

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 21.09.2020	Delivered on 29.09.2020
---------------------------	----------------------------

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No. 2797 of 2018

M.Gopi ... Petitioner/Plaintiff

-vs-

1.A.S.Sasikala

2.A.R.Subash

... Respondents/Defendants

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 05.03.2018 in I.A.No. 307 of 2017 in O.S.No. 45 of 2013 on the file of the II - Additional District Court, Salem.

For Petitioner : Mrs.P.Veena Suresh

For Respondents: Mr.D.Shivakumaran

O R D E R

The plaintiff in O.S.No.45 of 2013 has come up with this civil revision petition, aggrieved by an order by the Trial Court extending the time for payment of cost of Rs.1,000/- as per the conditional order dated 03.11.2014.

2.The suit in O.S.No.45 of 2013 was filed by the petitioner seeking a declaration of his title to the suit property, recovery of possession and for permanent injunction. The said suit was decreed exparte on 02.08.2014. The defendants filed an application to set aside the exparte decree in I.A.No.237 of 2014 on 08.08.2014. The said application came to be allowed by the Trial Court on 03.11.2014, subject to the condition that the petitioners therein pay a costs of Rs.1,000/- on or before 20.11.2014 and to cross-examine the P.W.1 on 21.11.2014.

3. From 21.11.2014, the application was adjourned for various reasons up to 01.04.2015. On 01.04.2015, the Trial Court recorded that the conditional order dated 03.11.2014 regarding payment of Rs.1,000/- was not complied with and dismissed I.A.No.237 of 2014. When the things stood thus, the

respondents herein, nearly after two years filed I.A.No.308 of 2016 on 11.08.2016 seeking to condone the delay of 744 days in filing a petition to set aside the exparte decree. The affidavit filed in support of the said application reads as follows:-

"2. I humbly submit that the decree obtained by the plaintiff is Ex-parte decree. I submit that the previous counsel did not give me proper instruction and case details. I was misguided by my Advocate that he had filed condone delay petition under Section 5 of Limitation Act 1963 and Order 9 Rule 13 to set aside the ex-parte decree and it was allowed with cost of Rs.3,000/-. When I verified in the Court, I came to know that no such petition was filed. I totally relied on my Advocate and he misguided me stating false details."

4. The affidavit filed in I.A.No. 308 of 2016 was totally silent about the reasons for the delay. The said petition was dismissed by the Trial Court on the ground that there is no bonafide on the part of the petitioners. Aggrieved by the dismissal of I.A.No. 308 of 2016, the petitioners preferred C.R.P.No. 1081 of 2017. This Court by order dated 22.03.2017 dismissed the civil revision petition observing as follows:-

"4. On perusal of records, it is seen that the petitioners have already filed an application in I.A.No. 237 of 2014 in O.S.No. 45 of 2013 to set aside the exparte decree dated 01.08.2014 and the said application was allowed on a condition to pay cost of Rs.1,000/-. Even though the case has been adjourned from time to time till 01.04.2015 for payment of cost, cost has not been paid by the petitioner. Therefore, the said application I.A.No. 237 of 2014 in O.S.No. 45 of 2013 was dismissed on 01.04.2015. Therefore, the Trial Court has dismissed the said application in I.A.No. 308 of 2016, stating that there is no bonafide on the part of the petitioner."

5. In view of the above facts and circumstances of the case, I am not inclined to entertain this petition. At this stage, the learned counsel appearing for the petitioners submitted that liberty may be given to the petitioner to file an appropriate application before the trial Court, seeking extension of time, for payment of the cost.

6. This civil revision petition is dismissed. However, it is open for the petitioners to approach the Court below for filing an application seeking extension of time, for payment of cost, if permissible under law. No costs. Consequently, connected miscellaneous petition is closed."

5. After the dismissal of the civil revision petition by this Court, the petitioner have come up with the present application in I.A.No. 307 of 2017, seeking extension of time to comply with the condition imposed in I.A.No.237 of 2014 by the order dated 03.11.2014 after expiry of almost 2 ½ years. The prayer in the application presents a very interesting reading. It reads as follows:-

"III. For the reasons stated, in the accompanying affidavit the petitioners / defendants pray that this Hon'ble Court may kindly be pleased to pass an order to extent the time for paying the cost ordered in I.A.No. 237 of 2014 in O.S.No. 45 of 2013 as directed by the Hon'ble High Court of Judicature at Madras in C.R.P.No. 1081 of 2017 and C.M.P.No.5181 of 2017 on 22.03.2017 and thus render justice." (Emphasis supplied)

6. This Court in the order in C.R.P.No. 1081 of 2017 never directed the Trial Court to extend the time, it has only stated that it is open to the petitioners to file an application for extension of time, if they are so advised. Both the affidavit as well as the petition filed in respect of I.A.No. 307 of 2017, it is made to appear that this Court had directed the Trial Court to extend the time in the order dated 22.03.2017 made in C.R.P.No.1081 of 2017. This is a classic example of how a innocuous observations by this Court are misused before the Trial Courts.

7. The learned Additional District Judge, who heard the application extended the time granted. Though the learned judge had referred to various decisions of the Hon'ble Supreme Court regarding extension of time, he has lost sight of total absence of any explanation for the non-compliance with the order. At every stage, the respondents herein have chosen to blame the counsels, who had appeared for them and had chosen to change counsels. The latest application in I.A.No. 307 of 2017 has been filed by the 4th counsel, who had came on record for the respondents herein before the Trial Court. Aggrieved by the order of the learned Additional District Judge allowing the application under Section 148, the petitioner / plaintiff has come up with this civil revision petition.

8. A reading of the order of the learned District Judge shows that the learned District Judge has concentrated more on the power of the Court to extend the time after expiry of the time originally granted. After Salem Advocate Bar Association Vs. Union of India reported in 2005 (6) SCC 344, the power of the Court to extend the time after the time originally granted had expired is beyond pale of controversy. Even in

Chinnamarkathian Vs. Ayyavoo reported in 1982 (1) SCC 159, the Hon'ble Supreme Court had held that the Court will have power to extend the time, even after the time originally granted has expired provide the person who seeks extension of time, makes out a case for such explanation. The Trial Court has not adverted to the total lack of reasons for the non-compliance with the conditional order. After having concluded that the Court has power to extend the time even after the expiry of the time originally granted, the Trial judge chose to dispose of the application in the following words:-

"16. When this Court has got power to extend the time even after the expiry of period this Court finds that this petition is entertainable and in view of the reasons stated in the affidavit it can be ordered in favour of the petitioners. However, considering the period between the disposal of the petition in I.A.No. 236 of 2014 and the present petition, heavy costs has to be imposed so as to compensate the respondent and point is answered accordingly."

9. Except the above, the learned District Judge has not considered the merits of the case or the reasons assigned for non-compliance. A look at the affidavit filed in support of this application would show that only reason that is assigned is that the petitioners are illiterate persons, they must be given an opportunity to prove their case. They had chosen to blame their counsel claiming that he did not inform them about the orders that have been passed earlier. The allegations in the affidavit, in my considered opinion, are wholly insufficient to extend the time. The petitioners have chosen to suppress the filing of the application under Order 9 Rule 13 in I.A.No.237 of 2014 in their affidavit filed in support of I.A.No.308 of 2016. They ought to have filed an application for extension of time immediately or at least before filing I.A.No.308 of 2016.

10. In the counter to I.A.No: 308 of 2016 the petitioner herein had taken a specific plea that the earlier application to set aside the ex parte decree in I.A.No. 237 of 2014 was dismissed for non-compliance with the condition. At least after filing of said counter the petitioners should have filed an application for extension of time. The Trial Court dismissed I.A.No.308 of 2016 on the same ground, on 24.01.2017 at least thereafter, the petitioners should have sought for extension of time. They did not do so, they chose to challenge the order in I.A.No.308 of 2016 before this Court and this Court also dismissed the civil revision petition. Of course, there was an observation that it will be open to the petitioners to approach the Court, seeking extension of time, if permissible under law. This observation was projected as if this Court had issued a direction to the Trial Court to extend

the time, if an application is made by the petitioners. I find that the petitioners have been totally negligent and careless in their attitude in prosecuting the proceedings. May be, it is fault of the counsels who appeared for the petitioners but the petitioners cannot be allowed to blame their counsels and escape the rigour of law.

12. No doubt, the dismissal of an application to set aside an exparte decree would result in severe prejudice to the petitioners but the Court cannot also be oblivious to the plight of the person, who had succeeded in the suit as early as of the year 2014. I therefore, find that the Trial Court was in error in extending the time for compliance with the order dated 03.11.2014. The learned District Judge has not adverted to the reasons assigned for the non-compliance and the total absence of explanation for seeking extension earlier. The petitioners cannot be allowed to blame their counsels and escape by changing their counsel at every stage.

13. I am therefore, convinced that this is not a fit case, where the learned District Judge should have exercised the discretion in extending the time granted to comply with the order. This civil revision petition is therefore allowed, the order in I.A.No.307 of 2017 dated 05.03.2018 is set aside, I.A.No. 307 of 2017 will stand dismissed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To:-

The II - Additional District Judge,
Salem.

+1cc to M/s.P.Veena Suresh, Advocate Sr.31900

+1cc to Mr.D.Shivakumran, Advocate Sr.31849

C.R.P.No. 2797 of 2018

nmi[co]
srg 02/11/2020