

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.NO.513 OF 2013

Velumani

... Appellant

vs

1. S.Raghunathan
2. S.Viswanathan
3. Kokila
4. Manjula
5. Deepa
6. Krishnaveni
7. Sangeetha
8. Vijaya Lakshmi
9. Vasanthakumari
10. Umadevi
11. Branch Manager,
Karur Vysya Bank Limited,
Komarapalayam,
Namakkal District.
12. Branch Manager,
State Bank of India,
S.S.I. Branch, Bhavani - 638 301,
Erode District.
13. Branch Manager,
Life Insurance Corporation,
Komarapalayam - 638 183,
Namakkal District.
14. Singaravelan
15. Ramanan
16. Manager,
Saravana Transport,
10/51, M/s.Saravana Transport,
Ragavendra Street, Komarapalayam,
Namakkal District.
17. Sundararajan

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18. Manager,
Varma Roadways,
No.1, Ragavendra Street,
Komarapalayam, Namakkal District.

19. Pandu

20. Manager,
Southern Roadways,
108/45-C2, Thammanna Street,
Komarapalayam,
Tiruchengode Taluk,
Namakkal District.

21. Manager,
Aarna Apparels,
No.6, Ragavendra Street,
Komarapalayam, Namakkal District.

(11, 12, 15 to 21 exparte in Lower
Court given up)

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Order 43, Rule 1
(c) of CPC, to set aside the fair order and decretal order
dated 03.01.2013 passed in I.A.No.205 of 2012 in O.S.No.94 of
2008 by the Additional District Court, Namakkal.

For Appellant : Mr.Silambanan,
Senior Counsel for
M/s.Profexs Associates

For R1 : Mr.N.Manokaran

For R3 & R4 : Mr.S.G.Ramesh Kumar

For R8 to R10 : Mr.R.Kamesh Kumar

For R13 : Mr.T.Muruganantham

For R14 : Mr.N.M.Karthikeyan

For R2, R5, R6 to R7 : No appearance

J U D G M E N T

The appellant was the plaintiff in O.S.No.94 of 2008 who had
filed the said suit for partition the suit schedule properties.
In the said suit, the several applications came to be filed by

the appellant and the respondents due to intervening developments.

2.The appellant had also filed I.A.No.26 of 2011 (formerly I.A.No.328 of 2009) to amend the plaint which came to be allowed on 25.08.2011.

3.The appellant however failed to take steps to carry out the amendments in terms of Order VI Rule 17 of CPC. The Court had adjourned the case to 30.08.2011, 13.09.2011, 27.09.2011, 04.10.2011 to facilitate the appellant to take steps. Since there was no representation for the appellant, the suit was ultimately dismissed for default on 12.10.2011.

4.Under these circumstances, the appellant filed I.A.No.205 of 2012 on 31.10.2011 for set aside the dismissal of the suit for want of prosecution. I.A.No.205 of 2011 was contested permanently by the respondents. The court after considering the appellant's attitude in the suit, dismissed the I.A.No.205 of 2011 on 03.01.2013.

5.Heard the learned senior counsel for the appellant and the learned counsel for the 1st, 3rd, 4th, 8th, 10th, 13th and 14th respondents.

6.The learned senior counsel for the appellant submits that the court at best ought to have proceeded with the suit and not dismissed the case for not carrying out the amendments pursuant to the order dated 25.08.2011 in I.A.No.26 of 2011. The learned senior counsel for the appellant submits that mere the dismissal partition suit by itself will not preclude fresh suit for partition. Therefore, the court ought to have allowed I.A.No.205 of 2011. The Court only should have seen whether any hardship would have been caused to the respondents by allowing the application. It is submitted that there is no point in relegating the appellant to file a fresh suit for partition as the partition suit is of the year 2008.

7.Defending the order passed by the learned Additional District Judge, the learned counsel for the 1st respondent Mr.N.Manoharan submits that the conduct of the appellant was dilatory tactics as she was taking adjournment repeatedly despite the order allowing the application for amendment was passed on 25.08.2011. Since no time was prescribed, it was mandatory under Order 6 Rule 18 of CPC to carry out the amendment within fourteen days from the date of the order or within such extended time that may be fixed or allowed by filing application under Section 148 of CPC. He submits that the suit was correctly dismissed for non prosecution and not restored vide the impugned order.

8.He submits that the court taking note of the conduct of the appellant has rightly dismissed the application for restoration of the suit. The learned counsel for the 1st respondent Mr.M.Manoharan strongly placed relies of the decision of the Hon'ble Supreme Court in Noor Mohammed vs Jethanand and Another, (2013) 5 SCC 202. He specifically drew my attention to the paragraph Nos.30,31 and 32 of the order wherein in the peculiar facts and circumstances of the case, the court observed as follows in paragraph No.32:-

32. Coming to the proceedings before the High Court from the date of presentation of the second appeal till the date of admission, the manner in which it has progressed is not only perplexing but also shocking. We are inclined to think that the Court should not have shown indulgence of such magnitude by adjourning the matter when the counsel for the appellant was not present. It is difficult to envision why the Court directed fresh notice to the appellant when there was nothing suggestive for passing of such an order. The matter should have been dealt with taking a recourse to the provisions in the Code of Civil Procedure. It is also astonishing that the lawyers sought adjournments in a routine manner and the court also acceded to such prayers. When the matter stood dismissed, though an application for restoration was filed, yet it was listed after a long lapse of time. Adding to the misery, the official concerned took his own time to put the file in order. From the Registrar General's communication it is perceptible that some disciplinary action has been initiated against the erring official. That is another matter and we do not intend to say anything in that regard. But the fact that cannot be brushed aside is that there is enormous delay in dealing with the case. Had timely effort been made and due concern bestowed, it could have been avoided. There may be cases where delay may be unavoidable. We do not intend to give illustrations, for facts in the said cases shall speak for themselves.

9.In this case, there was no doubt some delay on the part of the appellant in taking steps to carry out the amendments within a period of 14 days from the date of the order dated 25.08.2011 in I.A.No.26 of 2011 and therefore the suit was dismissed on 12.10.2011. The appellant is guilty of not taking steps in time for amending the plaint. However, that did not mean the suit

could be dismissed and where an application is filed to set aside the dismissal of the suit for non-prosecution also should be dismissed.

10. Several defendants came to be impleaded in view of the intervening developments before the lower Court. The dismissal of application to restore the suit only on the ground that the appellant failed to take steps to comply with the requirements of Order VI Rule 18 of CPC by itself is not a sufficient ground to disallow the application filed for restoration the suit to the file of the Court.

11. The observation in Noor Mohammed vs Jethanand and Another, (2013) 5 SCC 202, cited was made in the context of the peculiar facts and circumstances of the case. There the appeal was listed for admission along with stay application on 30.07.2001. It was adjourned on several occasions though nobody appeared for the appellant. As nobody was present for the appellant the case was dismissed on 10.11.2003 for non prosecution. Under these circumstances, the appellant therein filed an application for restoration of appeal in 2004 but dragged on the proceedings till 2011. It is in that background several observations were made. Ultimately, in paragraph 34, the Court observed as follows:-

34. Though we have dwelled upon the issue, yet we refrain from issuing any directions, for the High Court as a constitutional court has to carry the burden and live up to the requisite expectations of the litigants. It is also expected from the lawyers' community to see that delay is avoided. A concerted effort is bound to give results. Therefore, we request the learned Chief Justice of the High Court of Rajasthan as well as the other learned Chief Justices to conceive and adopt a mechanism, regard being had to the priority of cases, to avoid such inordinate delays in matters which can really be dealt with in an expeditious manner. Putting a step forward is a step towards the destination. A sensible individual inspiration and a committed collective endeavour would indubitably help in this regard. Neither less, nor more.

12. In the present case, the only reasoning given for dismissing application for restoration of the suit appears to be in absence of the appellant on the date and failure of the appellant to take steps to carry out amendments pursuant to order dated 25.08.2011 in I.A.No.26 of 2011. As mentioned above, delay in incorporating corrections are not to be viewed

seriously while considering the application for restoration of the suit to the file of the Court.

13.Since, the appellant also has been guilty of not appearing before the Court, I am of the view, to meet the ends of justice, the appellant may be given one chance on terms.

14.Under these circumstances, the appellant is directed to pay a sum of Rs.7,500/- to the High Court annexed Mediation and Conciliation Center, Madras as cost within a period of two weeks from the date of receipt of a copy of this order. On such receipt, the application filed for restoration of the suit in I.A.No.205 of 2012 in O.S.No.94 of 2008 shall stands allowed with consequential relief.

15.The liberty is given to the appellant to move appropriate application for carrying out the amendment pursuant to the order dated 25.08.2011 in I.A.No.26 of 2011 in accordance with law. The respondents are at liberty to defend such application if any that may be filed by the appellant. The Trial Court is requested to dispose the suit on merits in accordance with law within a period of nine months from the date of receipt of a copy of this order.

16.The present Civil Miscellaneous Appeal is allowed with the above observations.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Court, Namakkal.
2. The Section Officer, V.R. Section,
Madras High Court.
3. The Secretary, Mediation & Conciliation Centre,
Madras.

+1cc to Mr.Silambanan, Advocate, S.R.No.99376
+1cc to Mr.T.Muruganantham, Advocate, S.R.No.99484
+1cc to Mr.N.Manokaran, Advocate, S.R.No.99660

C.M.A.No.513 of 2013

RGN(CO)
CS/11/02/2020