

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (NPD) No. 566 of 2019

Mani

... Petitioner

-Vs-

Subramaniam (died)
S/o Narayanasamy

1. Kandipan

2. Parthiban

3. Kannan

4. Nandagopal

5. Masilamani

6. Seethalakshmi

... Respondents

Prayer: Petition filed under Section 115 of Civil Procedure Code against the order dated 23.06.2017 passed in I.A. No. 360 of 2016 in I.A. No. 208 of 2012 in O.S. No. 73 of 2010 on the file of the Subordinate Judge, Neyveli.

For Petitioner

: Mr. V. Rajesh Babu

For Respondents

: Mr. G. Surya Narayanan

ORDER

This Civil Revision Petition has been filed against the fair and decretal order passed in I.A. No. 360 of 2016 in I.A. No. 208 of 2012 in O.S. No. 73 of 2010 on the file of the Subordinate Judge, Neyveli, on 23.06.2017.

2. The short facts pertaining to this revision, which are required to be noticed, are as follows:

(i) Late in the year 2010, the suit in O.S. No. 73 of 2010 was filed by the revision petitioner before the Learned Sub Judge, Neyveli for the relief of declaration and permanent injunction. The said suit was dismissed for default for the non-appearance of the petitioner on 20.11.2011. Thereafter, the petition to condone the delay of 120 days in filing the restoration application to restore the suit was filed in I.A. No. 208 of 2012 on 18.04.2012 by the petitioner.

(ii) The said I.A. No. 208 of 2012 was allowed by the Court below and the petitioner was directed to pay a cost of Rs. 300/- (Rupees Three Hundred Only) on or before 30.10.2012 and the said order was passed on 15.10.2012.

(iii) On or before 30.10.2012, the petitioner was not able to pay the cost, therefore, the said I.A. No. 208 of 2012 was dismissed for non payment of cost on 31.10.2012.

(iv) Thereafter, the counsel on record for the petitioner before the Court below unexpectedly died on 31.03.2013. Because of the sudden demise of the counsel on record, the petitioner could not be in a position to know the development of the case. Thereafter, as averred in the petitioner's affidavit filed in support of this revision petition, the petitioner was not able to trace the bundle, as the counsel on record died already, and to whom the bundle has been transferred to look after also could not be traced by the petitioner in time. Therefore, it took nearly two years and only thereafter on getting the bundle from the junior counsel, the petitioner was able to file a petition in I.A. No. 557 of 2015 under Section 5 of the Limitation Act, in I.A.No.208 of 2012 to condone the delay of 1040 days in filing the restoration application to restore the I.A. No. 208 of 2012 and the same was filed only on 30.10.2015.

(v) Subsequently, after knowing the position that, the said I.A. could not have been filed, on 12.09.2016, the petitioner has withdrawn the said I.A. No. 557 of 2015 as not pressed without prejudice to the rights of the petitioner to file appropriate petition in the manner known to law. On the same day, i.e., 12.09.2016, the petitioner has filed yet another petition in I.A. No. 360 of 2016 in I.A. No. 208 of 2012 under Sections 148 and 151 of Civil Procedure Code to extend the time for paying the costs of Rs.300/- (Rupees Three Hundred Only) as ordered by the Court on 15.10.2012 beyond the period i.e., on 30.10.2012. The said I.A. No. 360 of 2016 seeking extension of time to pay the cost was dismissed by the Court below on 23.06.2017, which is the impugned order herein. Assailing the same, the present revision has been filed.

3. In this context, it is the case of the petitioner, as projected by the learned counsel for the petitioner that, even though time was given to pay the cost of Rs. 300/- (Rupees Three Hundred Only) on or before 30.10.2012, since the petitioner is a poor farmer, due to various reasons, he did not pay the cost immediately on or before 30.10.2012 and thereafter, the dismissal taken place on 31.10.2012 for non

payment of cost could not be immediately taken note of by the petitioner and in the meanwhile, the learned counsel appearing for the petitioner before the trial Court died on 31.03.2013, i.e., within a span of five months. Therefore, the petitioner was not in a position to know what was the effect of non-payment of the cost which ought to have been paid by the petitioner on or before 30.10.2012 and according to the petitioner, he has no knowledge about the dismissal of the said I.A. on 31.10.2012 for non payment of cost, because the counsel on record died, ofcourse after five months from the date of the said order.

4. Subsequently, when the petitioner has taken efforts to contact some junior counsel to trace the bundle and to pursue the matter further, the petitioner could not be succeeded and at last after two years, the petitioner was able to get the bundle and only thereafter on legal advise, he filed the petition in I.A. No. 557 of 2015 to condone the delay of 1040 days, which was subsequently realized as not the proper petition and accordingly, the same was withdrawn by the petitioner on 12.09.2016 and on the very same day, the present application i.e., I.A. No. 360 of 2016 was filed for seeking extension of

time. The extension of time, according to the petitioner, required was 1351 days and therefore, the dismissal of the said application, through the impugned order by the Court below, without realizing the aforesaid facts, according to the learned counsel appearing for the petitioner, is unjustifiable and cannot be accepted and therefore, the indulgence of this Court is very much needed.

5. Per contra, the learned counsel appearing for the respondents, having relied on the aforesaid dates and events, has pointed out that, the very reasoning given by the petitioner for non pursuing the matter even after the dismissal of the same on 31.10.2012 for non payment of the cost, is because of the demise of the learned counsel for the petitioner before the lower Court, however, the fact remains that, the said advocate died only on 31.03.2013, i.e., after five months from the date of dismissal of the I.A. No. 208 of 2012.

6. He further submits that, therefore, if at all, the petitioner had due diligence to pursue the matter, as he had knowledge about the cost awarded by the lower Court on 15.10.2012, where two weeks time

was given, that is up to 30.10.2012 and within the said date, if the petitioner could not be in a position to pay the cost, at least within a week or two or a month, definitely the learned counsel on record, who was very much alive at that time, would have informed the petitioner. No such effort seems to have been taken by the petitioner, as no such averments made in the affidavit filed in support of the application before the lower Court or herein.

7. Thereafter, he also submits that, assuming the advocate on record died on 31.03.2013, the petitioner could have further traced out the bundle and filed a necessary petition seeks extension of time then and there. Nothing was moved from the side of the petitioner and very lethargically, the petitioner had come forward to the trial Court and filed a wrong petition on 30.10.2015 under Section 5 of the Limitation Act and that was withdrawn nearly after one year i.e., on 12.09.2016. All these action on the part of the petitioner and his attitude made it clear that, the petitioner did not have any interest in pursuing the suit and only to drag on the suit proceedings and to trouble the respondents i.e., defendants in the suit, he had been adopting these delaying tactics

and knowing very well that, the cost should have been paid within 15 days, he filed the present petition after nearly about four years, therefore, such inordinate delay cannot be accepted or taken easily by any Court of law. Therefore, the Learned trial Court, who dealt with the said I.A. in question, has rightly dismissed the same through the impugned order with acceptable reasons. Therefore, it does not require interference of this Court.

8. I have considered the said submissions made by both sides.

9. The aforesaid facts and circumstances as well as dates and events are not in much controversy, as both the learned counsel agreed the dates and events.

10. Some reasons have been given by the petitioner that, he is not in a position to pursue the matter by seeking extension of time to pay the cost and in this regard, the petitioner's counsel viz., counsel on record died on 31.03.2013 and thereafter, he was not in a position to trace the bundle and all efforts were taken to locate the bundle with a

junior counsel and in this regard, it took nearly two years to approach this Court, on the legal advise, he filed the petition. Filing of wrong petition on 30.10.2015, is not the fault of the petitioner as he acted upon the legal advise and thereafter realizing the same, he was able to withdraw the same on 12.09.2016 and after realizing the same, he has chosen to file the right petition on the same day i.e., on 12.09.2016. With all these reasons, there had been a delay of 1351 days, for getting extension and therefore, the trial Court has not accepted the reasoning given by the petitioner's side and accordingly rejected the application in question.

11. In this context, this Court is of the view that, the suit has been filed by the petitioner i.e., the plaintiff for a declaration of title over the immovable property. If this revision is dismissed and the petitioner is thrown out at the threshold, his valuable right over the immovable property would get defeated and he would not be in a position to agitate the issue in the manner known to law before the concerned Court as on such ground the substantive right vests with the litigant cannot be easily taken away or brushed aside. Even though,

it is one of the settled proposition that, each and every day delay has to be explained, it is also a settled proposition that, where there is a sufficient cause shown to the satisfaction of the Court and still if the said cause has not been accepted by the Court and the right of the party is denied and by virtue of that, if subsequently the party is affected, certainly this Court can show its indulgence and exercise its discretion to accept the plea made by the litigant to approach the Court belatedly of course with reasons.

12. In that view of the matter, this Court feels that, in the interest of justice and that the petitioner has come out and pursue the matter in the Court below to establish his right over the immovable property, the petition can be allowed on heavy terms, since for the past more than four years, the issue has been pending at this stage, where the respondents suffered a lot, since they had to engage the counsel at the Court below as well as before this Court.

13. Taking into account all these aspects, this Court is inclined to dispose of this revision petition with the following directions:-

"(i) That the impugned order is set aside and the time sought for i.e, the extension of time to make the payment of Rs. 300/- (Rupees Three Hundred Only) being the cost imposed by the Court below in I.A. No. 208 of 2012, by order dated 15.10.2012, is extended and the petitioner is directed to pay the said cost to the Court below within a period of one week from the date of receipt of a copy of this order.

(ii) This order is subject to payment of the cost of a sum of Rs.20,000/- (Rupees Twenty Thousand Only) payable by the petitioner to the respondents within a period of thirty days from the date of receipt of a copy of this order."

14. It is made clear that, if any of the cost, viz., Rs.300/- imposed by the Court below or Rs.20,000/- (Rupees Twenty Thousand Only) awarded now on the petitioner, is not paid within the time stipulated above, this order allowing this revision shall stand automatically withdrawn and no further indulgence would be shown by this Court for any extension of time for payment of cost on the side of the petitioner. Since the suit has been pending for all these years from 2012, it is submitted by both sides that, the suit is ripe for trial, the

trial Court is directed to complete the trial and decide the suit within six months from the date of receipt of a copy of this order.

15. With these directions, this Civil Revision Petition is allowed on the said terms. No costs.

05.09.2019

Index: Yes
Speaking order
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Note: Issue order copy by 10.09.2019.
To

The Subordinate Judge,
Neyveli.



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R.SURESH KUMAR, J.

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