



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.04.2018

Pronounced on: 26.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. PD(MD)No.2752 of 2015

and

M.P. (MD)No.1 of 2015

Shanmugaraj

... Petitioner/1st Respondent/1st
Respondent/1st Defendant.

Vs.

1.Muniammal

... 1st Respondent/Petitioner/
Petitioner/Plaintiff

2.Puspan

3.Rajkumar

4.Saravanan

5.Duraimurugan

... 2 to 5 Respondents/ 2 to 5
Respondents/ 2 to 5 Respondents/
2 to 5 Defendants

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to strike off I.A.No.179 of 2015 in I.A.No.117 of 2015 in I.A.No.83 of 2015 in O.S.No.4 of 2014 on the file of the District Munsif-cum-Judicial Magistrate, Vilathikulam by allowing this Civil Revision Petition.

For Petitioner : Mr.K.K.Ramakrishnan

For Respondent 1 : Mr.S.Ponsenthilkumar

For Respondents : Mr.K.Guhan

2 and 4

For Respondents : Dismissed

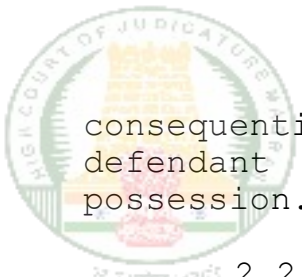
3 and 5

ORDER

The first defendant in the Suit in O.S.No.4 of 2014 on the file of the District Munsif cum Judicial Magistrate, Vilathikulam, is the revision petitioner in this Civil Revision Petition.

2.The brief facts of the case are as follows:

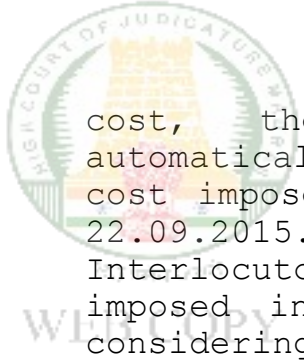
2.1.The first respondent / plaintiff has filed a suit in O.S.No.4 of 2014 on the file of the District Munsif cum Judicial Magistrate, Vilathikulam, for declaration of Document No.3758/2012, Vilathikulam Sub Registrar Office, executed in favour of the first defendant by the respondents 2 to 5 as void and consequential declaration of title of the property situated in Thoothukudi District, Guruvarpatti Village, New Survey No.111/2A2 and also for



consequential injunction restraining the petitioner herein/first defendant and respondents 2 to 5 from interfering with her possession.

2.2. In the said suit, written statement was filed by the petitioner herein / first defendant stating that the first respondent / plaintiff has no valid right and title over the suit schedule property and the vendors of the petitioner herein / first defendant, namely, respondents 2 to 5 / defendants 2 to 5 have valid title and the petitioner / first defendant has purchased the property from them for a valid sale consideration. It is further stated that from the date of purchase, the petitioner / first defendant has been in continuous possession and enjoyment of the said property. The fourth respondent herein / fourth defendant has also filed a written statement specifically denying the allegations made by the plaintiff and he has also stated the source of title to the property. While so, as there was no representation for the plaintiff on 18.03.2015, the said suit was dismissed for default. Thereafter, the first respondent / plaintiff filed an interlocutory application in I.A.No.83 of 2015 on 31.03.2015. In the said interlocutory application also, the first respondent / plaintiff has not appeared and hence, the said Interlocutory Application was dismissed on 16.06.2015. Thereafter, the first respondent / plaintiff filed another Interlocutory Application in I.A.No.117 of 2015 to restore I.A.No.83 of 2015. On 15.09.2015, the trial Court allowed the said Interlocutory Application in I.A.No.117 of 2015 on condition that the first respondent / plaintiff should pay a cost of Rs.1,000/- on or before 21.09.2015 with further condition that if the plaintiff fails to pay the said cost, the said Interlocutory Application would be dismissed automatically and directed to post the matter for compliance on 22.09.2015. As the first respondent / plaintiff has not paid the cost imposed on her in time, I.A.No.117 of 2015 was dismissed. However, the first respondent / plaintiff filed another Interlocutory Application in I.A.No.179 of 2015 to extend the time limit to pay the cost imposed in I.A.No.117 of 2015. Aggrieved against the numbering of the Interlocutory Application in I.A.No.179 of 2015, the petitioner has preferred this Civil Revision Petition.

3. The learned counsel appearing for the petitioner submitted that the suit filed by the plaintiff was dismissed for default on 18.03.2015 as there was no representation by the plaintiff. Thereafter, the first respondent / plaintiff filed an interlocutory application in I.A.No.83 of 2015 on 31.03.2015. In the said Interlocutory Application also the first respondent / plaintiff had not chosen to make her appearance and hence, the said Interlocutory Application was dismissed on 16.06.2015. Further, the first respondent / plaintiff filed another Interlocutory Application in I.A.No.117 of 2015 to restore I.A.No.83 of 2015. On 15.09.2015, the trial Court allowed the said Interlocutory Application in I.A.No.117 of 2015 on payment of cost of Rs.1,000/- on or before 21.09.2015 with further condition that if the plaintiff fails to pay the said



cost, the Interlocutory Application would be dismissed automatically. As the first respondent / plaintiff has not paid the cost imposed on her in time, I.A.No.117 of 2015 was dismissed on 22.09.2015. However, the first respondent / plaintiff filed another Interlocutory Application to extend the time limit to pay the cost imposed in I.A.No.117 of 2015. But, the trial Court without considering the maintainability of the application under Section 148 of C.P.C., without any restoration of order of dismissal made in I.A.No.117 of 2015, dated 22.09.2015, erroneously numbered the said application as I.A.No.179 of 2015. He would further submit that the trial Court has no jurisdiction to entertain the application to extend the time for making payment under Section 148 C.P.C. without any bona fide reasons.

4.The learned counsel appearing for the petitioner would further submit that present I.A.No.179 of 2015 filed for seeking extension of time to pay the cost is not maintainable without any steps to set aside the I.A.No.117 of 2015 which was dismissed on 22.09.2015 and also the reason assigned by the petitioner is not bona fide. Hence, the revision petitioner prayed this Hon'ble Court ought to exercise the power under Article 227 of Constitution of India to strike off I.A.No.179 of 2015 from the file of O.S.No.4 of 2015. Further, the conduct of the first respondent/plaintiff in allowing dismissal of suit for default, dismissal of restoration application for her absence and notice of hearing not served and not filing any extension petition before expiry of the date stipulated by the trial Court i.e., 22.09.2015 by stating bona fide reason and accusation against Advocate for her default have to be taken into account to strike off I.A.No.179 of 2015.

5.The learned counsel appearing for the petitioner has circulated the following Judgments in support of his contention which are as follows:

- 1.AIR 1961 SC 882 [Mahanth Ram Das v. Ganga Das].
- 2.2008 (5) CTC 651 [Union Bank of India, Oppanakara Street, Coimbatore v. K.R.Jewellers and others]
3. 2009 (1) CTC 319 [C.Raghupathy v. C.Govindan and others]
- 4.(2012) 7 SCC 738 [A.Nawab John and others v. V.N.Subramaniam]
- 5.2015 (2) CTC 559 [P.R.Yelumalai v. N.M.Ravi]

6.In the case of Mahanth Ram Das v. Ganga Das reported in AIR 1961 SC 882 the Hon'ble Supreme Court has held at paragraph 5 as follows:

"5. They do not, however, completely estop a Court from taking note of events and circumstances which happen within the time fixed. For example, it cannot be said that, if the appellant had started with the full money ordered to be paid and came well in time but was set upon and robbed by thieves on the day previous, he could not ask for extension of time, or that the Court was powerless to extend it. Such orders are not like the law of the Medes and the Persians. Cases are



known in which Courts have moulded their practice to meet a situation such as this and to have restored a suit or proceeding even though a final order had been passed. ..."

7. In the case of Union Bank of India, Oppanakara Street, Coimbatore v. K.R. Jewellers and others reported in 2008 (5) CTC 651 a Division Bench of this Court in paragraph 13 has observed as follows:

"13. ... Mere allegation of negligence levelled against the counsel cannot be a sufficient reason to condone the delay. Instead, the respondents have also equal responsibility as that of the counsel to follow up the matter. There is also no evidence to show that the respondents were following up the matter with the counsel. ..."

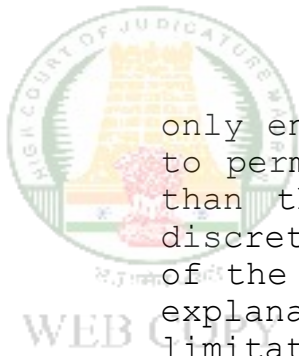
8. In the case of C. Raghupathy v. C. Govindan and others reported in 2009 (1) CTC 319 this Court has held at paragraph 7 as follows:

"7. ... Even by engaging a counsel, party to the case is not relieved of his duties and obligations. Where a party either does not fully brief the counsel or keep no contact with him, it is the party who is in default and negligence and has to bear the consequences. Moreover, the petitioner was not diligent even after engaging the present counsel on record. The time taken for filing the application after engaging the new counsel was 115 days and there was no reasonable and acceptable explanation for those days. Hence, putting the blame on the counsel cannot be an excuse to the petitioner to establish sufficient cause for condonation of delay. ..."

9. In the case of A. Nawab John and others v. V. N. Subramaniam reported in (2012) 7 SCC 738 the Hon'ble Supreme Court has declined to exercise the judicial discretion for payment of deficit Court without any bona fide reason by issuing guideline to exercise the judicial discretion. The relevant portion of the judgment is extracted as follows:

44. It is well settled that the judicial discretion is required to be exercised in accordance with the settled principles of law. It must not be exercised in a manner to confer an unfair advantage on one of the parties to the litigation. In a case where the plaint is filed within the period of limitation prescribed by law but with deficit court fee and the plaintiff seeks to make good the deficit of the court fee beyond the period of limitation, the Court, though has discretion under Section 149 CPC, must scrutinise the explanation offered for the delayed payment of the deficit court fee carefully because exercise of such discretion would certainly have some bearing on the rights and obligations of the defendants or persons claiming through the defendants. (The case on hand is a classic example of such a situation.)

It necessarily follows from the above that Section 149 CPC does not confer an absolute right in favour of a plaintiff to pay the court fee as and when it pleases the plaintiff. It



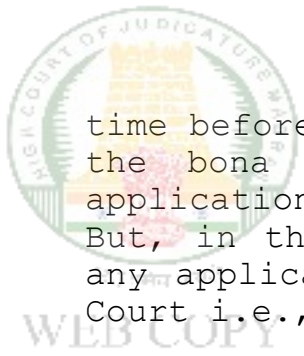
only enables a plaintiff to seek the indulgence of the Court to permit the payment of court fee at a point of time later than the presentation of the plaint. The exercise of the discretion by the Court is conditional upon the satisfaction of the Court that the plaintiff offered a legally acceptable explanation for not paying the court fee within the period of limitation.

10. Further, in the case of P.R.Yelumalai v. N.M.Rav reported in 2015 (2) CTC 559 the Hon'ble Supreme Court was pleased to confirm the reasoning of the two Courts that application for extension of time was rejected as the same has not been filed before expiry of period of compliance.

11. The learned counsel appearing for the petitioner would further submit that failure of the first respondent / plaintiff in conducting her case with due diligence even after dismissal of the suit for default and restoration application and conduct of respondent in accusing her Advocate without assigning any bona fide mistake on the part of Advocate who had conducted the case for setting aside the order of default leads to inevitable conclusion that the application in I.A.No.179 of 2015 accusing Advocate for the failure to make cost within the time is not bona fide and hence, her application is liable to be struck off under Article 227 of the Constitution of India.

12. The first respondent/plaintiff in the affidavit filed in I.A.No.179 of 2015 had not stated any bona fide reason to entertain the application under Section 148 C.P.C. and she had not preferred any application under Section 151 C.P.C. to exercise the inherent power. The reason assigned by the 1st respondent / plaintiff in the petition that her Advocate had not informed the particulars of payment of cost cannot be accepted because the litigant should follow the proceedings of the case and also duty bound to appear in the Court and follow the order of the Court. In this case, the litigant, namely, the first respondent / plaintiff is more vigilant and showed due diligence in following the proceedings of I.A.No.117 of 2015 and hence, there was no bona fide reason to show any sympathy towards the first respondent. Further, the Hon'ble Division Bench judgment and the judgment of the Hon'ble Supreme Court relied upon by the first respondent are not applicable to the present case because accusing the Advocate who has not informed the first respondent about the cost is not a bona fide reason.

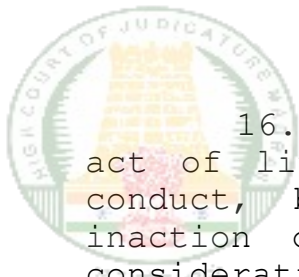
13. Further he would submit that all the High Courts should follow the dictum laid down by the Hon'ble Supreme Court in the case of Mahanth Ram Das v. Ganga Das reported in AIR 1961 SC 882 to extend the time for the payment stipulated by any Court. In the said decision the Hon'ble Supreme Court considering the unfortunate situation that the High Court did not consider the bona fide reasoning of the plaintiff that he was unable to generate sufficient amount and hence, he filed appropriate application to extend the



time before expiry of time stipulated by the High Court and accepted the bona fide reason on the ground that plaintiff filed the application before expiry of time stipulated by the High Court. But, in this case, the first respondent / plaintiff had not filed any application before the expiry of time stipulated by the trial Court i.e., before 22.09.2015.

14.From the above observation, the first respondent / plaintiff had not given any bona fide reason and also she failed to act diligently to comply with the order of the Court and she had not even showed her bona fide efforts to pay cost which were thwarted by some unfortunate events and hence, I.A.No.179 of 2015 is liable to be struck off from the file of O.S.No.4 of 2014 as per the power conferred under Article 227 of the Constitution of India. Further, the reason accusing the counsel on record cannot be accepted in the absence of due diligence on the part of the first respondent / plaintiff in proceeding the suit. The first respondent / plaintiff has been persistently accusing her counsel on record i.e., on 18.03.2015 the counsel has not informed her about the date of hearing and also he did not appear on account of his appearance in some other Court. Further, the first respondent / plaintiff stated that her counsel has not informed her about the details of payment of cost and hence, accusing the counsel without even making any steps to show her due diligence in following the proceeding in O.S.No.4 of 2014, her application is liable to be struck off.

15.Further, the Hon'ble Supreme Court in the case of A.Nawab John and others v. V.N.Subramaniam reported in (2012) 7 SCC 738 held that judicial discretion should be exercised in judicious manner. Even the Hon'ble Division Bench of this Court in the case of Union Bank of India, Oppanakara Street, Coimbatore v. K.R.Jewellers and others reported in 2008 (5) CTC 651 has specifically held that mere allegation of negligence levelled against the counsel cannot be a sufficient reason to condone the delay. Instead, the respondents have also equal responsibility as that of the counsel to follow up the matter. There is also no evidence to show that the respondents were following up the matter with the counsel. In this case, there was no bona fide reason to entertain the application filed by the first respondent/plaintiff and the reason assigned in the application that the mistake is on the part of the counsel is not acceptable. Further, there is a negligence deliberate and gross inaction on the part of first respondent / plaintiff in making payment of cost imposed on her and total lack of bona fide on her part in not taking steps to file extension petition before expiry of time by assigning proper reason. In addition to that when there was gross negligence and deliberate inaction in not making payment of cost and there was total lack of bona fide in accusing counsel for her default in making cost, this Court has no other option but to exercise the extraordinary power conferred under Article 227 of the Constitution of India.



16. It is well settled principle that in order to condone any act of litigants in discharging their duties towards Court, the conduct, behaviour and attitude of parties relating to their inaction or negligence are relevant factors to be taken into consideration. Further, the fundamental principle is that Courts are required to weigh the 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. In this case, the first respondent / plaintiff allowed the suit to dismiss for default on 18.03.2015; dismissal of restoration application on 16.04.2015; not making payment of cost on or before 22.09.2015; not taking steps to file any application to set aside I.A.No.117 of 2015 and made unacceptable reasons without any bona fide material fact that lead her to prolong the case and hence, I.A.No.179 of 2015 in O.S.No.4 of 2014 is to be struck off from the file of the learned District Munsif-cum-Judicial Magistrate, Vilathikulam.

17. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-III)

To

The District Munsif-cum-Judicial Magistrate,
Vilathikulam.

+1CC to Mr.K.GUHAN, Advocate, SR.No. 75171
+1CC to Mr.S.PON SENTHIL KUMARAN, Advocate, SR.No.75239
+1CC to Mr.K.K.RAMAKRISHNAN, Advocate, SR.No. 75158

C.R.P.PD (MD) No.2752 of 2015
26.07.2018

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