

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 05.11.2019

Orders Pronounced on : 11.11.2019

CORAM

THE HON'BLE MR. JUSTICE **R.PONGIAPPAN**

CRP.NPD.No.3946 of 2014
and
M.P.No.1 of 2014

Pandian

..Petitioner

Vs.

1.Kaliyamoorthy

2.Nagarajan

3.Rajendran

4.Balan @ Jayabalan

5.Narayanan

..Respondents

PRAYER:

The Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure against the order dated 23.06.2014 passed in I.A.No.1292 of 2010 in O.S.No.176 of 2003 on the file of the learned Additional District Munsif, Cuddalore.

For Petitioner : Mrs.Hema Sampath,
Senior Counsel for
Mr.B.Kumarasamy

For R1 : Mr.R.Gururaj

For R2 to R5 : Given up

ORDER:

The plaintiff in O.S.No.176 of 2003 on the file of the learned District Munsif, Cuddalore is the petitioner herein. He has filed the above referred suit as against the respondents herein and seeks the relief of declaration and recovery of possession. For the reason that the defendants have not appeared before the court, on 07.06.2006, the learned Additional District Munsif, Cuddalore decided the suit in favour of the petitioner and passed an ex parte decree.

2. Aggrieved over the same, the first respondent / fourth defendant in this Civil Revision Petition filed an application under Section 5 of Limitation Act to condone the delay of 1492 days in filing the application under Order 9 Rule 13 of Code of Civil Procedure. The learned Additional District Munsif, Cuddalore after affording opportunity to the petitioner herein by order dated 23.06.2014 allowed the application filed by the first respondent and condoned the delay of 1492 days in filing the application to set aside the ex parte decree.

Challenging the same, the petitioner is before this Court and praying to set aside the said order.

3.In the impugned order, the learned Additional District Munsif, Cuddalore has held that the evidence given by the first respondent / PW1 is clear that when at the time the exparte decree was passed he was suffered from knee pain, jaundice and he was taking treatment. Further it was observed by the court below as since the father of the first respondent was looking over the suit proceedings, the first respondent herein has not followed the suit proceedings. Only after the demise of his father, the first respondent / the fourth defendant came to know the details of the case filed against him. Therefore, for giving one more opportunity to the first respondent, the petition filed to condone the delay is necessarily to be allowed.

4.In this regard, the learned counsel appearing for the petitioner / plaintiff would contend that for condoning the delay in filing the application the person who filed the said application has to project sufficient cause with bonafide intention. But here is a case, the first respondent is 46 years at the time of entering into the suit proceedings. He would further contend that it is unbelievable that he

has directed his father to watch the case proceedings. Since he is a B.Sc. Graduate he is having the care and vigil in following the progress of case proceedings. Furthermore he has added that without producing any document relates to the fact that he is suffering from illness the learned Additional District Munsif, Cuddalore without testifying the truth found in the affidavit filed by the first respondent allowed the application, which is erroneous in law. In this regard, he relied on the judgment of ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others*** reported in ***(2013) 12 SCC 649***, in which our Hon'ble Apex Court has held as follows:

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 encapsule 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 scrutinized 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 half hazard 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 non-challant manner
requires to be curbed, of course, within legal parameters.*

5.He has relied on one other judgment of ***Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and another*** reported in **(2015) 1 SCC 680**, wherein our Hon'ble Apex Court has dismissed the application filed to condone the delay of 9 days.

6.On the other hand, the learned counsel appearing for the respondent is present and made submission that the petitioner in this Civil Revision Petition obtained fraudulent decree after suppressing the real facts before the trial court. He relied on the judgment of ***M.K.Prasad Vs. P.Arumugam*** reported in **(2001) 6 SCC 176**, wherein our Hon'ble Apex Court has held as follows:

"Court ought to keep in mind the judgment impugned (unreasoned in this case), the extent of the property involved and the stake of the parties, when deciding an application under Order 9 Rule 13 of Code of Civil Procedure."

7. Further he has relied on the judgment of ***N.Balakrishnan Vs. M.Krishnamurthy*** reported in **(1998) 7 SCC 123**, wherein our Hon'ble Apex Court has held as follows:

"Condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion."

8.He has also relied on the judgment of **S.P.Chengalvaraya Naidu (dead) by L.Rs Vs. Jagannath (dead) by L.Rs & Ors.** reported in **1994-1-L.W 21**, in which it is held as follows:

"The High Court fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the Court. The High Court, however, went haywire and made observations which are wholly perverse. "We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that becomes an engine of fraud in the hands of dishonest litigants."

9.So culling out the entire principle laid down by our Hon'ble Apex Court in the above referred judgments, though the application

filed under Section 5 of Limitation Act for condoning the delay has to be dealt with liberally the entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion.

10.It is the case of the petitioner / plaintiff before the trial court is that there was a partition on 03.07.1954 between his father Samikannu Padayatchi and his elder brother Munusamy Padayatchi. In the said partition 'B' schedule property was allotted to the share of Samikannu Padayatchi and thereafter 'B' schedule property was under his possession. After the demise of Samikannu Padayatchi on 26.05.1991, the plaintiff / petitioner being the sole legal heir enjoying the property by raising various crops. However in the year 1998 the plaintiff leased out the property in favour of the respondents / defendants, since the plaintiff was not able to give personal attention to maintain the property. But the defendants were paying the lease amount only for a year. Subsequently they have defaulted to pay the lease amount. In this occasion, the brother of Samikannu Padayatchi, Munusamy Padayatchi taken a hostile stand towards the petitioner. Only now the petitioner / plaintiff came to know that the defendants with ulterior motive tried to deny the title of the property. Their act is

unjust and the suit was filed by the plaintiff. Now on go through the entire averments set out by the plaintiff / the petitioner in the plaint, he has not made any allegation as against the defendants as they fraudulently obtained deed, decree etc. So it cannot be said that the petitioner in this Civil Revision Petition fraudulently acted and obtained decree in a fraudulent manner. Further as already observed here, it is the case that the first respondent filed application to condone the delay in filing the application to set aside the exparte decree. It is necessary to find out whether he projected sufficient cause or not. It is not in dispute that he has completed graduation and otherwise at the time when he received summons in the suit filed by the petitioner, he is aged about 46 years. However he has stated in his evidence as on 26.12.1966 through the registered sale deed his mother Kannammal purchased the 5th item of the suit property from the plaintiff's father. As per his evidence the first respondent is absolute owner to the 5th item of the property. In order to substantiate the said evidence he has produced the copy of the sale deed dated 26.12.1966 stands in his mother's name. Further he has produced the copy of the patta dated 11.11.2008 stands in his name.

11.In this regard, the learned counsel appearing for the petitioner would contend that without saying anything in the affidavit filed by the first respondent in support of the petition filed before the trial court giving evidence as above is not appreciable. It is a general rule without any pleadings, the evidence given on that score cannot be looked into and thereby for considering the evidence given by the first respondent, for allowing the application is against the principle of law. In this regard, it is pertinent to note that in the affidavit filed the first respondent has stated as on 26.12.1966 itself his mother Kannammal becomes owner to the fifth item of the suit property. So it cannot be said that the first respondent gave evidence apart from the pleadings set out in the affidavit.

12.Now on considering the other circumstances found in this case, the specific case of the first respondent / fourth defendant is that he is the absolute owner to the fifth item of the suit schedule property. In this regard, on go through the judgment and decree passed by the learned Additional District Munsif, Cuddalore he has mentioned that though nine issues were framed for deciding the suit, when at the time of pronouncing judgment he has not discussed anything about the issues framed in the suit. It is the duty to the Additional District

Munsif to give detailed answers to the issues framed. Even though the defendants in the suit remained ex parte, it is for the plaintiff to prove his case by producing the relevant documents. In this regard, though eight documents were marked as plaintiff side exhibit, in respect to the relevancy of those documents with the suit has not been discussed in the judgment rendered by the learned Additional District Munsif, Cuddalore. Since the claim made by the first respondent / fourth defendant is based on the registered sale deed elaborate trial is needed to determine the right of the parties. Though the first respondent has not projected sufficient cause to determine his right, since the case is based on the title, to determine the right condoning the delay in filing the set aside application is necessary.

13.In the judgment of ***Velayudha Gounder and others Vs. Govindasamy*** reported in **(2019) 7 SCC 359**, our Hon'ble Apex Court has held as follows:

"7.The learned District Munsif, Sankarapuram while at the time of disposing the application filed by the petitioner has rightly held that the petitioner has not shown any sufficient cause for allowing the application. It is true on the face itself the affidavit filed by the petitioner did not have any valid reasons for the delay. The affidavit filed by the petitioner has

not contained any details about the date on which the petitioner has gone to Kerala and the date on which the petitioner returned to Tamil Nadu and also about the details of employment having by him in Kerala. So it cannot be said that the order passed by the trial judge is having material irregularity. However, on going through the background of the case put forth by the plaintiff, it is apparent that even though the petitioner has not projected sufficient cause it is necessary to see the other factual aspects found in and around the suit. Actually the plaintiff has filed CRP.NPD.No.957 of 2010 the suit for relief of declaration and for permanent injunction. If the title is not proved by the plaintiff, he cannot get the remedy of declaration. In the written submission filed by the petitioner before the trial court he has stated that vide the sale deed dated 24.11.1990, 20.08.1992 he has purchased 0.98 cents of the suit schedule property. Therefore, in the said suit the plaintiff claimed title through the sale deed. So it is necessary to decide the title to avoid the multiplicity of proceedings."

14. So following the principles laid down by our Hon'ble Apex Court in this case also, for establishing the right of the first respondent as already observed elaborate trial is necessary. Further since the delay to be condoned is nearly four years, hence it should be necessary to impose some cost. Accordingly, the order passed by the learned Additional District Munsif, Cuddalore is modified as follows:

"The first respondent shall pay a sum of Rs.15,000/- (Rupees Fifteen Thousand only) as exemplary cost to the revision petitioner within 10 days from the date of receipt of copy of this order. If the cost is not paid within the stipulated period as mentioned above, the order dated 23.06.2014 passed in I.A.No.1292 of 2010 by the learned Additional District Munsif, Cuddalore, shall stand confirmed.

15. More than that, since the suit is filed in the year 2003, it is necessary to issue some direction to the learned Additional District Munsif, Cuddalore to dispose the suit within a specific period. The learned Additional District Munsif, Cuddalore is directed to dispose the suit in O.S.No.176 of 2003 as early as possible, preferably within a period of four months from the date of payment of cost.

16. Accordingly, the Civil Revision Petition is disposed of. Consequently connected miscellaneous petition is closed. No costs.

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11.11.2019

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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To
The learned Additional District Munsif,
Cuddalore.



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R.PONGIAPPAN,J.

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Pre Delivery order made in
CRP.NPD.No.3946 of 2014 and
M.P.No.1 of 2014

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