

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2020

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
&
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

O.S.A.No.155 of 2019
&
C.M.P.No.13825 of 2019

M. Jagannathan ...Appellant/Defendant

Vs.

1. Mala Devarajan
2. M.Devarajan (Died)
3. D.Manikandan
4. D.Hariharan
5. H.Saraswathy

(R3 to R5 brought on record as LRS of deceased R2-M.Devarajan, as per order dt.13.2.2020 in CMP.No.2650 of 2020) ...Respondents/Plaintiff

Prayer: Original Side Appeal filed under Order 36, Rule II of the Original Side Rules, read with Clause 15 of the Letters Patent Act against the order dated 24.10.2018 in A.No.6255 of 2018 in C.S.No.824 of 2007.

Application No: 6255/2018: Application praying that this Hon'ble Court be pleased to condone the delay of 159 days in filing the application to set aside the decree passed in C.S.No. 824 of 2007 dated 03/01/2018

For Appellant : M/s. A.Rajeswari Karthikeyan

For Respondents : Mr.V. Manohar

O R D E R

(Delivered by Dr.Vineet Kothari, J.)

This Original Side Appeal has been filed by the defendant M. Jagannathan, Son of Late K.Madanagopal, aggrieved by the order dated 24.10.2018, passed by the learned Single Judge disposing the Appln.No.6255 and 6256 of 2018 in Civil Suit No.824 of 2007 filed by the plaintiffs-Mala Devarajan, wife of Devarajan and M.Devarajan, who claim to be the auction purchasers of the property in question through Court auction held on account of appellant/defendant's default in payments of dues to one M/s. Park Town Benefit Fund.

2. A Civil Suit was filed by the auction purchasers/plaintiffs-Mala Devarajan and Devarajan against the appellant/defendant-Jagannathan to hand over vacant possession of the suit property as well as to pay damages for continued possession of the said property. The said suit was decreed exparte, even while the appellant/defendant M.Jagannathan had not filed the written statement in the Civil Suit in question. The appellant/defendant therefore filed an application seeking to condone the delay in filing the application to set aside the exparte decree, which came to be rejected by the learned Single Judge on 24.10.2018. The reason assigned by the learned Single Judge in the order impugned before us in A.No.6255 of 2018 is quoted below for ready reference.

'14. The only reason set out for the condonation in seeking to set aside the exparte decree is that the matter had been entrusted to senior counsel M.Shrikrishna, who had passed away. The applicant states that he was not aware of the passing away of the senior counsel and it was in these circumstances that the matter came to be decreed exparte.

15. Having heard learned counsel and perused the counter and documents filed, I am of the categorical view that both the applications deserve to be dismissed in limine.

16. At the outset, this Court takes exception to the fact that the application has been filed in a very casual manner suppressing from this Court relevant details and events that have transpired in the matter till date. Simply on this limited ground, the applications are liable to be dismissed.

17. However, I proceed to decide the matter on merits. The applicant does not contest the basic facts involved, that he had availed financial accommodation from the Park Town Benefit Fund, defaulted in repayments leading to the auction of the property mortgaged by him to the plaintiffs and that he continues to be in possession of the property in question despite the valid sale by court auction to the plaintiff. In fact, that the respondent has no defence in the suit is apparent from the position that till date no written statement has been filed, despite the suit having been filed as early as in 2007.

18. The sole plea in the applications turns on the passing away of the senior counsel. This explanation, in my view, is of no assistance to the applicant whatsoever. The matter has been entrusted to a counsel on record who had entered appearance in the suit. This submission is thus unacceptable and is rejected.

19. The applicant certainly requires no indulgence of this Court. On the other hand, I believe that the conduct of the applicant is to be condemned. In fact, even the order of this Court passed in O.S.A.No.335 of 2013 has not been properly complied with in so far as while the direction is to remit a sum of Rs.5,00,000/- to the credit of the suit, the amount has admittedly been remitted to the credit of the Registrar General of the High Court.

20. Learned counsel for the respondent has filed a voluminous compilation of decisions wherein courts have condoned delays in filing applications seeking to set aside exparte decrees. The cases are entirely distinguishable on facts and do not apply in the factual matrix of this matter as noticed by me above.

21. The application seeking condonation of delay is dismissed. Consequently, the application seeking stay of the Proceedings stand rejected as well.'

3. Mr.V.Manohar, learned counsel appearing for the respondents/plaintiffs also brought to our notice that earlier also the same defendant Mr.Jagannathan has suffered exparte decree in C.S.No.824 of 2007 vide order dated 30.7.2010, which was however set aside by the Division Bench of this Court in another Original Side Appeal previously filed by the defendant Jagannathan namely O.S.A.No.335 of 2013 vide order dated 26.11.2013. Despite that also, the said Defendant did not file any written statement in C.S.No.824 of 2017. Even in the second round of litigation when the exparte decree has been passed, he again filed the application for setting aside the same with a delay of 159 days stating the reasons that the Senior Counsel who was engaged to argue on behalf of the said defendant Mr.Srikrishnan has passed away and the Advocate on Record did not inform the said fact to him. In these circumstances, the application for setting aside the exparte decree came to be filed belatedly.

4. M/s. Rajeswari Karthikeyan, learned counsel appearing for the appellant submitted that the learned Trial Judge ought to have allowed the aforesaid appellant to atleast file his written statement and the said order has been passed without considering the defence on the part of the defendant Jagannathan and the learned Single Judge has even pronounced on the merits of the claim made by the auction purchasers/plaintiffs, which he submitted, is not sustainable. She further submitted that the reason assigned by the appellant in the said application to condone the delay namely expiry of senior counsel Mr.Shrikrishnan was a genuine, correct and reasonable reason and therefore the exparte Decree may be set aside by allowing the said application for condoning the delay.

5. Having heard the learned counsel for the parties, we are of the opinion that a serious miscarriage of justice has occurred in the present case, where the present appellant Jagannathan-defendant in the suit filed by the plaintiffs Mala Devarajan and her husband Devarajan, the auction purchasers, has been decreed exparte and twice over without taking on record even the defence of the defendant by the trial court. Even if there was a delay in filing the written statement and application seeking condonation of delay in filing the application to set aside the exparte decree was there, we are satisfied with the reason assigned by the applicant/defendant Jagannathan namely, the death of the Senior Counsel Mr.Shrikrishnan, to whom, the case has been entrusted and this was not informed to him was a reason which could have been considered sympathetically by the learned Single Judge. If the learned Single Judge was of the opinion that the delay is caused deliberately, the opposite party could have been compensated with adequate costs.

6. In the present case, by an interim order, even this Court had directed the Appellant to deposit Rs.10 lakhs towards the damages as the Appellant-defendant is continuing to be in possession of the property in question, which was auctioned in favour of the plaintiffs way back in 2006, which amount has been deposited during the present COVID times and the said amount is lying in the deposit with the Registrar General of this Court with reference to this Original Side Appeal.

7. In such circumstance we are of the opinion that in the interest of justice, subject to the payment of cost of Rs.25,000/- (Rupees twenty five thousand only) by the defendant Janarthanan to the plaintiffs, the trial of the suit in C.S.No.824 of 2007 deserve to be restored to the file of the learned trial Judge. The defendant/appellant shall pay the said cost in favour of the plaintiffs within a period of four weeks from today and also file a written statement in the Civil Suit No.824 of 2007 within the same period of four weeks in the learned trial Court. Thereafter, the trial of the said suit should be undertaken and in view of the long lapse of the period which has happened, we request the learned Single Judge to expedite the trial of the said suit and dispose of the same as far as possible within a period of one year from now.

8. The amount of Rs.10,00,000/- deposited by the defendant to the credit of C.S.No.824 of 2007 under the interim order of this Court dated 11.3.2020 may be made over to the plaintiffs/respondents by the Registrar General, which will remain subject to the final decision of C.S.No.824 of 2007.

9. With these observations and directions, the present Original Side Appeal is disposed of. No costs. Consequently, connected C.M.P.No.13825 of 2019 is closed.

sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

msr

To

1.The Sub Assistant Registrar,
Original Side,
High Court,
Madras.

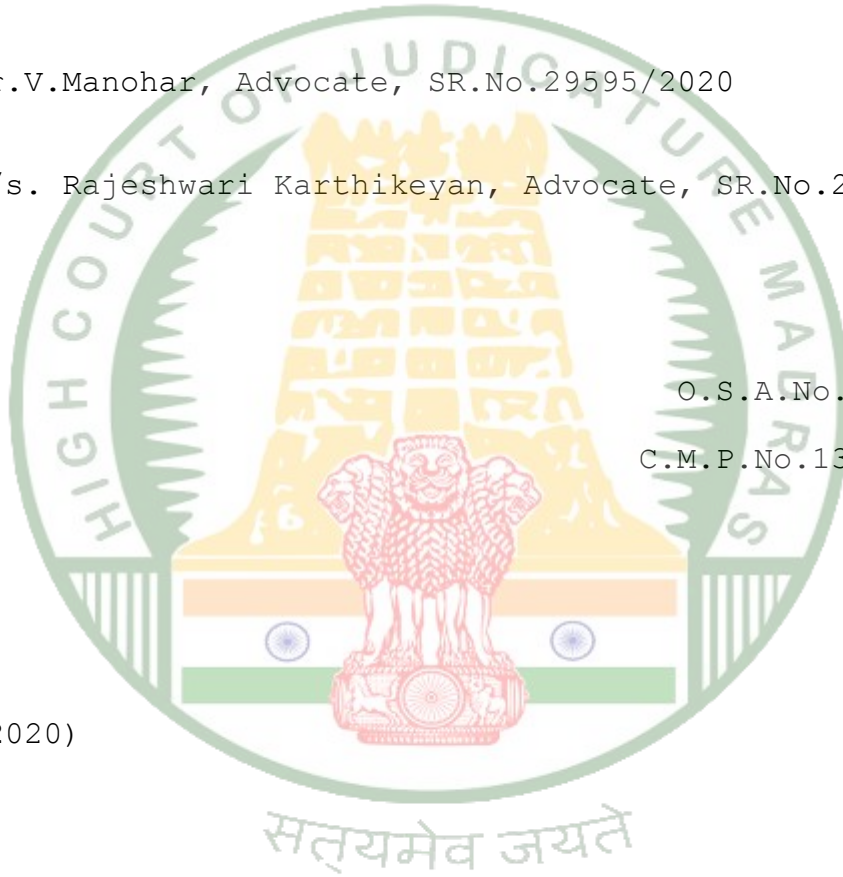
2.The Registrar General,
High Court,
Madras.

+1cc to Mr.V.Manohar, Advocate, SR.No.29595/2020

+1cc to M/s. Rajeshwari Karthikeyan, Advocate, SR.No.29550/2020

O.S.A.No.155 of 2019
&
C.M.P.No.13825 of 2019

SR(CO)
RN(21/10/2020)



WEB COPY