



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.04.2019
(Reserved on 10.04.2019)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP (NPD) (MD) No.1038 of 2011
and
M.P (MD) No.1 of 2011

1) Balakrishnan
2) Jeyalakshmi

... Petitioners

vs.

1) Ramasamy Chettiar
2) Ganesan
3) Murugan
4) Sakthivel

... Respondents

Petition filed under Section 115 of the Civil Procedure Code, against the order and decreetal order dated 30.10.2010 made in I.A.No.84 of 2010 in O.S.No.126 of 2007 on the file of the Sub Court, Srivilliputhur.

For Petitioner : Mr.D.Senthil
For R1 & R2 : Mr.C.Jeganathan for
M/s.Veera Associates

ORDER

The defendants 1 and 2 are the revision petitioners.

2.The defendants filed an application to set aside the exparte decree along with an application to condone the delay in I.A.No.84 of 2010 in O.S.No.126 of 2007. By the order dated 30.10.2010, the Trial Court dismissed the petition. Challenging the dismissal as illegal, this revision petition has been filed by the defendants.

3.The plaintiffs who are the respondents herein filed the suit in O.S.No.126 of 2007 seeking the relief of partition.

4.It is the case of the defendants that they received the suit notice and as they did not appear, they were set exparte; an application was moved to set aside the exparte decree on 02.01.2008; as the plaintiffs had given an assurance that they would not proceed with the case, the defendants did not process the application to set aside the exparte decree; contrary to the promise, the plaintiffs proceeded with the enquiry and got a decree on 11.01.2008 and therefore the decree which was fraudulently



obtained must be set aside.

5. The defendants also wanted the indulgence of the court to condone the delay of 526 days in filing the application to set aside the exparte decree.

6. It is stated that the defendants informed the plaintiffs regarding the obligation to provide the vacant site for the purpose of turning of the deity and only after this information was provided, the promise on the part of the plaintiffs came that the plaintiffs would not proceed with the case. It is claimed by the defendants that they were misled and therefore the defendants must be given an opportunity to contest the case on merits.

7. The plaintiffs contend that commissioner has been appointed in the proceedings for passing of final decree and commissioner's report has been marked as Ex.R1, and as the property had been visited after notice to both sides and that the counsel on both sides had been present when the commissioner visited the property, the reason stated for delay in filing the application to set aside the exparte decree is not correct and therefore, rightly that application has been dismissed by the Trial Court.

8. The plaintiffs point out that the application to set aside the exparte decree has been filed on 22.07.2009; notice has been received even on 29.04.2008 and the Trial Court has given a finding that steps to set aside the exparte decree have not been taken at the earliest point of time and therefore the dismissal is justified. The plaintiffs also contend that the notice served in the final decree application would go to show that defendants have been lackadaical in moving the court to get the exparte decree set aside and that no explanation has been offered for the inordinate delay of 526 days.

9. The contentions raised on both sides have to be considered in the light of the decisions relied upon by the side of the defendants.

9.1. The specific finding is that appropriate steps had not been taken at appropriate time and the delay caused is undue and it cannot be condoned. Whether the finding given by the Trial Court has to be accepted or it has to be reversed or modified or set aside is the issue to be considered.

9.2. The petitioners/defendants have relied upon the following decisions to substantiate their contention that the exparte decree is liable to be set aside and that the Trial Court ought to have condoned the delay.

i) V. Amudha vs. S.A. Arumugham and 2 others, 2000-1-L.W.547:-

"The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. Rules



of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest republicate up sit finis litium (it is for the general welfare that a period be put to litigation) Rules of limitation are not meant to destroy tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.''

ii) N. Balakrishnan vs. M. Krishnamurthy, 1999-1-L.W.739:-

'A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice.'

iii) Padmanabhan vs. IM. Karthikeyan and 4 others, CRP (MD) Nos. 1771 of 2016 and 1153 of 2017 dated 14.08.2018:-

'Thus it becomes plain that the expression "sufficient cause" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the 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. In a particular case whether explanation furnished would constitute sufficient cause? or not will be dependent upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the Courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal an exception more so when no negligence or inaction or want of bone fide can be imputed to the defaulting party. On the other hand, while considering the matter the Courts should not lose sight of the fact that by not taking steps within the time



prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine like manner. However, by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the list terminates either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, Courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way.''

iv) S.Rajaram vs. S.Seenivasan, 2007 (4) CTC 136:-

'In the case on hand, admittedly there is a delay of thirteen months. The reason adduced by the complainant is that compromise talk was going on between the parties. It is also not in dispute that the accused borrowed a sum of Rupees one lakh from the complainant. So, his stake is heavy. Only a person who lent such a huge amount could not kept silent for a long time and accordingly, the complainant took steps by serving legal notice to the accused/respondent after receipt of intimation of dishonour of cheque from the Bank. So, at this juncture, the complainant cannot be found fault with and he was not negligent and he had taken sufficient steps.''

v) Bhagmal and others vs. Kunwar Lal and others, 2010 (5) CTC 827:-

'Under such circumstances, the High Court should not have taken the hyper-technical view that no separate application was filed under Section 5. The application under Order IX Rule 13 CPC itself had all the ingredients of the application for condonation of delay in making that application. Procedure is after all handmaid of justice. Here was a party which bona fide believed the assurance given in the compromise panchnama that the respondent No. 1/plaintiff would get his suit withdrawn or dismissed. The said compromise panchnama was made before the elders of the village. Writing was also effected, displaying that compromise. The witnesses were also examined. Under such circumstances, the non-attendance of the appellants/defendants, which was proved in the further proceedings, was quite justifiable.''

vi) K.C.Datta vs. B.Estate, AIR 1972 CALCUTTA 221:-

'Even when an exparte decree has been fully executed it is open to the Court to set aside the decree on proper grounds and if the exparte decree is set aside on an application under Order 9 Rule 13 the principles of restitution laid down in Section 144 of the Code of Civil



Procedure would be attracted. **The fact that a conveyance has been executed by the Court would not disentitle the defendant from seeking its remedies under Order 9 Rule 13.**

vii) Karupiah vs. T. Ramavelar, 2019 (1) TNLJ 47 (Civil)
''Inordinate delay of 543 days unexplained - Application dismissed by the Trial Court - Revision filed - On the settled legal position that **merits of the matter should be looked instead throwing it on the aspect of delay**, the order of trial Court was set aside.

10. Having regard to the legal position cited above, this Court is of the view that the parties must be given an opportunity to put forth and prove the case on merits. The technical approach should not prevent the parties from proving the case on merits. At the same time, because of the delay involved, the inconvenience caused to the other side must be taken note of and the loss must be compensated by cost.

11. The reason stated for not moving the court even though application has been filed at an earlier point of time seems to be probable. The defendants have not taken care to prove the reasons for the delay in a comprehensive way, but it cannot lead to the conclusion that the reason stated is false.

12. As the records disclose commissioner's report has already been filed. The delay is also inordinate. Therefore, this Court is of the view that subject to defendants pay a sum of Rs.20,000/- as costs to the plaintiffs, the exparte decree should stand set aside with the delay having understood as condoned. It is made clear that the defendants would not be given another opportunity to contest the case on merits if at all the defendants are not showing due diligence in proceeding with the case. Considering the interest of both sides and subject to the following terms and conditions, the revision petition is allowed.

i) The defendants shall pay a sum of Rs.20,000/- (Rupees Twenty Thousand only) to the plaintiffs on or before 17.06.2019; on such payment being made, the delay stands condoned and the exparte decree stands set aside.

ii) The Trial Court shall proceed with the case and dispose of the same within a period of two months thereafter.

The revision stands allowed subject to the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //



1. The Subordinate Judge,
Srivilliputhur.

2. The Record Keeper,
V.R.Section, Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1CC TO MR.D.SENTHIL, Advocate Sr. No.64426

+1CC TO MR.VEERA ASSO., Advocate Sr. No.64386

CRP(NPD) (MD) No.1038 of 2011
30.04.2019

GRC (CO)

TR (03.05.2019) 6P 6C