



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2018

CORAM

WEB COPY

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (NPD) (MD) No.254 of 2016

P.Pavul Nadar

... Petitioner/Petitioner/5th Defendant

-vs-

1. V.Ponnusamy

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

2. P.Jebamani

3. S.Gnanappoo Ammal

4. S.Abraham

5. S.Rajaiah Siluvai Muthu

6. P.Gnanambal

... R2 to R6/R2 to R6/D1 to D4 & D6

PRAYER: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code praying to set aside the Fair and Decretal Order dated 25.08.2015 passed in I.A.No.188 of 2015 in O.S.No.326 of 2009 on the file of the I Additional District Munsif Court, Tirunelveli and to allow the present Civil Revision Petition.

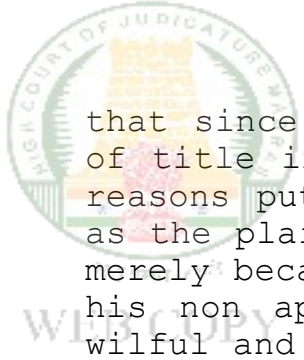
For Petitioner : Mr.S.P.Maharajan

For Respondent : No Appearance

ORDER

The revision petitioner is the 5th defendant in O.S.No.326 of 2009 on the file of the I Additional District Munsif Court, Tirunelveli and the plaintiff sought for the relief of declaration, etc. in the suit, in which, an exparte order was passed against the defendants on 13.02.2013 on account of their non appearance. Therefore, the revision petitioner/5th defendant has filed an application in I.A.No.188 of 2015 for condoning the delay of 726 days in filing petition for setting aside the said exparte order 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 the Trial Court had posted the matter for cross examination of the plaintiff by the petitioner on 05.02.2013 and on the said date, due to his ill-health, he could not appear before the Trial Court and he also did not contact his Advocate, which ended in dismissal of the suit against the defendants. It is the further case of the petitioner



that since the plaintiff sought for a larger relief of declaration of title in the suit, the Court should have considered the genuine reasons put forth by the revision petitioner to condone the delay, as the plaintiff is not entitled to the entire relief as prayed for merely because of non appearance of the defendants. 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 so as to enable the petitioner to challenge the exparte order, it is prayed that the order of the Trial Court is liable to be set aside.

3. Heard the learned counsel for the petitioner and also perused the material documents available on record. There is no representation on behalf of the respondents.

4. 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. He has further stated that inspite of due diligence, he was not in a position to know the status of the case, as he, being aged about 75 years, suffered from high blood pressure and became immobile.

5. 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. As regards delay, it is worth referring to the Hon'ble Apex Court decision in the case of **N.Balakrishnan vs. M.Krishnamurthy**, reported in (1998) 7 SCC 124, wherein, it is held as under:

"9. It is axiomatic that condonation of delay is a matter of discretion of the court Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. 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 reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first cut refuses to condone the delay. In such cases, the superior cut would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court."

6. 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 726 days has occurred in filing petition to set aside the ex parte order, 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 25.08.2015 passed in I.A.No.188 of 2015 in O.S.No.326 of 2009 by the learned I Additional District Munsif, Tirunelveli, is liable to be set aside on payment of costs.

8. In the result,

(a) this Civil Revision Petition is allowed and the order dated 25.08.2015 passed in I.A.No.188 of 2015 in O.S.No.326 of 2009 by the learned I Additional District Munsif, Tirunelveli, is hereby set aside, condoning the delay of 726 days, on condition that the revision petitioner shall pay a sum of Rs.20,000/- as costs to the 1st respondent/plaintiff, within a period of two weeks from the date of receipt of a copy of this order;

b) On production of acknowledgment of payment of costs, the Trial Court is directed to number the petition if any filed to set aside the ex-parte decree and dispose the same within a period of two months thereafter. No costs.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1. The I Additional District Munsif,
Tirunelveli.
2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to Mr.S.P.MAHARAJAN, Advocate in SR.No.69189

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RJ/PN/SAR-3/30/07/2018 - 3P/5C

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