and also mesne profits. The said suit was decreed on 21.12.2009.

3. The petitioners have filed I.A.No.524 of 2014 to condone the delay of 1477 days in filing petition to set aside the ex parte decree alleging that they have no knowledge about the suit filed by the respondent and no summons were served on the petitioners. When the respondent was trying to alienate the suit property to a third party, the petitioners came to know about the suit filed by respondent and on 08.05.2013, the petitioners have given paper publication. Thereafter, the petitioners have filed petition to set aside the ex parte decree with delay condonation petition. The delay of 1477 days in filing petition to set aside the ex parte decree is neither willful nor wanton.



4. The respondent remained ex parte in I.A.No.524 of 2014.

5. Upon consideration of the submissions of the learned counsel for the petitioners, the trial Court dismissed I.A.No.524 of 2014. Aggrieved by the same, the petitioners have filed this Civil Revision Petition.

6. I heard Mr.Mr.S.Anand Chandrasekar for M/s.Sarvabhauman Associates, learned counsel for the petitioners and Mr.S.Shankarganesh, learned counsel for the respondent and also perused the materials available on record.

7. The learned counsel for the petitioners submitted that the trial Court failed to exercise its discretion vested in proper manner and the same is liable to be set aside. The trial Court failed to appreciate that the suit filed by the respondent is one for declaration and for recovery of possession. He submitted that though there was a discrepancy in the averments made by the petitioners and facts as found by the trial Court relating to knowledge of the suit, the approach of the trial Court in disbelieving the petitioners on the said basis is erroneous. The learned counsel further submitted that despite notice, the respondent has not entered appearance in I.A.No.524 of 2014 and contested the petition. In this circumstances, the trial Court ought to have been liberal in its approach.

8. The learned counsel for the respondent submitted that though the respondent was remained ex parte in I.A.No.524 of 2014 and has not contested the same, the trial Court having found that the delay has not been properly explained, dismissed the application of the petitioners. He would submitted that there is no illegality or perversity in the order of the trial Court.

9. The point that arises for consideration is whether the trial Court was right in dismissing the petition filed by the petitioners.

10. In its order, the trial Court pointed out that after the receipt of suit summons, the petitioners have engaged one Mr.V.Lakshminarayanan, Advocate and filed vakalat. When the suit was posted on 16.12.2009 for filing written statement, the petitioners have not filed the written statement and they were called absent and set ex parte and thereafter, on 21.12.2009, ex parte decree was passed. Therefore, the contention of the petitioners that they have no knowledge about the filing of the suit by the respondent is unacceptable. Further, the delay 1477 days has not been properly explained by the petitioners by adducing oral evidence.

11. Admittedly, in order to show sufficient cause for the delay, the petitioners have not adduced any oral evidence. The trial Court had rightly recorded that only after entering appearance



through their advocate and for non-filing of the written statement, the petitioners were set ex parte and ex parte decree was passed on 21.12.2009. The petitioners have filed petition seeking to condone the delay of 1477 days in filing petition to set aside the ex parte decree.

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12. It is settled that where there was no satisfactory explanation by the petitioner for the inordinate delay, it was very unfair for the Court to condone the delay. Condonation of delay is a matter of discretion of the Court and Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within the certain limit.

13. In all cases, what is to be decided is whether sufficient cause has been shown to condone the delay or not. Admittedly, in the case on hand, the petitioners have not established by preponderance of evidence to show that there was sufficient cause for the delay in filing petition to set aside the ex parte decree in the suit.

14. 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.

15. 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.

16. 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 obliged to remove injustice.

(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.

(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 en capsule 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."

17. In Esha Bhattacharjee, supra, the Hon'ble Supreme Court referred to some of its Judgments regarding Law of Limitation. It may be useful to extract paragraphs 10, 11 and 12, which read as follows:

"10. In this context, we may refer with profit to the authority in Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation and another, 2010 (5) SCC 459, where a Two-Judge Bench of this Court 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.



11. In *Improvement Trust, Ludhiana v. Ujagar Singh and others*, 2010 (6) SCC 786, it has been 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.

12. A reference to the principle stated in *Balwant Singh (dead) v. Jagdish Singh and others*, 2010 (8) SCC 685 would be quite fruitful. In the said case the Court referred to the pronouncements in *Union of India v. Ram Charan*, AIR 1964 SC 215; *P.K. Ramachandran v. State of Kerala*, 1997 (2) CTC 663 (SC) : 1997 (7) SCC 556; and *Katari Suryanarayana v. Koppiseti Subba Rao*, 2009 (4) CTC 286 (SC): 2009 (11) SCC 183 and stated thus:

25. We may state that even if the term sufficient cause has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of reasonableness as it is understood in its general connotation.

26. The Law of Limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the Applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly."

18. 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)

19. In *Maniben Devaraj Shah*, supra, the Hon'ble Supreme Court upon perusal of the application for condonation of delay and the affidavit on record came to hold that certain necessary facts were conspicuously silent and, accordingly, reversed the decision of the High Court which had condoned the delay of more than seven years. In the present case, the delay was 1477 days.

20. As stated supra, in the case on hand, the explanation for the delay given by the petitioners is not acceptable. Though liberal approach is to be taken in petition under Section 5 of the Limitation Act, the petitioners have not shown semblance of bonafide for the delay on their part. As rightly held by the trial Court that reason for the delay stated by the petitioner does not have any bonafide in it.

21. This Court is in full agreement with the proposition that refusal to condone the delay would result foreclosing a suitor from putting forth his/her cause and there is no presumption that delay in approaching the Court is always deliberate. But at the same time the other side should not be suffered.

22. It is to be noted that if a litigant chooses to approach the Court long after the time prescribed under the relevant provisions of law, he/she cannot say that no prejudice would be caused to the other side by the delay being condoned. This Court has not delve into the merits of the suit.

23. In the case on hand, the length of the delay is a relevant matter to be taken into account while considering whether the delay should be condoned or not. It is not open to any litigant to fix his own period of limitation for instituting proceedings for which law has prescribed periods of limitation.

24. From a reading of the averments, it is seen that petition seeking to condone the delay of 1477 days was filed in a casual manner without giving proper reasons, much less acceptable reasons, cannot be sustained and the trial Court was right in dismissing the petition.

25. At the cost of repetition, it is reiterated that the petitioners have not shown the sufficient cause to condone the delay as contemplated in the decisions of the Hon'ble Supreme Court supra. The petitioners are seriously lacking to apply the provision of Section 5 of Limitation Act. In the case on hand, the inordinate delay of 1477 days was not properly explained by the petitioners.



26. Applying the ratio laid down by the Hon'ble Supreme Court in the decisions, supra, to the facts and circumstances of the case on hand, this Court is of the view that the petitioners have failed to explain each and every day delay and the trial Court was absolutely right in dismissing the petition. I do not find any reason to interfere with the order passed by the trial Court. Resultantly, the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.

27. In the result, the Civil Revision Petition is dismissed.
No costs.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-III)

To

The District Munsif Court,
Thuraiyur.

+1CC to Mr.S.Shankar Ganesh, Advocate, SR.No. 76495
+1CC to Mr.Sarvabhauman, Advocate, SR.No.76836

C.R.P. (MD) (NPD)No.2413 of 2015
02.08.2018

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