

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2019

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

C.R.P.No.3649 of 2018 and C.M.P.No.20317 of 2018

N.K.Soorappan

... Petitioner

-Vs-

Velayudham

... Respondent

Prayer : Civil Revision Petition under Article 227 of the Constitution of India against the fair and decreetal order dated 14.12.2016 passed in I.A.No.44 of 2014 in O.S.No.181 of 2008 on the file of the Principal District Munsif-cum-Judicial Magistrate, Vaniyambadi, Vellore District.

For Petitioner : Mr.P.A.Sudesh Kumar

For Respondents: Mr.Chandrasekaran

O R D E R

This revision has been filed against the fair and decreetal order dated 14.12.2016 passed in I.A.No.44 of 2014 in O.S.No.181 of 2008 on the file of the Principal District Munsif-cum-Judicial Magistrate, Vaniyambadi, Vellore District..

2. Before the trial Court, the revision petitioner was the second defendant, who was set exparte in the suit filed by the respondent / plaintiff. In order to set aside the exparte decree, the revision petitioner / second defendant had come forward before the trial Court to file an application to set aside the exparte decree and since there has been a delay of 1116 days in preferring the application, naturally the revision petitioner had filed a petition to condone the said delay of 1116 days. The said application since has been dismissed through the impugned order, aggrieved against the same, the petitioner has preferred the present revision petition.

3. Heard the learned counsel for the revision petitioner, who would submit that ,the delay is very huge to the extent of 1116 days and there has been plausible reason on the part of the revision petitioner / second defendant for not approaching the Court in time. In this context, the learned counsel for the revision petitioner would submit that, the revision petitioner's wife was suffering from brain fever and had been hospitalised on 25.10.2010 ie., just before the revision petitioner was set exparte and accordingly from June 2010 treatment had to be given continuously to the wife of the revision petitioner, but despite

the continuous treatment, unfortunately she died on 13.04.2013. Therefore, for the whole period between 2010 to 2013, the revision petitioner had been engaged in looking after his wife as she had been in serious condition and also was in the death bed and after slowly recovering from the shock of the parting away of the dear one of the second defendant / revision petitioner, he had come forward to file the present petition to condone the delay only on 25.11.2013. In this context, the learned counsel for the petitioner would also rely on the documents filed along with the application as Exs.P1 to P11 from 09.06.2010 to 13.04.2013 and two witnesses were examined on behalf of the revision petitioner.

4. However Mr.Chandrasekaran, learned counsel for the respondents / plaintiffs would submit that, the second defendant / revision petitioner is none other than the brother of the first defendant, who had already been set exparte and in order to set aside the exparte order and to condone delay, he approached the Court below and that petition was dismissed, as against which the revision petition filed before this Court was also dismissed. Therefore, the second defendant ie., the present revision petitioner being the brother of the first defendant must have been in a position to know what had happened in the court below and he must have knowledge about the exparte decree passed against him also and therefore, he cannot plead ignorance over the same and hence what fate that the first defendant faced, has to be faced by the second defendant also, as the second defendant is no more superior than the first defendant in the given suit and therefore, the said petition since had been dismissed rightly by the trial Court, does not require any interference by this Court.

5. He would also submit that, pursuant to the above, execution petition has been filed and it has been kept pending and at this stage, if this revision is allowed that would cause prejudice to the cause of the respondents / plaintiffs and hence the same may be dismissed.

6. I have considered the submissions made on behalf of the petitioner as well as the respondents and have gone through the materials placed on record.

7. With regard to the law on condoning the delay is concerned, there cannot be any pedantic view or rule, and it depends upon the circumstances of the case and the reasons adduced by the parties to condone the delay, where if such reasons given by them are plausible or not or for the sake of filing condone delay petition, those reasons are invented and filed, have to be looked into by the Court.

8. Here in the case in hand, admittedly the wife of the revision petitioner was hospitalised sometime before the petitioner was set exparte and she had been continuously under treatment and was in a serious condition and in fact in the death bed for more than three years till 13.04.2013.

9. In this context, the medical certificate to that effect had been chronologically filed on behalf of the revision petitioner, which were marked before the Court below as Ex.P1 to P11. Ex.P11 is nothing but the death certificate of the wife of the revision petitioner dated 13.04.2013 and corroborating the same two witnesses were also examined on behalf of the revision petitioner.

10. All these reasons would go to show that, the revision petitioner / second defendant, though, assuming had knowledge about the exparte decree and subsequent developments, had been prevented from approaching the Court to file the petition, in view of the shocking state of affairs which was prevailing in his family for a long period and therefore, the Court must take judicial notice of these factors.

11. Right over the property is not only a civil right, but it is a substantive right, which cannot be taken away or abrogated on technicalities, which is also one of the settled proposition of law.

12. Moreover, in this case, though the delay is very huge to the extent of 1116 days, this Court feels that, there has been plausible reasons on the part of the revision petitioner for condoning such delay as explained above. Therefore, this Court is of the considered view that, the trial Court is erroneous in dismissing the petition, as the yardsticks applicable to other similarly placed cases of condonation of delay with huge delay cannot be applied to the facts and circumstances of this particular case.

13. In that view of the matter, I have no hesitation to hold that the impugned order is not sustainable and the same has to be set aside. Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Principal District Munsif-cum
Judicial Magistrate, Vaniyambadi,
Vellore District.

+1 CC to Mr. Rangan, Advocate sr 88090.
+1 CC to Mr. Sudesh Kumar, Advocate sr 88147.

C.R.P. No.3649 of 2018

MG (CO)
SP (25/02/2020)



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