



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.06.2019

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

CRP (PD) (MD) NO.1578 of 2013

and

M.P (MD) No.1 of 2013

Mohan : Petitioner/Respondent/Defendant

.vs.

1.Kiruba Theatre (Register No.4/1988),
Kalappakulam, through its partner
M.Seenivasan

2.M.S.Seethalakshmi : Respondents/Petitioners/Plaintiffs

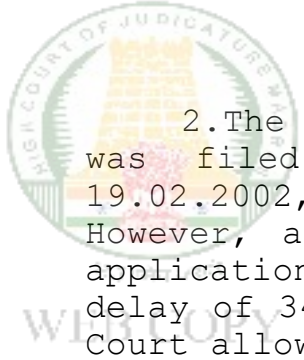
PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order made in I.A.No.19 of 2012 in O.S.No.99 of 1996, dated 07.06.2013, on the file of the Additional District Munsif Court, Sankarankovil.

For Petitioner : Mr.A.Chidambaram
for
Mr.R.Manimaran

For Respondents : Mr.M.R.Priyankajothi
for
Mr.R.Subramanian

O R D E R

This Civil Revision Petition is filed challenging the order made in I.A.No.19 of 2012 in O.S.No.99 of 1996, dated 18.04.2013, wherein and whereby the trial Court allowed the application filed under Section 5 of the Limitation Act, to condone the delay of 3434 days in prosecuting the suit, which was dismissed for default on 19.02.2002.



2.The petitioner is the first defendant in the said suit, which was filed for declaration and for permanent injunction. On 19.02.2002, the trial Court dismissed the suit for non-prosecution. However, after a period of nearly ten years, the plaintiffs filed application under Section 5 of the Limitation Act for condoning the delay of 3434 days in filing the restoration application. The trial Court allowed the application only on the reason that the defendants did not file counter to the said application, though sufficient time was granted.

3.No doubt, the trial Court imposed a cost of Rs.2,500/- to be paid by the plaintiffs to the defendants. Challenging the said order, the present Civil Revision Petition is filed.

4.The learned counsel for the petitioner submitted that when the delay is enormous, the trial Court ought to have given a justifiable reason for allowing the application.

5.On the other hand, the learned counsel for the respondents submitted that the petitioner herein is not entitled to question the order of the trial Court, when they have not chosen to file any counter opposing the application filed under Section 5 of the Limitation Act.

6.Heard both sides.

7.The suit is of the year 1996. The same was dismissed for default on 19.02.2002. Admittedly, the application for restoration was filed with a delay of 3434 dyas. Therefore, Section 5 of the Limitation Act application was filed to condone such delay. It is true that the said application was not opposed by the respondent/defendant by filing a counter affidavit. Therefore, the trial Court allowed the application only on the above said reason. I do not think that the approach of the trial Court in allowing the said application merely because the same is not opposed, cannot be considered as a proper course of disposal of the application, especially, when the delay is enormous to the tune of 3434 days. The trial Court has not gone into the reasons stated by the applicants explaining the delay and given any finding on such reasons. Merely because the other side is not opposing the application, that does not mean that the said application needs to be allowed automatically. On the other hand, it is the duty of the Court to apply its mind to the reasons stated in the accompanying affidavit explaining the delay and only on being satisfied with such reasons, the trial Court can allow the application. To put it differently, it is not the satisfaction of the other side that matters for condoning the delay and on the other hand, it is only the satisfaction of the Court is required on the reasons stated for condoning the delay.

8.At this juncture, it is to be noted that Section 5 of the Limitation Act, 1963, empowers the Court to admit any appeal or any application after the prescribing period of limitation only when the



appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or the application within such period. Section 5 of the Limitation Act thus reads as follows:-

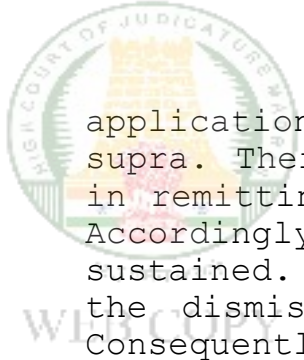
"5.Extension of prescribed period in certain cases:-

Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period, if the applicant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period."

Therefore, it is apparent that the satisfaction of the Court is the requirement and not that of the respondent'/respondents' in the said application. Therefore, the satisfaction of the Court for condoning the delay must be explicitly available in the order condoning the delay, notwithstanding the fact whether the respondent in such application has opposed the same or not?. No doubt, non-opposing the application or giving consent for allowing the same by the respondent may be taken by the Court as one of the reasons for considering the application and certainly not the only the reason to allow the same. In other words, it is the duty of the Court to apply its mind to the reasons stated in the application for condonation of delay and to get itself satisfied as to whether those reasons are genuine and proved.

9. Therefore, I am of the view that the order passed by the trial Court in this case as such, cannot be sustained, since it has not adverted to the reasons stated for condoning the delay and given any finding on the same. Normally this Court would have remitted the matter for considering the application afresh, provided the reason stated in the affidavit in support of Section 5 application *prima facie* satisfies this Court for remand. Therefore, I perused the affidavit filed in support of I.A.No.19 of 2012 in O.S.No.99 of 1996 seeking to condone the delay of 3434 days. Perusal of the said affidavit would clearly show that the plaintiffs are well aware of the date of hearing of the suit on 19.02.2002. They only say that the first plaintiff was affected with Jaundice at that time and he took treatment for three months and thereafter, he became alright. It is further stated therein that though he became alright after three months, he has forgotten about the suit and therefore, he could not contact his counsel. After saying so, it is further stated that only just one week before filing the application, the petitioners met the counsel and came to know about the dismissal of the suit for default.

10. From the above statements made in the accompanying affidavit, it is evident that the plaintiffs have not explained the reasons for the enormous delay in filing the application. On the other hand, it is apparent that they were aware of the date of hearing as 19.02.2002 and however, they have chosen to file the



application after nearly a period of more than ten years as stated supra. Therefore, this Court finds that no purpose would be served in remitting the matter for fresh consideration of the application. Accordingly, I find that the order of the trial Court cannot be sustained. Consequently, this Civil Revision Petition is allowed and the dismissal of the suit on 19.02.2002 is restored. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (RTI)

/ True Copy /

Sub Assistant Registrar (CS-)

To

The Additional District Munsif,
Sankarankovil.

+1 CC to M/s.R.J.KARTHICK, Advocate (SR-71057[F] dated 25/06/2019)

ORDER MADE IN
CRP (PD) (MD) NO.1578 of 2013
and
M.P (MD) No.1 of 2013
24.06.2019

rj2/skn
ES/05.07.2019/4P/3C