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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 26.07.2018

DELIVERED ON : 25.09.2018

CORAM

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

C.R.P. (MD) (NPD) No.414 of 2016

and

CMP(MD) No.1794 of 2016

L.J.Ganesan

.. Petitioners

VS

1.Maheswari
2.Jeyapandi
3.Mahalakshmi
4.Thangaraj

.. Respondents

Revision filed under Article 227 of Constitution of India against the order dated 19.1.2016 passed in I.A.No.119 of 2015 in Un Numbered A.S.No. of 2016 on the file of the Principal District Judge, Virudhungar District at Srivilliputhur, dismissing the delay petition filed against the fair and Decreetal order dated 5.9.2014 made in E.A.No.22 of 2012 in E.P.No.76 of 2007 in O.S.No.1 of 2007 on the file of Sub Ordinate Judge, Virudhunagar.

For Petitioner : Mr.C.Jeganathan

For Respondent : Mr.P.T.Ramesh Raja
for respondent No.4

No Appearance - R1 to R3

ORDER

This revision is directed against the order dated 19.1.2016 passed in I.A.No.119 of 2015 in un-numbered A.S.No. of 2016 on the file of the Principal District Judge, Virudhungar District at Srivilliputhur, dismissing the application filed by the petitioner seeking to condone the delay of 139 days in filing the appeal against the order dated 5.9.2014 passed in E.A.No.22 of 2012 in E.P.No.76 of 2007 in O.S.No.1 of 2007 on the file of Sub-Court, Virudhunagar.



2. The petitioner herein is the claimant in E.A.No.22 of 2012. The first respondent is the decree-holder, the respondents 2 and 3 are judgment-debtors and the fourth respondent is the auction purchaser.

3. Succinctly put, the facts are as under: The petitioner has filed E.A.No.22 of 2012 under Order 21, Rules 58(1) and 91 read with Section 47 of C.P.C. seeking to set aside the Court auction sale in respect of the petition mentioned properties alleging that the petition mentioned items Nos.1 and 2 originally belonged to one Mariappa Nadar, who is the father of the second respondent and after the demise of Mariappa Nadar, his legal heirs have given power of attorney in favour of one B.Mariappan in respect of petition mentioned item Nos.1 and 2 and the said B.Mariappan divided the said item Nos.1 and 2 into several plots and sold a portion of the petition mentioned item Nos.1 and 2 described as item No.3 in favour of the petitioner through a registered sale deed dated 29.2.2008. After purchase, the petitioner was in possession and enjoyment of item No.3. During attachment in E.P.No.76 of 2007, the petitioner's property i.e., item No.3 was also attached and sale was effected and finally, the fourth respondent took auction on 7.6.2011 and he was issued with sale certificate on 8.8.2011. Since, the petitioner has got right over item No.3 of the schedule of properties, he filed E.A.No.22 of 2012 seeking to set aside the sale.

4. The fourth respondent/auction purchaser filed counter stating that when the sale has been confirmed and sale certificate was issued, the petitioner has no right to maintain the claim petition. In order to prevent the fourth respondent from taking possession of the auctioned property, the petitioner has filed the petition, which was not maintainable and liable to be dismissed.

5. Before the Executing Court, the petitioner examined himself as P.W.1 and marked Exs.P1 and P2. On the side of the respondents, nobody was examined, but the fourth respondent marked Exs.R1 and R2 on his side.

6. Upon consideration of the oral and documentary evidence, the Executing Court, dismissed the E.A.No.22 of 2012 filed by the petitioner. Assailing the same, the petitioner has filed an appeal with delay condonation petition in I.A.No.119 of 2015.

7. In I.A.No.119 of 2015, the petitioner alleged that he had applied for copies on 8.9.2014 and the same was made ready on 7.10.2014 and received on 11.10.2014. Since the petitioner was not well after the receipt of the certified copy, he could not file the appeal. After recovery and after mobilising money for filing the appeal, the petitioner contacted his advocate and filed the appeal with a delay of 139 days. The delay is neither wilful, nor wanton. According to the petitioner, he has got a good case in the appeal.



Hence, prayed for condonation of delay of 139 days in filing the appeal.

8. Resisting I.A.No.119 of 2015, the fourth respondent, who was the contesting party has filed counter stating that the petitioner has not explained each and every day's delay. Moreover, from what date he was suffering from illness has not been stated and from whom he had taken treatment has also not been stated in the affidavit filed in support of the petition. In fact, the petitioner was doing dry fish business in Virudhunagar and he was attending the shop daily. Only for the purpose of the filing petition, the petitioner had stated that he was not well. There are no merits in the petition and prayed for dismissal of the same.

9. Upon consideration of the rival submissions, the appellate Court dismissed the petition seeking to condone the delay of 139 days in filing the appeal. Challenging the same, the petitioner has filed the present revision.

10. I heard Mr.C.Jeganathan, learned counsel for the petitioner and Mr.P.T.Ramesh Raja, learned counsel for the contesting fourth respondent and also perused the materials available on record. No representation on behalf of the respondents 1 to 3.

11. The learned counsel for the petitioner submitted that the appellate Court dismissed the delay condonation petition on the presumption that the property involved in the claim petition was already delivered to the fourth respondent in E.A.No.76 of 2007 by an order dated 8.8.2011. He would submit that the execution of the sale deed in favour of the fourth respondent had taken place without the knowledge of the petitioner and the petitioner was not a party to the execution proceedings. The learned counsel further submitted that since delivery of the property had taken place only after the dismissal of the claim petition, the condonation of delay will not be affected by the above factor and prayed for setting aside the order of the appellate Court.

12. The learned counsel then submitted that law of limitation cannot be involved for destroying the rights of the parties and no prejudice would be caused to the other side, if the petitioner is given an opportunity to contest the appeal on merits. In support, the learned counsel for the petitioner relied upon the following decisions:

(i) Ajay Kumar Guleeha v. J.Vijayakumar and another, reported in CDJ 2015 MHC 2279.

<https://hcservices.ecourts.gov.in/hcservices> (ii) Jeyamoorthy v. Parasuraman and others, reported in 2007 (3) MLJ 636.

(iii) G.P.Srivastava v. R.K.Raizada and others,



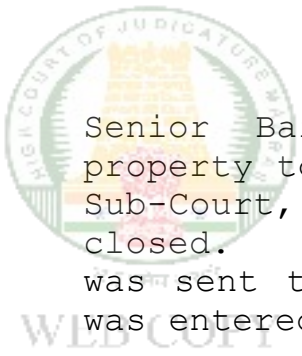
reported in (2000) 3 SCC 54.

13. Per contra, the learned counsel for the fourth respondent submitted that the fourth respondent is the bona fide Court auction purchaser and in fact, the petitioner was a person set up by the judgment-debtors to file the claim petition, which was rightly dismissed by the Executing Court. Though the petitioner obtained copies on 11.10.2014, he had not filed the appeal immediately and by setting forth vague reason, the petitioner had filed the appeal with a delay of 139 days. According to the learned counsel, each and every day's delay has not been properly explained by the petitioner and the appellate Court was right in dismissing the petition filed by the petitioner and therefore, there is no need to interfere with the same.

14. The point that arises for consideration is whether the petitioner has shown sufficient cause for the delay and whether appellate Court was right in dismissing the petition filed by the petitioner seeking to condone the delay of 139 days in preferring the appeal against the order passed in E.A.No.22 of 2012.

15. As far as merits of the claim petition E.A.No.22 of 2012 is concerned, this Court need not look into the merits of the said application, as the same is not under challenge before me. The challenge before this Court is only against the order passed in I.A.No.119 of 2015 filed by the petitioner seeking to condone the delay of 139 days in filing the appeal. However, in order to record the conduct of parties, particularly, the petitioner, this Court is briefly setting forth certain factual aspects herein below.

16. On a perusal of the order impugned in this revision, it is seen that the appellate Court recorded that the first respondent obtained decree against the respondents 2 and 3 and had obtained attachment of the property on 29.2.2008 bearing S.No.163/1 measuring an extent of 2.33 acres and S.No.163/2 measuring 50 cents on the northern side. It has also recorded that before ordering attachment, on 6.2.2008 the Court has ordered status quo in respect of the aforesaid properties. While so, the respondents 2 and 3 have executed a power of attorney on 25.2.2008 in favour of Mariappan. Thereafter, the attached property was brought for sale to realise the decree amount by the first respondent and the sale was conducted on 7.6.2011, wherein the fourth respondent was the successful bidder and the sale was confirmed and also sale certificate was issued in favour of the fourth respondent. When the petition of the fourth respondent in E.A.No.116 of 2011 for delivery of property was pending, the legal heirs of the power agent Mariappan have filed a claim petition in E.A.No.100 of 2008 and the same was dismissed by the Executing Court. As against the said order, no appeal was preferred and the said order has become final. Thereafter, on 18.10.2014, the



Senior Bailiff has handed over possession of the auctioned property to the fourth respondent and the same was recorded by the Sub-Court, Virudhunagar on 17.11.2014 and E.A.No.116 of 2011 was closed. The sale certificate in favour of the fourth respondent was sent to the Sub Registrar Officer, Virudhunagar and the same was entered in the relevant registers of the SRO.

17. In I.A.No.119 of 2015, the petitioner averred that an order was passed by the Executing Court in E.A.No.22 of 2012 on 5.9.2014 dismissing the petition. On 8.9.2014, the petitioner applied for copies of the same and the copies were made ready on 7.10.2014, but the same was taken delivery only on 11.10.2014. According to the petitioner, since he was not well and was not having sufficient money to file the appeal, a delay of 139 days occurred in filing the appeal and the delay is neither wilful, nor wanton.

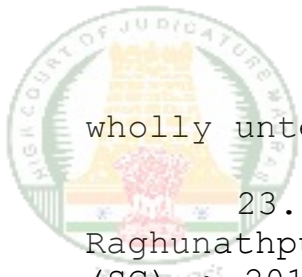
18. Admittedly, the petitioner has not explained each and every day's delay. He has not filed any proof to show that really he fell sick and had taken treatment. It is the bounden duty of the petitioner to show sufficient cause for the delay.

19. 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 petitioner had not established by preponderance of evidence to show that there was sufficient cause for the delay in filing the appeal.

20. The decisions relied upon by the petitioner, supra, are in relation to an opportunity to be given to the aggrieved party to contest the case on merits. In the case on hand, admittedly, in all stages the petitioner has contested the proceedings and only after affording an opportunity, the Courts have decided the issue. In the given facts of the case, those decisions are not applicable to the case on hand.

21. 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.

22. 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 and the exercise 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.

23. 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 encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate 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



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



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."

25. 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)

26. 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.

27. As stated supra, in the case on hand, the explanation for the delay given by the petitioner is acceptable one. Though liberal approach is to be taken in petitions under Section 5 of the Limitation Act and the petitioner had shown semblance of bona fide for the delay on his part. As not right by the Executing Court for the delay stated by the petitioner does not have any bona fide in it.



28. 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 and the case on hand it is a meagre delay and hence no prejudice would be caused to the other side by the delay being condoned.

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29. In the case on hand, though the length of delay is only 139 days, whether the petitioner has given reasonable explanation for the delay is the point for consideration and therefore, the said aspect is a relevant matter to be taken into account while considering whether the delay should be condoned or not.

30. From a reading of the averments, it is seen that petition seeking to condone the delay of 139 days in filing the appeal was filed by giving proper reasons and the appellate Court was not right in dismissing the petition.

31. It is reiterated that the petitioner had shown sufficient cause to condone the delay as contemplated in the decisions of the Hon'ble Supreme Court supra. The petition is not seriously lacking to apply the provision of Section 5 of Limitation Act, as the affidavit filed by the petitioner before the appellate Court with convincing explanation for the period commencing from the date of dismissal of the I.A.No.119 of 2015 till the date of filing of the un-numbered appeal. In the case on hand, as stated supra, the delay of 139 days in filing appeal was properly explained by the petitioner.

32. Applying the ratio laid down by the Hon'ble Supreme Court in the recent judgment in Civil Appeal No.(S).3777 of 2015 and the facts and circumstances of the case on hand, I am of the view that the petitioner had explain each and every day's delay and the appellate Court was not in absolute right in dismissing the petition being I.A.No.119 of 2015. Therefore, I find there is a reason to interfere with the order passed by the appellate Court. Resultantly, the Civil Revision Petition is on merits and the same is liable to be allowed.

33. In the result:

(a) this Civil Revision Petition is allowed and the order in I.A.No.119 of 2015 in Unnumbered A.S.No. of 2016 dated 19.01.2016, on the file of the learned Principal District Judge, Virudhunagar District at Srivilliputhur, is set aside;

(b) the learned Principal District Judge, Virudhunagar District at Srivilliputhur is hereby directed to number the Appeal in A.S.No. of 2016 and to dispose of the same within a period of two weeks from the date of receipt of a copy of this order after affording opportunity to both parties and to dispose of the



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same within a period of four months from the date of numbering the Appeal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-I)

To

1.The Principal District Judge,
Virudhunagar District @ Srivilliputhur.

2.The Subordinate Judge,
Virudhunagar.

+1cc to Mr.C.JEGANNATHAN, Advocate, SR.No.86510.

order made in
C.R.P. (MD) (NPD) No.414 of 2016
and
CMP (MD) No.1794 of 2016
25.09.2018

KK/RSK/SAR 1/30.10.2018/11P/4C