

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2020

CORAM

THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

CMP No. 4541 of 2018

in

CRPSR. No. 11584 of 2018

Palanisamy

..Petitioner

Vs

1. Muthurani

2.Nagarathinam

.. Respondents

Prayer: Civil Miscellaneous Petition is filed to condone the delay of 2280 days in filing the above Civil Revision Petition in CRP SR.No. 11584 of 2018 to set aside the fair and final order dated 25.08.2011 made in I.A. No. 2302 of 2010 in O.S. No. 69 of 2009 on the file of the District Munsif Court, Udumalpet.

For Petitioner : M/s.D.R.Arunkumar

For Respondents : Ms.T.Madhumitha
for M/s.S.Gunalan



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ORDER

The prayer sought for in the Miscellaneous Petition is to condone the delay of 2280 days in filing the above Civil Revision Petition in CRP SR.No. 11584 of 2018 to set aside the fair and final order dated 25.08.2011 made in I.A. No. 2302 of 2010 in O.S. No. 69 of 2009 on the file of the District Munsif Court, Udumalpet.

2. The learned counsel for the revision petitioner has submitted that the petitioner has handed over the suit papers to one Natrayan, who is senior most advocate clerk in Udumalpet and he assured the petitioner that the aforesaid suit will be defended effectively and settle the issue as soon as possible and also obtained the signature of the petitioner in the vakalath, who is the 2nd defendant in the aforesaid suit. The petitioner has also paid fees to the said advocate clerk and as and when insisted by him and he got the petitioner's signature in some affidavits. The petitioner made signature in the aforesaid papers believing that he will get favourable orders. Since the said Advocate clerk has long experience and knows the entire members of the Bar,

he was under the impression that he will safeguard his property, but he has has not received any information or any communication from the said advocate clerk.

3. The learned counsel appearing for the petitioner further submitted that unfortunately, the petitioner came to know that the aforesaid suit was set exparte as early as on 05.08.2009 and the petition for setting aside the exparte decree was filed along with the condone delay petition in I.A. No. 2302 of 2010 and the same was also dismissed on 25.08.2011. Therefore, the petitioner is having good defence in the main suit and he has also stated in the written statement that the suit mentioned property is the self acquired property of the petitioner and not the family property as stated by the respondents/plaintiff in the plaint. Therefore, passing exparte order against the petitioner is liable to be set aside.

4. The learned counsel appearing for the first respondent has submitted that the petitioner has filed the Civil Revision Petition before this Court to set aside the order passed in I.A. No.2302 of 2010 dated 25.08.2011. Further,

the reasons stated in the grounds that he was misguided by an advocate clerk, the petitioner has not produced any proof before this Court, therefore, the contention of the petitioner before the Court does not have any supporting materials to establish the said allegations against the advocate clerk.

5. The learned counsel for the first respondent further submitted that when the suit was posted on 05.08.2009 for filing written statement, the petitioner has not filed the same, hence the trial Court has passed the ex-parte decree against the revision petitioner. Thereafter, the revision petitioner has filed an application to set aside the application under section Order 9 Rule 13 along with condone delay application of 256 days. After elaborate enquiry and perusal of entire documents, the trial Court has rightly dismissed the said application filed by the revision petitioner herein in I.A. No. 2302 of 2010 on 25.08.2011. After final decree application and lapse of eight years, the revision petitioner herein filed the present revision petition before this Court with a huge delay of 2280 days, which is barred by limitation. Therefore, the present Civil Revision Petition is liable to be set aside.

6. Heard the learned counsel appearing for the revision petitioner and the learned counsel appearing for the respondents and perused the documents available on record.

7. On a perusal of records and the affidavits filed by the parties concerned, it is seen that the revision petitioner has made allegations against one advocate clerk namely Natrayan, stating that the said advocate clerk has misguided the petitioner and obtain signature in affidavits and he has not communicated with his advocate. But the revision petitioner has not placed any materials to prove the aforesaid allegations against the advocate clerk namely Natrayan. If the petitioner was really affected by the said advocate clerk, he could have made complaint before the authorities concerned, without doing so, the petitioner has preferred the present civil revision petition. This Court cannot go into the merits of the case, unless materials are placed against the aforesaid advocate clerk. Further, the petitioner after lapse of eight years, has approached this Court with mere allegations against one advocate clerk, which is impermissible under the law.

8. As far as suit schedule property is concerned, the petitioner has made contrary statement in the written statement as well as in the present petition filed for condonation of delay. No particulars have been furnished before this Court and there is no satisfactory explanation for condoning the huge delay of 2280 days.

9. Considering the fact that no sufficient documents were filed to substantiate the reasons, which prevented him to file the said application within a stipulated period and in the absence of any satisfactory reasons in the affidavit as well as any materials placed before the Court below, I do not find any reason to interfere with the order passed by the Court below. In my view, the Court below has rightly rejected the application filed by the petitioner.

10. In this context, it is useful to extract the relevant portion of the judgment of Hon'ble Supreme Court rendered in the case of ***H.Dohil Constructions Company Private Limited Vs. Mahar Exports Limited and another, reported in (2015) 1 SCC 680.***;

“24....The filing of an application for condoning the delay of

1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the respondents no deserving any indulgence by the court in the matter of condonation of delay. The respondents had filed the suit for specific performance and when the trial court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered.”

11. In the light of the decision of the Hon'ble Supreme Court cited supra and considering the fact that there is no satisfactory explanation by the petitioner for the inordinate delay of 2280 days, I am of the opinion that no *prima-facie* case is made out to interfere with the order passed by the Court below. Accordingly, this Civil Miscellaneous Petition, seeking condonation of delay is dismissed. Consequently, the Civil Revision Petition is closed at the SR itself.

03.03.20220

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D.KRISHNAKUMAR,J

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