

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

Civil Revision Petition (NPD) No.3609 of 2014
and
M.P.No.1 of 2014

Munian @ Muniappan

Petitioner

Vs

The Block Development
Union Office
Nangavalli, Mettur Taluk
Salem

Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decretal order dated 13.06.2014 passed in I.A.No.1013 of 2013 in O.S.No.218 of 2006, on the file of the District Munsif Court, Mettur.

For Petitioner : Mr.R.Subramanian

For Respondent : Mr.N.Manikandan

ORDER

Aggrieved over the order dated 13.06.2014 passed in IA No.1013 of 2013 in OS No.218 of 2006, on the file of District Munsif, Mettur, the petitioner, who is the plaintiff/respondent in the above referred suit and Interlocutory Application respectively has filed this Civil Revision Petition.

2. Initially the petitioner has filed a suit in OS No.218 of 2006 on the file of District Munsif Court, Mettur as against the respondent herein and seeks the relief of permanent injunction restraining the defendant / respondent and his subordinates from in any way trespassing, disturbing, evict or interfering the plaintiff's peaceful possession and enjoyment of the suit property. As a defendant, after filing the written statement, the respondent has not appeared before the trial Court. Hence, by order dated 07.10.2009, the learned District Munsif, Mettur has passed an exparte decree against the respondent. In the said circumstances, in the year of 2013, the respondents herein has filed an application under Section 5 of Limitation Act and prayed to condone the delay of 1356 days in filing the application for setting aside the exparte decree dated 07.10.2009.

3. The learned District Munsif, after affording an opportunity to the petitioner herein by an order dated 13.06.2014 had allowed the application filed by the respondent with the condition that the respondent has to pay Rs.2000/- as a cost.

4. Aggrieved over the said findings, the petitioner is before this Court with this present Civil Revision Petition, in which he prayed to set aside the order dated 13.06.2014 and to dismiss the application filed in IA No.1013 of 2013.

5. In the affidavit filed before the Court below, the respondent herein has stated that the case records pertains to the suit in OS No.218 of 2006 was misplaced and on receipt of notice in the contempt proceedings filed by the petitioner herein, he came to know about the exparte decree and judgment. Only in the year of 2009, the respondent herein has filed a petition to set aside the exparte decree.

6. Resisting the claim made by the respondent herein, the present Civil Revision petitioner has filed a counter affidavit before the trial Court, in which he has stated as follows:-

6.1. The respondent/petitioner is not entitled to file this petition, since he has participated in OS No.95 of 2007, which was filed by the revision petitioner as a plaintiff against this respondent/petitioner. After full trial, the said suit was decreed on 06.12.2012, infavour of the revision petitioner. In the said matter, the Deputy Block Development Officer was examined as DW 1. So, from 2007 onwards, the respondent/petitioner is having the knowledge about the decree in OS.No.218 of 2006 dated 07.10.2009. So, after the lapse of 6 years, the petition for condoning the delay has been filed by the respondent/petitioner, only to escape from the contempt proceedings in R.E.P.No.41 of 2012. Even after granting the decree in OS No.95 of 2007, the respondent and his office bearers along with police and Revenue people came and demolished the house belonging to the revision petitioner and

caused damage worth Rs.1,00,000/-. Only in the said circumstances, R.E.P. 41 of 2012 has been filed for contempt against the respondent. The reasons stated in the affidavit filed by the respondent/petitioner is not substantiated with the relevant documents. The respondent is having knowledge in respect to the suit filed by the revision petitioner during the year 2007. In the execution proceedings filed by the revision petitioner, the respondent appeared and filed counter on 17.08.2018. So the allegation levelled by the petitioner as the case records were misplaced is the reason invented only for the purpose of filing the petition to condone the delay. According to him, there is no valid reason put forth by the petitioner for condoning the delay.

7. Today when the petition is came up for hearing, both the counsel appearing for the petitioner and the respondent in this Civil Revision Petition are present. The learned counsel appearing for the petitioner made a submission that in the affidavit filed in support of the petition filed before the court below, the respondent has not stated any valid reason. Being a Government servant saying that the case records were misplaced is nothing but a story invented for the purpose of petition filed under Section 5 of Limitation Act. He has further added that only because of the reason that the respondent being the Government Officer, the trial Court magnanimously considered the prayer sought for by the petitioner and allowed the petition, which is purely erroneous in law.

According to him, the application filed by the Government officers also having the same force as the petition filed by a common man.

8. In this regard, the learned counsel appearing for the petitioner relied upon the judgment of 2012 (3) SCC 563, wherein our Honourable Apex Court has held as follows:-

“3. Having regard to the law of limitation which binds everybody, we cannot find any way of granting relief. It is true that the Government should not be treated as any other private litigant as, indeed, in the case of the former the decisions to present and prosecute appeals are not individual but are institutional decisions necessarily bogged down by the proverbial red tape. But there are limits to this also. Even with all this latitude, the explanation offered for the delay in this case merely serves to aggravate the attitude or indifference of the Revenue in protecting its common interests. The affidavit is again one of the stereotyped affidavits making it susceptible to the criticism that the Revenue does not seem to attach any importance to the need for promptitude even where it affects its own interest.

23. In Pundlik Jalam Patil v. Jalgaon Medium Project the question was whether the respondent Executive Engineer, Jalgaon Medium Project had shown sufficient cause to

condone the delay of 1724 days in filing appeals before the High Court. In para 17, this Court held: (SCC p.455)

“17. ...The evidence on record suggests neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and 'do not slumber over their rights'”

24. After referring various earlier decisions, taking very lenient view in condoning the delay, particularly, on the part of the Government and the government undertaking, this Court observed as under: (Pundlik Jalam case, SCC pp.457-58, paras 29-30)

“29. It needs no restatement at our hands that the object for fixing time-limit for litigation is based on public policy fixing a life span for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.

“30. Public interest undoubtedly is paramount consideration in exercising the court's discretion wherever conferred upon

it by the relevant statutes. Pursuing stale claims and multiplicity of proceedings in no manner subserves public interest. Prompt and timely payment of compensation to the landlosers facilitating their rehabilitation/ resettlement is equally an integral part of public policy. Public interest demands that the State or the beneficiary of acquisition, as the case may be, should not be allowed to indulge in any act to unsettle the settled legal rights accrued in law by resorting to avoidable litigation unless the claimants are guilty of deriving benefit to which they are otherwise not entitled, in any fraudulent manner. One should not forget the basic fact that what is acquired is not the land but the livelihood of the landlosers. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed under Section 5 of the Limitation Act. Dragging the landlosers to courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of

involvement of public revenue. It serves no public interest.”

The Division Bench of this Court while at the time of passing an order in WA.SR.No.5947 of 2018, has held as follows:-

“4. It is the stand of the petitioners/appellants in this miscellaneous petition that the certified order copy of the order was received only on 21.12.2012. Therefore, after obtaining the opinion of the Government Pleader on 04.01.2013, they have forwarded the same to the Government for obtaining sanction and hence, there was a delay of 1860 days in preferring the appeal. The reason assigned in the affidavit also is not convincing to this Court. Though the legal advise was received on 04.01.2013 and received by the Government Authorities on 10.01.2013, the Government has slept over the matter for more than 5 years. Now, they have come up with this appeal without any satisfactory explanation. Though the delay is condoned by the Court normally in a liberal manner, the said approach cannot be extended mechanically without any plausible explanation.”

9. Now applying the principles set out in the judgments referred above, nowadays, challenging every order passed by Government Departments, clearly exhibits shirking responsibility of the Department

Heads. In fact, now the tendency has developed among the Department Heads, not to take any risk and to avoid any question relate to the litigant and only in order to avoid any query, these type of applications have been filed. Though the word sufficient cause has to be given liberal approach, to exercise discretion for such liberal approach, there must be necessary facts in the affidavit filed in support of the same. But, in the affidavit filed by the respondent before the trial Court, he has not stated anything about enormous delay occurred in filing the application under Section 5 of Limitation Act. In this occasion, on going through the plaint papers of the case, the petitioner herein has filed a suit for the relief of permanent injunction in respect of lands bearing survey No.103/1 measuring to an extent of 0.09.0 hectares of land and in S.No.103/2 measuring to an extent of 0.83-5 hectares of land and the poromboke land lying on the western side of the above said survey number, in which the coconut trees all grown up and a tiled house bearing the Door No.1-87/1 and with all the easementary rights thereon. So the description of property found in the plaint will disclose the fact that the petition has been filed seeking the relief of permanent injunction for the property vested with the Government.

10. In this regard, the learned Additional Government Pleader would contend that the property now claimed by the petitioner is Government (odai) rivulet, squatter(purampokku), situated adjacent to

the cemetery/graveyard. In respect to the said submissions, there was no denial on the side of the petitioner. Hence in view of the fact that the plaintiff claimed the relief of injunction for the property owned by the government, it is necessary to conduct elaborate trial for determining the right of parties. Whether the petitioner is having easementary right over the suit property or not, which has to be decided only after completing the trial, for which setting aside the exparte decree is very much essential. Further, as already observed only because of the reason that the department is having a lethargic attitude, the petition could not be filed within the period of limitation.

11. Moreover, on going through the impugned order passed by the Appellate Court, it is to be noted that the Appellate Court has imposed a cost of Rs.2,000/- on the respondent herein. Now, it is desirable to enhance the said cost of Rs.2000/- to Rs.25,000/-.

12. Hence, in view of the above detailed discussions, the respondent herein is directed to pay a cost of Rs.25,000/- to "Adyar Cancer Centre, Chennai", within a period of one month from the date of receipt of copy of this Order. Further it is directed that the head of department shall recover the aforesaid amount from the salaries of the officers, who are responsible for the delay. Further, the learned District

Munsif, Mettur is directed to dispose of the suit in O.S.No.218 of 2006,
within three months from the date of payment of cost.

13. With the above directions, the Civil Revision petition is dismissed. Consequently, connected miscellaneous petition is closed.

23.10.2019

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To

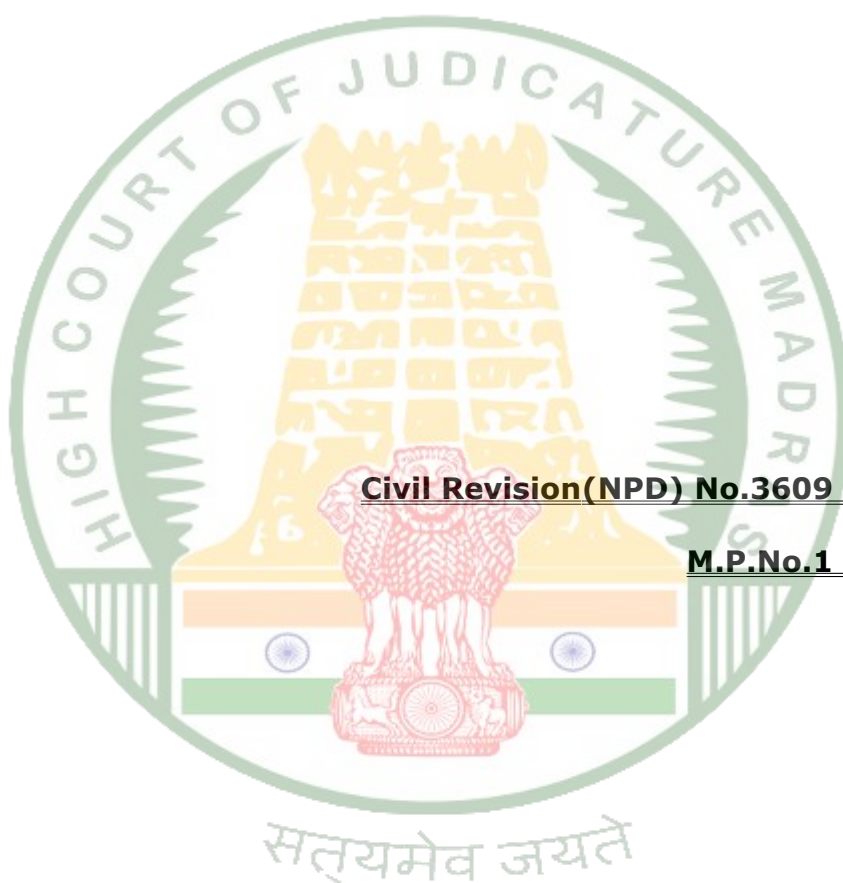
The District Munsif Court, Mettur.



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R.PONGIAPPAN, J.,

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