BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 18.10.2019
CORAM
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH
C.R.P.(PD)(MD)No.1316 of 2012
and
M.P.(MD)No.1 of 2012

M/s.Hotel Temple Towers Private Ltd.,
Rep by its Managing Director M.Venkatachalam,
No.20/1A, Satchidanandha Moopanar Road,
Thanjavur. ... Petitioner/Respondent/Plaintiff

Vs

Thanjavur Municipality,
Rep by its Commissioner,
Gandhiji Road,
Thanjavur ... Respondent/Petitioner/Defendant

PRAYER: Civil Revision Petition filed under Section 227 of the Constitution of India, praying to allow this revision and to set aside the fair and decreetal order dated 13.02.2012 passed by the District Munsif Court, Thanjavur in I.A.No.628 of 2011 in O.S.No.33 of 2007.

For Petitioner : Mr.P.Sesubalan Rajan

For Respondent : Mr.P.Srinivas

O R D E R

This civil revision petition has been filed challenging the fair and final order passed by the Court below allowing the application filed under Section 5 of the Limitation Act condoning the delay of 1203 days in filing the petition to set aside the exparte decree dated 01.08.2007.

2. The petitioner/plaintiff filed a suit against the respondent/defendant to declare certain adjustment of payment made by the defendant Municipality towards tax as null and void and for consequential relief. This suit came to be decreed exparte by Judgment and Decree dated 01.08.2007. The Municipality woke up from the deep slumber and filed an application to set aside the exparte decree with a delay of 1203 days. The Court below, after considering the facts and circumstances of the case and after being satisfied with the reasons assigned by the respondent, condoned the delay. Aggrieved by the same, the present civil revision petition has been filed.

3. The learned counsel appearing for the petitioner submitted that the only reason that has been assigned by the respondent is that one of the clerk who was dealing with the case, suffered from viral fever and therefore, he was unable to instruct the counsel. The learned counsel submitted that the delay is inordinate and without proper explanation, the Court below has mechanically allowed the application and therefore, the order requires interference.

4. The learned counsel appearing on behalf of the Municipality submitted that the amount that has been adjusted towards the arrears of tax is legal and it involves public interest. The learned counsel further submitted that there is yet another suit pending in O.S.No.123 of 2007 with regard to the claim made for the arrears of tax and every time, a demand is made, a suit comes to be filed and thereby, the Municipality is prevented from recovering the tax. The learned counsel further submitted that the Court below has exercised its discretion properly and there is no ground to interfere with the same.

5. This Court has carefully considered the submissions made by either side and the materials available on record.

6. The subject matter of challenge in the suit is the adjustment of the amount of Rs.49,694/- for the period 1994-1995 which is sought to be declared as illegal. This amount was sought to be adjusted for the tax arrears for the period 2003-2004 and according to the petitioner, it is barred by limitation. It is seen that there was an earlier suit filed in O.S.No.99 of 1998 challenging the assessment of tax and the same was dismissed for default in the year 1998. Subsequently, notice was received by the petitioner in the year 2006. The petitioner aggrieved by the same has filed the suit.

7. The respondent Municipality did not contest the suit and therefore, an exparte decree was passed. A look at the Judgment dated 01.08.2007 shows that there has been absolutely no application of mind and the Court below had not given even a single reason as to why, it is declaring the adjustment of amount made by the Municipality towards the arrears of tax, as null and void. The Judgment does not satisfy the requirements under Order XX of C.P.C. Such type of Judgments are repeatedly deprecated by the Hon'ble Supreme Court and this Court. Such mechanical passing of Judgments is interfered on a regular basis by this Court.

8. The reason assigned by the respondent Municipality for the delay is not happily worded and a simple viral fever to a Clerk cannot be a ground for not filing of a petition for such a long time. Like in every other case, the State machinery has moved at a very slow pace and ultimately, a petition came to be filed to set aside the exparte decree, with a delay of 1203 days.

9. The Court below had taken into consideration the facts and circumstances of the case and also the interest of the Municipality which involves the revenue of the State and has proceeded to condone the delay. This Court does not find any illegality or infirmity in the order passed by the Court below. The Hon'ble Supreme Court in ***State of karnataka Vs. Y.Moideen Kunhi*** *reported in* ***2009 13 SCC 192*** has categorically held that whatever be the length of delay in matters of public interest, liberal consideration is required to protect public justice. Therefore, while considering the petition to condone the delay, the same leverage must be given in cases which involves State machinery, since public interest is involved.

10. This Court is not inclined to interfere with the fair and final order passed by the court below. Accordingly, this civil revision petition is dismissed. The Court below is directed to complete the proceedings in O.S.No.33 of 2007 within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar(CS)

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To
The District Munsif, Thanjavur.

Copy to: The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

+1 CC to M/s.P.SESUBALANRAJA, Advocate (SR-93337[F] dated 21/10/2019)

+1 CC to M/s.P.SRINIVAS, Advocate (SR-93468[F] dated 22/10/2019)

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KK/SAR/07.11.2019/3P-6C/