



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.07.2018
Delivered on : 24.08.2018

WEB COPY

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

C.R.P. (MD) (PD) No.1301 of 2018

M/s.Jeevan Finance,
Rep. by its Proprietor Y.S.B.Jose .. Petitioner/Petitioner/
Plaintiff

vs.

1.C.J.V.Joel Singh
2.M.Seethalekshmi
3.J.Priya .. Respondents/Respondents/
Defendants 1 to 3

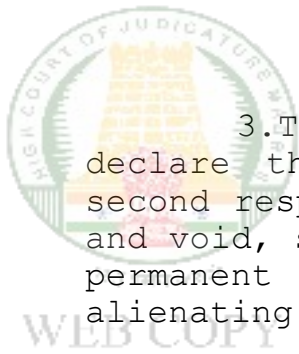
Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 01.03.2018 passed in I.A.No.555 of 2016 in O.S.No.64 of 2014 on the file of the learned Principal Subordinate Judge, Nagercoil, Kanyakumari District.

For Petitioner : Mr.S.Ramakrishnan
For Respondents : Mr.G.Aravinthan (for R2 & R3)

ORDER

This Civil Revision Petition has been filed challenging the fair and decreetal order dated 01.03.2018 made in I.A.No.555 of 2016 in O.S.No.64 of 2014, on the file of the learned Principal Subordinate Judge, Nagercoil, Kanyakumari District. By the said order, the trial Court dismissed the application filed by the petitioner under Section 5 of the Limitation Act seeking condonation of delay of 74 days in filing the application to restore an application in I.A.No.162 of 2016, which was also an application seeking to condone the delay of 175 days in restoring the above suit.

2.I heard Mr.S.Ramakrishnan, learned counsel for the petitioner and Mr.G.Aravinthan, learned counsel for the respondents 2 and 3 and perused the grounds of revision as well as typed set of papers filed on the side of both sides. The first respondent died and his only legal heir, the third respondent is already on record and is represented by her counsel.



3. The petitioner as plaintiff filed the above suit seeking to declare the sale certificate dated 28.11.2007 in favour of the second respondent herein, who is a Court auction purchaser, is null and void, sham and unenforceable under law and also for a decree for permanent injunction restraining the respondents/defendants from alienating the properties.

4. In the affidavit filed in support of the application in I.A.No.555 of 2016, to condone the delay, which was filed by the petitioner herein, it was stated that when the application in I.A.No.162 of 2016 came up for enquiry on 13.08.2016, he was suffering from Chicken pox and Advocates abstained from Court proceedings and there was no representation on his behalf. Hence, the application came to be dismissed for default and he also stated that the first respondent/first defendant also died on 23.08.2015 and to take steps and to file restoration application, in the said process, there occurred a delay of 74 days. The said delay is only meagre and required to be condoned.

5. The second respondent herein is the second respondent/defendant thereon, has also filed a detailed counter affidavit by placing certain facts to show that the averments made in the affidavit seeking condonation of delay, are false as the petitioner herein had been contesting various other proceedings before other Forum/Court/ Tribunals, filed affidavits, given oral evidence and such other matters.

6. In the counter affidavit, the dates on which the petitioner had appeared in the other proceedings, which are before the Special Judge, under TNPID Act, Madurai District have been referred to. Though the copies of such deposition/affidavit were not marked before the trial Court by the respondent, they have been filed in the form of typed set of papers before this Court. Nevertheless the trial Court has recorded the various dates on which the petitioner herein appeared in the other proceedings and effectively and actively contested those proceedings. Therefore, this Court is not precluded from referring to the same for examining the conduct of the petitioner to see the bonafides.

7. The learned counsel appearing for the petitioner submitted that the suit is one for declaration that the sale certificate dated 28.11.2007 in favour of the second respondent is null and void and also for permanent injunction and the Court below ought to have considered this aspect and ought to have allowed the application and condoned the delay of 74 days on costs. Further, it was contended that the suit was filed only in the year 2014 and there would not be any prejudice caused to the defendants thereon if the application seeking to condone the delay of 74 days is condoned. The learned counsel further submitted that the delay may be condoned by imposing



costs.

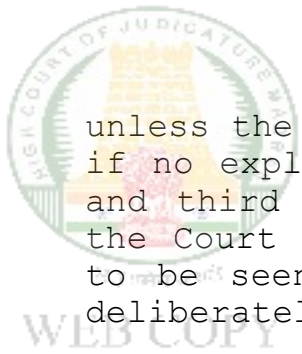
8.The learned counsel appearing for the respondents 2 and 3 vehemently opposed the submission made by the learned counsel for the petitioner and submitted that the plea raised by the petitioner is absolutely false and the very conduct of the petitioner would clearly establish that he is not interested in prosecuting the suit at any point of time. Further, he contended that the suit itself not maintainable one as the same is filed to declare the sale certificate issued by a competent Court in an execution proceedings arising out of a money decree, in which also, the petitioner herein remained exparte throughout.

9.Apart from the said arguments, the learned counsel submitted that in the proceedings in O.A.No.119 of 2008 before the Debts Recovery Tribunal at Madurai, initiated by Tamilnadu Mercantile Bank - Anjugramam Branch against the petitioner, the second respondent herein has been impleaded as sixth respondent by virtue of order dated 15.02.2011 in I.A.No.142 of 2011. The said impleadment by the Tribunal is only based on the Auction Sale dated 27.09.2007 by the second respondent herein. The said order itself can prove that the petitioner got knowledge of the sale proceedings long prior to filing of suit in O.S.No.64 of 2014, atleast in the year 2011. The present suit is only an attempt by the petitioner herein, instituted with an intention to grab money from the second respondent.

10.The short question which falls for consideration in this revision is as to whether the Court below was justified in rejecting the application filed by the petitioner praying for condonation of delay of 74 days in filing the petition to set aside the order of dismissed for default.

11.As noticed above, the petitioner, who is the plaintiff in the above suit, has not appeared for trial which resulted in the suit dismissed for default. The application filed by the petitioner to condone the delay of 175 days in filing application to setting aside the order of dismissal for default, which is not also properly prosecuted, resulted in dismissal and to set aside the order of dismissal of the said application, there was a delay of 74 days, the present application in I.A.No.555 of 2016 had been filed. Further, the petitioner was unable to establish before the Court about the sickness by producing any record or evidence.

12.In a situation where there has been no gross negligence or deliberate inaction or lack of bonafides, a broad and liberal view should be taken, so as to advance substantial justice instead of terminating the proceedings on technical ground of limitation,



unless the explanation furnished for delay is wholly unacceptable or if no explanation whatsoever is offered or the delay is inordinate and third party right has become embedded during the interregnum, the Court should leave in favour of condonation. Therefore, it has to be seen as to whether the petitioner is grossly negligent or deliberately inactive or his plea lacked bona fide.

13. It is a settled legal principle that law of limitation is found on public policy not meant to destroy rights of parties, but to see that the parties do not resort to dilatory tactics. Likewise, it has been held that liberal approach in considering an application under Section 5 of the Limitation Act should not override the substantial law of limitation and no premium can be given for lethargic attitude or utter negligence.

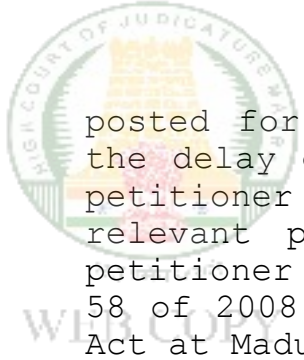
14. Bearing these settled legal principles in mind, if the case on hand is examined, the only answer that could be given is that the plea of the petitioner lacks bona fide. Such conclusion is supported by following reasons.

15. Though the delay of 74 days seems to be very meagre, the scenario, which made the respondents contest and oppose before various Courts, one after another, seems to have been running for more than a decade.

16. As pointed out by the learned counsel for the respondent, though the reason stated by the petitioner in the affidavit in support of the petition to condone the delay of 74 days is that the petitioner fell ill due to chicken pox and not able to appear in the proceedings on 13.08.2016 before the trial Court, but appeared in some other proceedings in C.C.Nos.57 and 58 of 2008 before the learned Special Judge constituted under TNPID Act at Madurai, on 08.08.2016 and 19.08.2016. In the said proceedings, the petitioner was arrayed as Accused No.2. The same could be proved through the typed set of papers filed by the learned counsel for the respondents.

17. The appearance of the petitioner in the said cases before the learned Special Judge constituted under TNPID Act at Madurai, on 08.08.2016 and 19.08.2016, would falsify the plea taken by him that he was suffering of chicken pox during 13.08.2016.

18. The learned counsel for the respondents 2 and 3 also elucidated before this Court, the conduct and attitude of the petitioner, by showing the non-appearance of the petitioner on 10.02.2015 in the above suit in O.S.No.64 of 2016 on the file of the learned Subordinate Judge, Nagercoil, when the suit is specifically



posted for trial. In application in I.A.No.162 of 2016 to condone the delay of 175 days in setting aside the order of dismissal, the petitioner stated that he was ill on 10.02.2015. But during that relevant point of time, i.e. on 06.02.2015 and 20.02.2015, the petitioner was able to appear in the proceedings in C.C.Nos.57 and 58 of 2008 before the learned Special Judge constituted under TNPID Act at Madurai.

19.The above two paradigm are sufficient to demonstrate the attitude of the petitioner and the delaying tactics adopted by the petitioner in the above proceedings. The same shows how interested he is in prosecuting the case as against the respondents. That apart his conduct clearly shows gross negligence and his actions were deliberate in not prosecuting the matter. In such circumstances, the trial Court was fully justified in rejecting the petition and left with no other option, this Court have to confirm the same.

20.This Court has seen the prayer of the suit in O.S.No.64 of 2014, which is filed to declare that the suit to set aside the sale certificate issued by a competent Court as null and void. No doubt the suit itself is one not maintainable. The petitioner, if really interested in securing his property, he would have contested the earlier proceedings for money decree and also the execution proceedings, which resulted in bringing the property for auction sale.

21.This Court can see that not only this Civil Revision petition, but also the suit in O.S.No.64 of 2014, on the file of the learned Principal Subordinate Judge, Nagercoil, were filed only to harass the parties namely, the decree holder and Court auction purchaser, even after a decade of a successful Court auction.

22.It is well settled dictum of the Hon'ble Apex Court reported in 2011 (4) SCC 363 (*Lanka Venkateswarlu (Dead), rep. by legal heirs v. State of Andhra Pradesh and others*), wherein it is held that for condonation of delay the discretion has to be exercised in a systematic manner informed by reason and justice must be done to both parties. Further, the condonation of delay is only a discretion that too judicial discretion and while exercising the judicial discretion, the Court should consider the loss caused to the opposite party. Here, in the present case, simply because participating in a Court auction sale and purchased a property for value, the second respondent had been harassed by the petitioner in one way or other that too for a period of over a decade.

23.Thus the petitioner having been guilty of gross negligence and laches, this Court has no hesitation to hold that the petitioner has not shown sufficient cause for condonation of delay.



The forgoing discussions will make it clear that even on merits the civil revision petition have not made out a case for condonation of delay of 74 days in preferring an application to set aside the order of dismissal of another application in I.A.No.162 of 2016, which was also belatedly filed with a delay of 175 days, in filing an application to restore the suit in O.S.No.64 of 2014, on the file of the learned Principal Subordinate Judge, Nagercoil.

24.In fine, I am of the considered view that there requires no interference in the order of the learned Subordinate Judge and the present revision lacks merits and the same deserves to be dismissed. Accordingly, the Civil Revision petition fails and it is dismissed. No costs.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-III)

To

The Principal Subordinate Judge,
Nagercoil, Kanyakumari District.

+ 1 CC TO Mr.S.RAMAKRISHNAN, ADVOCATE IN SR No. 74908
+ 1 CC TO Mr.G.ARAVINTHAN, ADVOCATE IN SR No. 80126

VSV
TE/JM/RSK/SAR-3 : 17/09/2018 : 6P/4C

order made in
C.R.P. (MD) (PD) No.1301 of 2018
24.08.2018