

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.06.2019

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRP (NPD) No.2215 of 2010 and

Kanchana

... Petitioner

Vs.

1. Minnakkal Village Panchayat
rep. by its President Mr.Arumugam
Vadugampalayam, Minnakkal Post,
Vennandur Via, Rasipuram Taluk,
Namakkal District.
2. The District Collector,
Namakkal District,
Namakkal.
3. The Block Development Officer,
(Village Panchayat),
Vennandur, Rasipuram Taluk,
Namakkal District.

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order dated 29.01.2009 passed in I.A.No.385 of 2007 in O.S.No.59 of 2003 by the District Munsif, Rasipuram, Namakkal District.

For Petitioner : Mr.P.Rathnavel
For Respondent : Mrs.R.Revathy (R1 and R3)
For 2nd respondent : No appearance

ORDER

The revision petitioner is the plaintiff in O.S.No.59 of 2003 on the file of the District Munsif, Rasipuram, Namakkal District. She filed the said suit for a permanent injunction and for a mandatory injunction against the respondents/defendants. The suit was dismissed for default on 13.07.2009. The revision petitioner filed a petition under Order IX Rule 9 of CPC to restore the suit on file along with I.A.No.385 of 2007 under Section 5 of the Limitation Act to condone the delay of 455 days in filing the petition to restore the suit and the same was dismissed by the learned District Munsif, Rasipuram, Namakkal District on 29.01.2009. Aggrieved over the said orders, the revision petitioner has filed the present revision petition.

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2. Section 5 of the Limitation Act is an enabling provision to assist the litigants, who failed to do an act within the prescribed time period, as originally fixed under various enactments. The appellant must show sufficient cause in order to condone the delay. The expression "sufficient cause" cannot be defined because, it is very wide and liberal in

nature. The doctrine of condonation of law has been brought under the Act, since the main aim of the court is to provide justice.

3. In the instant case, the plaintiff had filed the suit in O.S.No. 59 of 2003 before the District Munsif, Rasipuram, Namakkal District for the relief of permanent injunction restraining the respondents/defendants from interfering with her peaceful possession and enjoyment of the suit property and also for a mandatory injunction directing the defendants to demolish the superstructure put up by the first defendant in the suit property.

5. The defendants filed a written statement and the trial court framed necessary issues and both the parties went for trial. On 13.07.2004, the District Munsif, Rasipuram, Namakkal District, passed an order, as extracted here under:

"Plaintiff present. Plaintiff counsel present.

Defendant absent. Defendant counsel present. Plaintiff counsel refused to proceed the case. Defendant counsel ready to proceed the case. Hence, suit is dismissed for default without cost."

6. It is also seen from the records that an advocate commissioner was appointed in the suit to inspect the suit property. He filed his report stating that he could not demarcate the suit property and the construction of Magalir Mandram put up by the first defendant is in the Government land in S.No.146/105 of Minnakkal Village and not in the suit property. The plaintiff filed objections and once again the advocate commissioner went over to the suit property along with a surveyor to measure the suit property as per the orders of the learned District Munsif, Rasipuram.

7. According to the plaintiff, the defendants dictated the advocate commissioner and the surveyor as to how they should measure the suit property and that both of them were put under constant fear. Her further contention is that though she requested the advocate commissioner to seek the assistance of police for measuring the suit property as the first respondent brought more than 100 supporters at the time of inspection and rounded up the commissioner and the surveyor, the advocate commissioner refused to get any police protection. Her another contention is that the court orally observed that no police protection can be given to the advocate commissioner, since the advocate commissioner did not express that he is unable to execute the warrant without the assistance of police.

8. It is also seen from the records that the petitioner/ plaintiff approached this court by way of filing Crl.O.P.No.22312 of 2004 praying to direct the Inspector of Police, Rasipuram Police Station to give police protection to her and his counsel at the time of inspection of the suit property by the advocate commissioner. In the meantime, the petition for re-inspection of the suit property by the same advocate commissioner was dismissed, since the petitioner/plaintiff did not take steps for executing the warrant by the advocate commissioner and also did not pay advocate commissioner's fee. The suit was subsequently dismissed on 13.07.2004, as stated above.

9. The main allegation in the present revision petition is that the petitioner engaged Mr.P.Rathnavel as her counsel, who is practicing in Madras High Court and that one Mr.M.Subramaniam, practicing counsel at Rasipuram was looking after her case. Her further contention is that Mr.M.Subramaniam could not conduct the case, as he did not have the bundle. According to her, the adjournment petition filed by her counsel was refused to be received by the court.

10. It is to be pointed out that on 13.07.2004 both the petitioner /plaintiff and her counsel were present before the court and as per the orders of the learned District Munsif,the petitioner/ plaintiff refused to proceed with her case. Therefore, the suit was dismissed for default.

11. It is alleged in I.A.No.385 of 2007 in para 6, which is extracted hereunder.

" I submit that as my suit was dismissed for default on 13.07.2004, I requested my local counsel Mr.M.Subramani to file an application to restore the dismissal order. But he failed to file the petition within the period of limitation of 30 days, as prescribed under the Limitation Act. When I contacted my counsel at Chennai, I was asked to get the certified copy of the dismissal order dated 13.07.2004 for further course of action. Therefore, I asked the local counsel to get a certified copy of the dismissal order, but he did not file an application till 15.06.2005, but he filed the application only on 16.06.2005. The copy was made ready on 12.08.2005 and the same was delivered to my local

counsel on 02.09.2005. However, the local counsel handed over the certified copy to my counsel and after preparing the petition, I have filed the above petition along with condonation of delay petition on 10.11.2005. My local counsel Mr.M.Subramani has not filed petition to restore the dismissal order within the period of limitation and not applied for certified copy of the dismissal order promptly and the counsel at Chennai expressed his inability to give his legal opinion without seeing the copy of the dismissal order. It is because of some misunderstanding between me and the local counsel Mr.M.Subramani. I could not file the petition to restore the dismissal order dated 13.07.2004 within the period of limitation. I am a village lady and not well educated and as such I am not aware of the legal proceedings. I am completely depending upon the legal advice of my counsel. It is clear from the above facts that my local counsel has not acted promptly in the case. Therefore, I could not be punished for the default committed by my counsel.

12. The conduct of the petitioner/plaintiff is clear from the records. When the advocate commissioner stated that the building is constructed by the first defendant in the land of the government, she wanted the advocate commissioner to inspect the suit property once again with a surveyor and did not co-operate with the advocate commissioner in executing the warrant and she also requested the advocate commissioner to seek police protection, at the time of measuring the suit property, especially when the advocate commissioner and the surveyor did not express any difficulty in executing the warrant. The advocate commissioner did not file any petition before the trial court seeking for police protection. When the petitioner failed in her attempt before the trial court, she had filed a Crl.O.P.No.22312/2004 before this court for a direction to the Inspector of Police, Rasipuram Police Station to give police protection to her and her counsel. Earlier, she had filed a writ petition in W.P.No.4234 of 2002 before this court, in which a direction was given to the plaintiff to approach the civil court. In the writ petition, the 3rd defendant filed a counter contending that a self-help building for women under S.G.R.Y scheme is being constructed in pursuance of the orders of the District Collector in ROC No.4516/02/A2 dated 24.07.2002 in S.No.146/105 of Minnakkal Village. The suit property is in S.No.154/06 of Minnakkal Village. When the defendants 2 and 3 are government officials, it is unbelievable that the advocate

commissioner and the surveyor were ganged up by 100 persons at the time of inspection of the suit property. The conduct of the petitioner/ plaintiff is clear that she does not want to proceed with the trial of the case. The reason assigned in para 6 of the affidavit is also not convincing. The learned District Munsif, Rasipuram, Namakkal District has rightly dismissed the petition in I.A.No.385 of 2007 in O.S.No.59 of 2003 and I do not see any reason to interfere with the findings rendered by the trial court.

13. In the result, the civil revision petition is dismissed. No costs. The orders passed by the trial court is upheld.

21.06.2019

Index : Yes/No
Internet : Yes/No
Speaking/non-speaking order
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To

1. The District Munsif, Rasipuram, Namakkal District.

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R.HEMALATHA,J.
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