

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 31.10.2019

ORDER PRONOUNCED ON : 08.11.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

Civil Revision Petition (NPD) Nos.3914 & 4280 of 2013

and

M.P.Nos.1 & 1 of 2013

Velumani Petitioner in CRP No.3914 of 2013

Kandasamy Petitioner in CRP No.4280 of 2013

Vs

P.Ragunathasamy Respondent in both CRPs

COMMON PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decreetal order dated 13.08.2013 passed in I.A.No.993 of 2010 in O.S.No.22 of 1996 on the file of the District Munsif Court, Dharapuram and to allow the revision petitions and pass orders as this court may deem fit and proper.

For Petitioners (in both CRPs) : Mr.N.Devarajan

For Respondent (in both CRPs) : M/s.R.Shase
for Mr.M.Guruprasad

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COMMON ORDER

The petitioner in Civil Revision Petition No.4280 of 2013 and the petitioner in Civil Revision Petition No.3914 of 2013 are the first and fifth defendants respectively in the suit OS No.22 of 1996, on the file of District Munsif Court, Dharapuram.

2. Originally, the respondent in these two Civil Revision petitions has filed a suit as against the revision petitioners and three others, for the relief of specific performance, directing the defendants/petitioners to execute a sale deed after receiving the balance sale consideration of Rs.27,400/-. When the suit is posted for trial, due to non appearance of the petitioners/defendants before the trial Court, the learned District Munsif, Dharapuram by an order dated 13.04.1999 had passed an exparte decree against the petitioners. Only in the said occasion the petitioner in CRP No. 4280 of 2013 has filed an application in IA No.993 of 2010, under Section 5 of Limitation Act to condone the delay of 36 days in filing the application to set aside the exparte decree passed in the said suit. On the other hand, the petitioner in CRP No.3914 of 2013 has filed an application in IA No. 994 of 2010, under Section 5 of Limitation Act, to condone the delay of 2525 days in filing the application to set aside the exparte decree.

3. The learned District Munsif, Dharapuram in its order dated 13.08.2013, had dismissed the applications and aggrieved over the same, the petitioners are before this Court with these Civil Revision Petitions.

4. Today when these Civil Revision petitions came up for hearing, the learned counsel appearing for the petitioner in both Civil Revision Petitions would contend that the petitioner in CRP No.3914 of 2013 had gained knowledge about the pending of suit in OS No.22 of 1996 only in the year of 1995, particularly after receiving the notice from the execution proceedings, which has been filed based on the decree passed in OS No.22 of 1996. Further, he would contend that the petitioner in CRP No.4280 of 2013 had gained knowledge about the exparte decree within three months. Hence, he has also filed an application to set aside the exparte decree. He would further contend that since the first defendant is suffering from viral fever, he has also not filed any application immediately after passing the exparte decree.

5. On the other hand, the learned counsel appearing for the respondent would contend that though the order passed in IA.Nos.993 & 994 of 2010, under Section 5 of limitation Act is discretionary one, which should have been allowed only to the persons who had shown sufficient cause for the delay occurred, but in this case, the petitioner in both CRPs have filed affidavits with the false averments. Only for the reason that the

petitioners have not approached the Court with the bonafideness, the trial Court has dismissed the application, which is well within the principles of law. Hence, the dismissal order passed by the learned District Munsif, Dharapuram needs no interference by this Court.

6. Now, on considering the arguments advanced by either side, it is true that though the delay is enormous one, the same ought to have been condoned, if the said petitioner has come with the sufficient cause. In this occasion, it is necessary to see the judgment of our Honourable Apex Court reported in 2013 (12) SCC 649, (Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others), in which our Honourable Apex Court has held the principles applicable to an application for condonation of delay as below:-

"(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 and a 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 first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is

so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

(xiv) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

(xv) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(xvi) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(xvii) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters."

Now, applying the said principles to the case in our hand, though these type of applications are pragmatic and justice oriented, it is necessary for the petitioners to show the sufficient cause. It is to be noted that while at the time of dismissing the application, the learned District Munsif, Dharapuram has observed that the petitioners have not approached the court with correct particulars. In the said circumstances, on going through the affidavit filed by the first defendant in support of the petition filed in IA No.993 of 2010 (CRP No.4280 of 2013), he has stated that due to his illness (suffered from viral fever), he was unable to attend the court on 19.04.1999. In fact, in support of the said claim, he has not enclosed any

medical certificate for showing that during the relevant period, he was suffering from viral fever. According to the petitioner, the delay is only 36 days. In this respect, we have to decide whether the petitioner has projected any sufficient cause to condone the delay or not. In his affidavit, he has specifically stated that he came to know the details of exparte decree only at the time when he met his advocate. In this aspect, as per the averment made in the affidavit, the said affidavit was prepared on 26.04.1999 i.e within one week from the date of exparte decree. If it is so, when the application is filed from one week from the date of exparte decree, it is not necessary to file an application under Section 5 of Limitation Act. Accordingly, the averments set out in the affidavit filed by the petitioner is false and cannot be accepted.

7. The trial court has correctly held that the petitioner has not filed the application with actual number of days delayed, to set aside the exparte decree. Culling out of entire circumstances reveals the fact that the affidavit is a basic and necessary document for filing the condonation application with correct particulars. Similarly, in the affidavit filed by the 5th defendant in support of the petition filed in IA No.994 of 2010 (CRP No.3914 of 2013), he has stated that only after receiving the notice from the execution proceedings, which has been filed based on the decree passed in OS No. 22 of 1996, he gained knowledge about the passing of exparte decree. In this occasion, it is to be noted that along

with type set filed by the petitioner, he has enclosed the copy of written statement filed by the 5th defendant as document no.7. As per the endorsement, the said written statement was prepared in the month of June 1999, which shows that he gained knowledge in respect to the above suit in OS No.22 of 2013 in the year of 1999 itself. But in the affidavit filed by him, he has stated that he has received notice from the execution proceedings in the year of 2005 and after receiving the notice in 2005, he has filed the application to set aside the exappte decree only in the year of 2006. The said circumstances shows that he had filed the affidavit with incorrect particulars. The averments set out by the petitioner raised a question as to whether the petitioner has approached the court with bonafide reason or not. Though the document pertaining to OS No. 22 of 1996 was misplaced, it is the duty of the petitioner to file the application to set aside the exparte order immediately within 30 days from the date, on which the decree has been passed. But he has filed the application only in the year of 2010, for the reasons best known to him.

8. More than that, if the petitioner was vigilant and careful, he should have filed the application during 2005 itself, immediately after receiving notice from the execution applications. Whereas he has filed the application only in the year of 2006. For that delay also, he has not offered any proper explanation. So, the said delay would not have been caused beyond the control of the petitioner. In this aspect, the arguments

advanced by the learned counsel appearing for the respondent is acceptable one.

9. At this juncture, this Court wants to mention here that sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. When mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the Court cannot condone the delay on sympathetic grounds alone. 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 petitioner and the cause shown for the delay does not lack bona fides, then it may condone the delay.

10. In the light of the above discussions and taking into consideration of the fact that the petitioners in both Civil Revision Petitions have not shown any sufficient cause for the delay occurred and also there is no irregularity found in the orders passed by the learned District Munsif, Dharapuram, these Civil Revision petitions are dismissed. No costs. Consequently, connected Miscellaneous petitions are closed.

08.11.2019

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R.PONGIAPPAN, J.,

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To

The District Munsif Court, Dharapuram.



**Pre-delivery Common order in
Civil Revision(NPD) Nos.3914 & 4280 of 2013
and
M.P.Nos.1 & 1 of 2013**

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