

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **13.02.2019**

CORAM:

THE HONOURABLE Mr.**JUSTICE N.SATHISH KUMAR**

C.R.P.(NPD) No.3561 of 2013

G.Sampath

...Petitioner

versus

1. Rukmani Ammal
2. Saravanan
3. Arputhammal

...Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 16.07.2013 passed in I.A.No.553 of 2012 in O.S.No.1026 of 2004 on the file of Additional District Munsif Court, Vellore.

For Petitioner : Mr.K.V.Ananthakrushnan

For Respondents : Mr.K.Rajesh
for M/s.T.S.Gopalan & Co

ORDER

This Civil Revision Petition has been filed against the order of dismissal of the application filed to condone the delay of 2464 days in filing the application to set aside the ex-parte decree dated 22.08.2005.

2. The background leading to file this revision is as follows:-

a) The plaintiffs have filed a suit to set aside the sale deed executed by the first defendant in favour of the second defendant on the basis of the power of attorney executed by the plaintiff. It is the case of the plaintiffs that there was an agreement for sale at the relevant time and the first defendant had played a fraud and obtained a power of attorney as if he required it for some other purpose. However, on the strength of the above power, the property has been transferred. Hence, they have assailed the sale deed by filing the present suit.

b) The defendant entered appearance, however, the suit was decreed ex-parte on 22.08.2005. Thereafter, the first defendant filed an application to set aside the ex-parte decree with a delay of 2464 days. It is the contention of the first defendant in his affidavit that originally he engaged K.J.Sathyanarayan, Advocate to defend him and the said Advocate handed over the case bundle to the first defendant. Thereafter, he engaged another Advocate K.Dhakshinamurthy to appear in the above suit and also in the other connected suit in O.S.No.224 of 2000. When the matter is pending, he received summons from the Land Grabbing Cell on 23.05.2012. At the time of enquiry only, he came to know that the suit was decreed ex-parte on 22.08.2005. Thereafter, when he made an enquiry, it came to know that the advocate K.Dhakshinamurthy has not entered appearance on behalf of the defendants. Hence, he sought to condone the delay of 2464 days in filing the petition to set aside the exparte decree.

3. The respondents / plaintiffs denying the allegations of the petitioner / first defendant submitted that the entire allegation is false and in fact, the first defendant has already filed an application through one Advocate V.Natarajan to set aside the ex-parte decree as well as to condone delay of 1379 days. Therefore, the allegation that he came to know about the ex-parte decree only in the year 2012 is false. The Court below dismissed the application on the ground that the allegations found in the application are not correct and no sufficient cause was shown by the revision petitioner. In fact, the trial Court had considered the Exs.R1 to R4 and Exs.P1 to P4 filed by the parties and dismissed the application.

4. The learned counsel for the revision petitioner submitted that the party can not suffer on the mistake committed by the Advocate, who has not entered appearance despite he was engaged by the party. Had the Advocate properly appeared and informed the same to the defendant, he would not have been set ex-parte. Hence, he submitted that the right available to a party should not get suffered after engaging two counsels by him. Hence, he submitted that liberal approach may be adopted to condone the delay.

5. The learned counsel for the respondents would contend that the allegations set out in the application to condone the delay are found to be false. The Court below has rightly disbelieved the version of the revision petitioner. Hence, he submitted that there is no illegality or infirmity in the order passed by the trial Court.

6. I have considered the rival submissions as well as the documents and the orders of the Court below.

7. It is not in dispute that originally the suit has been filed to set aside the sale deed executed by the first defendant in favour of the second defendant. The suit itself was laid on the ground that the sale deed is a result of fraud. The first defendant had entered appearance in the above suit through one K.J.Sathyanarayanan, Advocate, which is not disputed. Thereafter, he has engaged another counsel K.Dhakshinamurthy to look after the case. However, the said Advocate also did not appear for the revision petitioner. Therefore, he was set ex-parte and he came to know about the ex-parte decree only in the year 2012. Hence, there occurred a delay of 2464 days. The trial Court has factually found that the allegation of the revision petitioner that he came to know about the ex-parte decree only in the year 2012, is found to be false. Further, the trial Court has also taken note of the fact that the Advocate K.Dhakshinamurthy never appeared on behalf of the petitioner. Only after the death of the said counsel K.Dhakshinamurthy, he wantonly included his name. It is also to be noted that Exs.R1 to R4 filed by the respondents reveals the fact that the revision petitioner has already engaged the Advocate called Natarajan to file set aside application with delay of 1359 days in the year 2008 itself. Thereafter, the above application has not been prosecuted. Therefore, the contention of the revision petitioner that he came to know about the ex-parte decree only in the year 2012 is nothing but false on the basis of the documents.

8. This Court is of the view that when the party seeking to condone the delay comes with false allegations distortion of the truth, the same cannot be accepted by the Court to exercise its discretion to condone the huge delay of 2464 days. It is not the case of the respondents that no summon was served and he never appeared in the suit. He has already engaged an Advocate K.J.Sathyanarayanan and took back the bundle and thereafter, he has also engaged another advocate V.Natarajan and filed an application to condone the delay in the year 2008 itself. All these facts clearly indicate that the petitioner is watching the entire proceedings. It cannot be said that he had no knowledge about the ex-parte decree. Hence, this Court is of the view that the order passed by the trial Court does not suffer from any illegality, infirmity or it lacks of merits. This Civil Revision Petition is dismissed. No costs.

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Index:Yes/No

Speaking/Non-speaking Order

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To
The Additional District Munsif,
Vellore.

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N.SATHISH KUMAR, J.

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