

A.No.2838 of 2019
in C.S.No.629 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 20TH DAY OF SEPTEMBER 2019

THE HON'BLE MRS. JUSTICE PUSHPA SATHYANARAYANA

A.No. 2838 of 2019
in
C.S. No.629 of 2012

Mr. L.Munishwar Ganesan
S/o. O.Lakshmanan,
No:C-9, Santhosh Apartments,
P.A.Towers, 33, Halls Road,
Egmore, Chennai - 600 008. ...Plaintiff

-Versus-

1. Mr. P.Ramesh Kumar,
S/o. (Late) Palani,
No:7/46, Kamaraj Nagar 1st Street,
Thiru.Vi.Ka.Nagar, Chennai - 600 082.

2. Mr.P.Jagdish Kumar,
S/o. (Late) Palani,
No:7/46, Kamaraj Nagar 1st Street,
Thiru.Vi.Ka.Nagar, Chennai - 600 082. ..Defendants

A.No.2838 of 2019:

1. Mr. P.Ramesh Kumar,
S/o. (Late) Palani,
No:7/46, Kamaraj Nagar 1st Street,
Thiru.Vi.Ka.Nagar, Chennai - 600 082.

2. Mr.P.Jagdish Kumar,
S/o. (Late) Palani,
No:7/46, Kamaraj Nagar 1st Street,
Thiru.Vi.Ka.Nagar, Chennai - 600 082.

:Applicants 1 and 2/Defendants

-Vs.-

Mr. L.Munishwar Ganesan
S/o. O.Lakshmanan,
No:C-9, Santhosh Apartments,
P.A.Towers, 33, Halls Road,
Egmore, Chennai - 600 008.

:Respondent/Plaintiff

Application praying that this Hon'ble Court be pleased to condone the delay of 1471 days caused in filing the application to set aside the ex-parte judgement and decree dated 10.02.2015 passed by this Hon'ble Court in C.S.No.629 of 2012.

This Application coming on this day before this court for hearing, the Court made the following order:-

The defendants/Judgment Debtors filed this application praying to condone the delay of 1471 days caused in filing the application to set aside the ex-parte judgment and decree dated 10.02.2015.

2. The suit for recovery of money based on mortgage was filed by the plaintiff in the year 2012. Despite service of summons, the applicants/defendants failed to appear before this Court in the suit leading to the passing of the ex-parte decree on 10.02.2015. The applicants/defendants claimed that they had never been served with the summons, as the respondent/plaintiff deliberately had given the address, where the applicants/defendants were not residing.

When they received the notice for proclamation of sale, the applicants/defendants came to know about the passing of the judgment and decree. Hence, there was a delay of 1471 days in filing this application seeking to set aside the ex-parte decree.

3. Resisting the prayer, the respondent/plaintiff filed a counter-affidavit dated 28.06.2019, wherein, *inter alia*, it is stated that the submission of the learned counsel for the applicants that the applicants had no knowledge about the suit is utter false, as the applicants, on receipt of summons on 14.03.2013, appeared before the Court on 18.03.2013 and sought time on the pretext "compromise was going". It is submitted that only to defeat the auction sale proceedings, though fixed on 27.03.2019, but could not be completed due to General Elections, the applicants had been instigated by other persons to file this application.

4. Heard both sides and perused the materials available on record.

5. It is to be stated that the Hon'ble Supreme Court in **Esha Bhattacharjee V. Raghunathpur Nafar Academy, (2013) 12 SCC 649**, after referring to various earlier judgments, culled out the principles governing the application of condonation of delay in paragraph 21 and held in paragraph

"22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are : 22.1. (a) 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.

22.2. (b) 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.

22.3. (c) 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.

22.4. (d) 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."

6. The applicants/defendants claimed that they had not been served with suit summons. On the other hand, the plaintiff/ respondent claimed that the applicants appeared before this Court on 18.03.2013 and sought time. Thereafter only the ex-parte judgment and order were passed, due to

7. Due service refers to service, which effectively brings the claim to the knowledge of the defendants and is effected in accordance with the provisions of the Code relating to service of summons, and in time for the defendants to attend and at the proper address.

8. Considering the reasons assigned by the applicants/defendants and taking note of the judgment cited supra, the applicants/defendants should be permitted to contest the suit on merits and this application is liable to be ordered, on payment of costs.

9. Accordingly, this application is allowed and the delay of 1471 days in filing the application to set aside the ex-parte judgment and decree dated 10.02.2015 is condoned, on payment of costs of a sum of Rs.5,000/- by the applicants/defendants to the Chief Justice Relief Fund within a period of two weeks from the date of receipt of a copy of this order. सत्यमेव जयते Proof affidavit shall be filed as expeditiously as possible.

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Sd/-P.S.N.J
20/09/2019

//Certified to be true copy//
Dated at Madras this the day of 2019.

COURT OFFICER(O.S.)

JJ 24/10/2019

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