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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

C.R.P (MD)Nos.340 and 341 of 2012 (NPD)

1.Jeyavalli, W/o.Karuppaiah

2.Kalidoss, S/o.Karuppaiah

.. Petitioners/Petitioners/

Defendants 4 & 5 in both petitions

Vs.

1.Sugantha, W/o.S.K.Mani

.. 1st Respondent/1st Respondent/
Plaintiff in both petitions

2.Tamil Nadu Government,
Rep. by its District Collector,
Karur.

3.The Thasildar,
Taluk Office,
Krishnarayapuram.

.. Respondents 2 & 3/
Respondents 2 & 3/
Defendants 1 & 2 in both petitions

PRAYER in both the C.R.Ps.:- Civil Revision Petitions are filed under Section 115 of C.P.C., against the fair and executable order dated 03.11.2011, made in I.A.Nos.94 and 95 of 2011 in O.S.No.119 of 1994, on the file of the District Munsif Court, Kulithalai.

For Petitioners
in both the C.R.Ps. : Mr.H.Lakshmi Shankar

For R1
in both the C.R.Ps. : Mr.G.Sridharan

For R2 & R3 : Mr.J.Gunaseelan Muthiah
in both the C.R.Ps. Additional Government Pleader

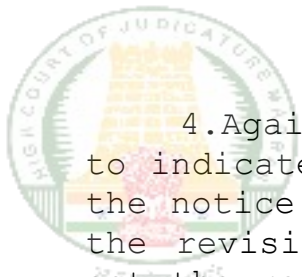


COMMON ORDER

These Civil Revision Petitions have been filed challenging the fair and decretal orders dated 03.11.2011, made in I.A.Nos.94 and 95 of 2011 in O.S.No.119 of 1994, on the file of the District Munsif Court, Kulithalai, by which, the prayers of the revision petitioners/defendants 4 and 5 to condone the delay of 1506 days in filing the application to set aside the *ex-parte* decree dated 20.01.2006 and to set aside the same, were rejected.

2.Heard the learned counsel appearing for the parties and perused the materials available on record.

3.Learned counsel appearing for the revision petitioners/defendants 4 and 5 would submit that the first respondent/plaintiff filed a suit in O.S.No.119 of 1994 before the District Munsif Court, Kulithalai, for declaration of title of a property, having an extent of 24 Acres of lands, in which, the revision petitioners/defendants 4 and 5 are also entitled to get 12 Acres of land as per the Will dated 24.05.1982. The counsel, who appeared on behalf of the revision petitioners/defendants 4 and 5 before the Trial Court, for the best reasons known to him, when the suit was posted for cross-examination, reported no instructions from the revision petitioners/defendants 4 and 5 and the same was not communicated to the revision petitioners/defendants 4 and 5 for quite long time. After many deliberations, it was found that on the basis of no instructions given by the counsel, who appeared on behalf of the revision petitioners/defendants 4 and 5 before the Trial Court, the case was proceeded and *ex-parte* decree was also passed on 20.01.2006. Thereafter, the revision petitioners filed the abovementioned Interlocutory Applications to condone the delay of 1506 days in filing the application to set aside the *ex-parte* decree dated 20.01.2006 and to set aside the same. The revision petitioners/defendants 4 and 5 have set out genuine reasons practically faced by them before the Trial Court as to why the application seeking condonation of delay is required to be allowed on premise that their counsel, who appeared before the Trial Court, after reporting no instructions, failed to communicate the order passed thereon. Secondly, the Court was also apprised of the fact that the suit for declaration of title is related to huge extent of property involved. In spite of high-stakes repeatedly mentioned by all the parties, the Trial Court overlooking the problem faced by the revision petitioners/defendants 4 and 5, has wrongly disallowed the prayer for condonation of delay, as if the revision petitioners/defendants 4 and 5 were slept over the matter, which indeed was not correct.



4. Again, in support of his submission to condone the delay and to indicate the *ex-parte* decree passed by the Trial Court, inviting the notice of this Court to the said order, the learned counsel for the revision petitioners stated that the Trial Court proceeded to set aside the revision petitioners/defendants 4 and 5 *ex-parte* and passed the *ex-parte* decree. It is well settled that the Trial Court is bound to pass an order after mentioning the minimum required facts and the basis on which, the *ex-parte* decree came to be passed. But, in the present case, only with few lines, the *ex-parte* decree came to be passed, as a result, for no fault of them, the revision petitioners/defendants 4 and 5 are made to loose a huge extent of lands of 12 Acres. Therefore, with heavy costs, the delay application may be allowed and the *ex-parte* decree also may be set aside with a direction to the parties and also to the Trial Court to proceed with the matter. If any such direction is given, the revision petitioners/defendants 4 and 5 are prepared to face day-to-day trial, in which event, even within two weeks time, the matter may be disposed of.

5. In support of his submissions, the learned counsel appearing for the revision petitioners relied upon the judgment of the Hon'ble Apex Court in the case of **M.K.Prasad Vs. P.Arumugam** reported in **AIR 2001 SC 2497 : 2001 (6) SCC 176**, wherein it has been held that while deciding the application for setting aside the *ex-parte* decree, the Court should have kept in mind the judgment impugned, the extent of the property involved and the stake of the parties. While doing so, the inconvenience caused to the respondent by way of delay on account of the appellant being absent from the Court can be compensated by way of awarding appropriate and exemplary costs. The relevant portion of the said judgment reads as follows:-

''9. While deciding the application for setting aside the *ex-parte* decree, the Court should have kept in mind the judgment impugned, the extent of the property involved and the stake of the parties. We are of the opinion that the inconvenience caused to the respondent for the delay on account of the appellant being absent from the Court in this case can be compensated by awarding appropriate and exemplary costs. In the interests of justice and under the peculiar circumstances of the case we set aside the order impugned and condone the delay in filing the application for setting aside *ex-parte* decree. To avoid further delay, we have examined the merits of the main application and feel that sufficient grounds exist for setting aside the *ex-parte* decree as well.''



6.Again, referring to yet another judgment of the Hon'ble Apex Court in the case of **Ram Nath Sao @ Ram Nath Sahu and others Vs. Gobardhan Sao and others** reported in 2002 (3) LW 417, wherein it has been held that the Court, while considering the scope of expression 'sufficient cause' within the meaning of Section 5 of the Limitation Act or Order 22 Rule 9 of the Civil Procedure Code or any other similar provision, should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of *bona fide* is imputable to a party.

7.Concluding his arguments, the learned counsel appearing for the revision petitioners/defendants 4 and 5 would submit that unless this Court interferes with the fair and decretal orders of the Trial Court, the revision petitioners will be loosing certain extent of lands, to which they are entitled to and therefore, he prayed that these Civil Revision Petitions may be allowed by imposing even exemplary costs, if it deems fit to meet out justice.

8.Mr.G.Sridharan, learned counsel appearing for the first respondent/plaintiff opposing the prayer sought for by the revision petitioners would submit that it has become the practice of the revision petitioners/defendants 4 and 5 not to co-operate with the disposal of the suit in taking out application seeking condonation of delay and such huge delay clearly shows that the revision petitioners/defendants 4 and 5 were eventually sleeping over the matter, not showing any interest to dispose of the pending suit filed by the first respondent/plaintiff seeking decree of declaration of title of the suit. Had the revision petitioners/defendants 4 and 5 indeed, aggrieved by the conduct of the counsel, who reported no instructions, they ought to have proceeded against him, but no such action has been taken. Secondly, the revision petitioners/defendants 4 and 5 did not mention about the fact that on what date they came to know about the *ex-parte* decree passed on 20.01.2006 in the application for condonation of huge delay of 1506 days in filing the application to set aside the *ex-parte* decree. This apart, the first respondent/plaintiff, who is taking care of two special children, has allowed the suit to be decided in her favour. But, after keeping quiet for more than 5 long years, all of a sudden, the revision petitioners/defendants 4 and 5 have filed I.A.No.94 of 2011 seeking to condone the delay. Therefore, the conduct of the revision petitioners/defendants 4 and 5 may be considered and they do not deserve any leniency. Moreover, as per the settled position in the matter of condonation of delay, each day delay has to be sufficiently explained. But, in the present case, no such explanation is provided, therefore, both the Civil Revision Petitions should fail, he pleaded.



9. But, this Court initially, was reluctant to entertain the Civil Revision Petitions for two reasons. Firstly, the huge delay of 1506 days in moving I.A.No.94 of 2011 in O.S.No.119 of 1994 on the file of the District Munsif Court, Kulithalai, does not tell the Court to give any indulgence. Secondly, when the revision petitioners/defendants 4 and 5 were set ex-parte on the instructions given by their counsel that he was unable to contact them, no action has been taken against such counsel. But, the factual position advocated by the counsel appearing on behalf of the revision petitioners/defendants 4 and 5 shows that there was a Will, dated 24.05.1982, executed by one Ramasamy Pillai, who is the grandfather of both the first respondent/plaintiff and the second revision petitioner/fifth defendant. In the said Will, a huge extent of property namely, 24 Acres of lands, has been executed giving 12 Acres each to the first respondent's mother/plaintiff's mother and the third defendant's mother.

10. Now, if the order passed in the application seeking condonation of delay as rejected by the Trial Court is confirmed, no doubt, the entire 24 Acres of lands would definitely go in favour of the first respondent/plaintiff. Therefore, in this context, it is necessary to refer the ratio laid down by the Hon'ble Apex Court in the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others** reported in **2013 (2) SCC 649**, which has given certain guidelines while dealing with the application for condonation of delay. The conduct, behaviour and attitude of a party relating to his inaction or negligence are relevant factors to be taken into consideration. It is the fundamental principle 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. Therefore, this Court is unable to sustain the impugned fair and decretal orders.

11. As mentioned above, when the revision petitioners/defendants 4 and 5, as a matter of right, are entitled to get 12 Acres of lands as per the Will dated 24.05.1982, for the fault committed by the counsel representing the revision petitioners/defendants 4 and 5 before the Trial Court, they cannot be penalised. The learned counsel appearing for the revision petitioners repeatedly stated that any highest term can be imposed for condoning the delay. Recording the same, this Court is inclined to allow both the Civil Revision Petitions on terms. Accordingly, these Civil Revision Petitions are allowed and the fair and decretal orders dated 03.11.2011, made in I.A.Nos.94 and 95 of 2011 in O.S.No.119 of 1994, on the file of the District Munsif Court, Kulithalai, are set aside



on condition that the revision petitioners/defendants 4 and 5 shall pay a sum of Rs.1,00,000/- [Rupees One Lakh only] **(*)to the first respondent/plaintiff**, within a period of six weeks from the date of receipt of a copy of this order. On production of payment of proof, the Trial Court is directed to take up the matter and proceed with the same by giving disposal within three months thereafter. The parties are directed to co-operate in conducting the case.

Sd/-

Assistant Registrar (Cr1 Side)

**(*)Amended as per order of this
Hon'ble Court dated 09/11/2020**

Sd/-

Assistant Registrar (Cr1 Side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

(*)to be substituted the order already despatched on 14/05/2020

1.The District Munsif,
Kulithalai.

2.The District Collector,
Karur.

3.The Thasildar,
Taluk Office,
Krishnarayapuram.

4.The Secretary,
Harijan Seva Sangh,
Madurai.

COPY TO

1. Jeyavalli, W/o. Karuppaiah,
Kamabarapatti Post, Siluvathur Via., Dindigul District.

2. Kalidoss S/o. Karuppaiah,
Door No. 69, Vellalar Street, Nagal Nagar, Dindigul.

3. Sugantha W/o. S.K. Mani,
Kallurengampatti, Mathagiri Post, Kulithalai Taluk.



+2 CC to M/s.G.SRIDHARAN, Advocate (**SR-21526**)
+1 CC to M/s.H.LAKSHMI SANKAR, Advocate (**SR-21547**)
+1 CC to M/s.SPL.GP (SR-106174[F] dated 20/12/2019)

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KK/11.05.2020/6P-8C

NS (CO)

TR (23.11.2020) 6P 12C