

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	01.07.2019
Pronounced on	21.09.2020

CORAM :

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(NPD).No. 4287 of 2017
and
C.M.P.No.20174 of 2017

Meena

.. Petitioner

Vs

R.K.Balan

... Respondent

Prayer in C.R.P(NPD)No.4287 of 2017: Civil Revision petitions filed under Sec.115 of C.P.C against the order dated 27.10.2017 passed in I.A.No.131 of 2015 in UN.A.S.Sr.No.6971 of 2015 on the file of Sub Court, Tambaram.

For Petitioner : Mr.ARL.Sundaresan, Senior Counsel
for
Mr.J.Ravikumar

For Respondent : M/s.Paul and Paul Associates

ORDER

Revision petitioner is the defendant in the suit. Aggrieved over the dismissal of the petition to condone the delay in filing the appeal, she has preferred the present revision.

2. According to her, the respondent filed a suit for declaration of title and delivery of possession by demolishing the offending structure put up by the petitioner and for permanent injunction. Petitioner filed written statement, but remained absent during trial. She was set ex-parte and an ex-parte decree was passed on 07.04.2010. On receiving notice in the execution petition filed by the respondent for demolishing the house of the petitioner, she became aware of the subsequent developments in the suit and immediately filed a petition to set aside the ex-parte decree along with a petition to condone the delay. The condone delay petition was dismissed and the same was confirmed by the High Court in a Civil Revision preferred by her, not being satisfied with the reasons. Therefore, she preferred an appeal against the ex-parte decree u/s. 96 of C.P.C along with a petition to condone the delay of 1860 days in filing the appeal. The said petition was also dismissed in view of the dismissal of condone delay petition filed to set aside the ex-parte decree. Hence, she preferred the above revision.

3. The learned Senior counsel appearing for the petitioner would contend that the petitioner was undergoing severe mental agony due to the matrimonial problems faced by her daughter, who was given in marriage at Singapore. Due to strained relationship and since she was in family way her daughter came down to India. She had the responsibility to set right the matrimonial relationship and for that purpose, she frequented to Singapore. Since the daughter underwent cesarean operation during the child birth, she had to spend her time in prenatal and post natal care. In that melle, she could not pay proper attention to the litigation. Even though, she had given the *bonafide* and sufficient reasons, they were not accepted and therefore, having no other alternative preferred the statutory appeal. The learned Senior counsel would vehemently contend that refusal to condone the delay to set aside the ex-parte decree, will not disentitle the petitioner from filing an appeal. The appeal being a statutory remedy, the petitioner cannot be denied of her valuable right. The petition to set aside ex-parte decree and filing of an appeal stand on two different fields and dismissal of a petition to condone the delay in setting aside ex-parte decree will not affect the appeal proceedings as they are independent. Further the ex-parte decree passed by the Trial Court does not conform to the mandatory requirement and devoid of reasons. On the face of it, it is illegal and liable to be set aside. The Lower Appellate Court also dismissed the petition to

condone the delay in preferring the appeal in view of dismissal of the earlier petition filed in a different proceeding, without considering it on merits and without assigning valid reasons. In support of his contention he would rely on the following judgments.

1. Bhivchandra Shankar More vs. Balu Gangaram More and others, 2019 (5) CTC 351
2. N.Maheswari vs. Mariappan and others, 2013(2) CTC 388
3. G.K.Suganya and 2 others vs. N.P.Sekar and other, 2019(5) CTC 673

4. Countering the submissions, the learned Senior counsel appearing for the respondent would contend that the reasons adduced for condoning the delay shall show sufficient cause to the satisfaction of the Court and it should be *bonafide*. This Court considered the very same reasons for the very same period and held it insufficient and unsatisfactory. Even according to the petitioner's own pleadings, there is no explanation for not taking action between 2010 and 2014, when she was very much in India. The long delay has not been explained, in spite of her intervening struggles and abroad trips. The High Court has decided, the petitioner had failed to explain the delay for the above period. Since the very same issue of sufficient cause has already been considered by the High Court, it cannot be revisited. It amounts to issue

estoppel. The petitioner can explain the further delay in filing appeal and not for the period, which was declared insufficient and not satisfactory. The delay is wilful, deliberate and malafide to protract the proceedings. In view of the above decision of this Court in C.R.P.No.2685 of 2015 dated 08.07.2015, the present petition is hit by cause of action estoppel. Under Or.41 R.3-A of C.P.C, the Appellate Court, only after satisfying itself can entertain the appeal. Once it is decided by the High Court that the delay was not satisfactorily explained and the petitioner has not shown sufficient cause, in view of the order of the High Court, principles of *res-judicata* will come into play. Irrespective of the proceedings, the delay is common and on the failure to show sufficient cause, the petitioner loses her right to contest the case on merits and undue liberty or liberal consideration cannot be shown. The revision petition is liable to be dismissed. He would rely on the following judgments to support the respondent's case.

1. Basawaraj & Others Vs. The Special Land Acquisition Officers, CDJ 2013 SC 718
2. Bhanu Kumar Jain vs. Archana Kumar and another, 2005 1 SCC 787

5. I have considered the rival submissions.

6. Facts are admitted.

7. The only point for consideration is whether the reasons for delay which were not accepted for condoning the delay to set-aside ex-parte decree will have an impact or influences on the condone delay in filing appeal.

8. Though the statutory provisions for condoning the delay is the same, the main proceedings are governed by different statutory provisions of the Code of Civil procedure.

9. To set-aside the ex-parte decree, the relevant provision is Or.9 R.13 C.P.C. To condone the delay in filing appeal, Rule 3-A of Or. 41 C.P.C is relevant provision.

10. Insofar as Or.9 is concerned, it deals with the consequences of appearance and non-appearance of the parties. In case of non appearance of plaintiff or defendant as the case may be, it will result in an order of dismissal for default or ex-parte order and consequential decree. In such proceedings, either of the parties shall show sufficient cause for their non-appearance be it illness, non-communication, *bonafide* lack of knowledge, non-service of

summons, want of sufficient time to appear, lack of transport and other incidents not within the control of the party. If the reason stated is sufficient and satisfactory for non-appearance, the ex-parte order can be set aside against all or some of the parties with or without conditions.

11. But contrary to the above provision, in an appeal filed under Sec.96(2), for condoning the delay shall be filed under Or.41 R.3-A, r/w Sec.5 of Limitation Act setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period. Here the reason for not preferring the appeal in time shall be shown. One cannot take the reasons of non-service of summons, or want of time. A party is expected to be diligent in pursuing his appeal from contacting his lawyer, till it is registered. The process involves applying for order copy, following it up, preparing the memorandum of appeal, mobilising funds to pay court fee and filing it in time. Though, all the works are done by or with the assistance of an advocate, the appellant shall be vigilant. Therefore, sufficient cause will be different in both the proceedings. The consideration of demeanor and sufficient cause in the perception of the Trial Court, is different from the Appellate Court, for the reason, in the former, the sufficient cause is for non-appearance of the party is relevant but in the latter not preferring the appeal in

time. For non-appearance of a party physically and not pursuing the actions required to be done is personal to him. The default committed by the party can be pardoned is different from not preferring the appeal. In the latter, his physical presence before the Court is not necessary. It can be taken care of by his counsel.

12. For condoning the delay and for setting aside ex-parte decree any reason is a good reason. Even it can be set aside on sympathetic grounds at the discretion of the Court. Opportunity shall be provided to a party. But for setting aside the decree or ex-parte decree by filing an appeal shall be within the statutory period of limitation, on the specific grounds of objection as to the correctness of the judgment made by the Court. The correctness of the judgment and the irregularity of the procedure cannot be attributed to a litigant. When non-appearance is attributable to a party, it can be condoned by the very same Court. But on the other hand the scrutinising the errors is on the Appellate Court on the basis of the factual and legal position.

13. Therefore, the delay cannot be weighed on the same footing for one operates on procedure and the other substantive and a statutory right. Hence the Courts are liberal in considering the delay occurring in preferring statutory appeals

to advance substantial justice rather than defeating the valuable rights of the parties on technicalities .

14. Thus the standard of approach shall be different as both the proceedings fall under entirely different spheres. Whether the Lower Appellate Court approached the issue judiciously taking into consideration, the various factors including the proceedings of the Trial Court is to be seen.

15. The order passed by the Lower Appellate Court in the petition to condone the delay in preferring Appeal reads as under;

“

6. The rival contentions placed by both parties considered. On perusal the main suit was decreed ex-parte and there is no denial on the side of the petitioner. On further perusal there is no denial on the side of the petitioner that the petitioner already filed a petition to condone the delay of 1533 days of delay to restore the main suit in O.S.No.202 of 2008 before the District Munsif Court Tambaram and after very serious deliberation and enquiry the District Munsif dismissed the said application in I.A.No.1315/2014. The only remedy available to the petitioner is to prefer the appeal against the above said order passed in I.A.No.1315 of 2014 and he is not entitled to prefer the present appeal

with enormous days of delay and moreover it cannot be entertained.”

16. The above order did not consider the nature of the decree passed, the statutory right of the party to file appeal and consideration of the reasons stated in the affidavit. Only because the delay in respect of the same period was dismissed by the Trial Court, after deliberation, in a proceeding to set aside ex-parte decree was dismissed, the petition filed in the present proceedings before it was also dismissed. The Lower Appellate Court went a step ahead and found that the petitioner has to prefer an appeal against the previous order.

17. It is relevant to refer to the judgment of Hon'ble Supreme Court in **2019 5 CTC 351, Bhivchandra Shankar More vs. Balu Gangaram More and others**, it has been held thus:

“ 10. A conjoint reading of Order IX Rule 13 CPC and Section 96(2) CPC indicates that the defendant who suffered an ex-parte decree has two remedies:- (i) either to file an application under Order IX Rule 13 CPC to set aside the ex-parte decree to satisfy the court that summons were not duly served or those served, he was prevented by “sufficient cause” from appearing in the court when the suit was called for hearing; (ii) to file a regular appeal from the original decree to the first

appellate court and challenge the ex-parte decree on merits.

11. It is to be pointed out that the scope of Order IX Rule 13 CPC and Section 96(2) CPC are entirely different. In an application filed under Order IX Rule 13 CPC, the Court has to see whether the summons were duly served or not or whether the defendant was prevented by any "sufficient cause" from appearing when the suit was called for hearing. If the Court is satisfied that the defendant was not duly served or that he was prevented for "sufficient cause", the court may set aside the ex- parte decree and restore the suit to its original position. In terms of Section 96(2) CPC, the appeal lies from an original decree passed ex-parte. In the regular appeal filed under Section 96(2) CPC, the appellate court has wide jurisdiction to go into the merits of the decree. The scope of enquiry under two provisions is entirely different. Merely because the defendant pursued the remedy under Order IX Rule 13 CPC, it does not prohibit the defendant from filing the appeal if his application under Order IX Rule 13 CPC is dismissed."

Therefore the approach of the Lower Appellate Court is not only superficial and mechanical, but also contrary to the legal principles. The Hon'ble Supreme Court dealt with the matter further and hold that dismissal of Or.9 R.13 petition does not bar Appeal under Sec.96. Further the principle that

remedies provided as simultaneous cannot be converted into consecutive remedies cannot be applied in a rigid manner and as a strait-jacket formula. Appeal remedy shall not be deprived on the grounds of delay in the following lines:

“ 14. The above observation of the High Court that “the remedies provided as simultaneous and cannot be converted into consecutive remedies” cannot be applied in a rigid manner and as a strait-jacket formula. It has to be considered depending on the facts and circumstances of each case and whether the defendant in pursuing the remedy consecutively has adopted dilatory tactics. Only in cases where the defendant has adopted dilatory tactics or where there is lack of bonafide in pursuing the two remedies consecutively, the court may decline to condone the delay in filing the first appeal. If the court refuses to condone the delay in the time spent in pursuing the remedy under Order IX Rule 13 CPC, the defendant would be deprived of the statutory right of appeal in challenging the decree on merits.

....

16. 16. Observing that the rules of limitation are not meant to destroy the rights of the parties, in N. Balakrishnan v. M. Krishnamurthy (1998) 7 SCC 123, this Court held as under:-

“11. 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 reipublicae 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 the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.”

As pointed out earlier, an appeal under Section 96 CPC is a statutory right. Generally, delays in preferring appeals are required to be condoned, in the interest of justice, where there is no gross negligence or deliberate inaction or lack of bonafide is imputable to the party seeking condonation of delay.”

18. On the other hand, the contention of the learned Senior counsel for respondent is that the petition is hit by issue of estoppel or cause of action estoppel. As narrated in the previous paragraphs he would contend that the finding of the High Court on merits of the case in C.R.P.(NPD) No. 2685 of 2015 dated 08.07.2015, having reached finality would operate as issue estoppel, irrespective of the nature of proceedings. To buttress his argument he would rely on ***Bhanu Kumar Jain vs. Archana Kumar and another, 2005 1 SCC 787***, wherein it has been held thus:

" 18. It is now well-settled that principles of res judicata applies in different stages of the same proceedings. [See Satyadhyan Ghosal and others Vs. Smt. Deorajin Debi and another, AIR 1960 SC 941) and Prahlad Singh Vs. Col. Sukhdev Singh [(1987) 1 SCC 727].

19. In Y.B. Patil (supra) it was held:

"4.... It is well settled that principles of res judicata can be invoked not only in separate subsequent proceedings, they also get attracted in subsequent stage of the same proceedings. Once an order made in the course of a proceeding becomes final, it would be binding at the subsequent state of that proceeding..."

20. In Vijayabai (supra), it was held:

"13. We find in the present case the Tahsildar reopened the very question which finally stood

concluded, viz., whether Respondent 1 was or was not the tenant of the suit land. He further erroneously entered into a new premise of reopening the question of validity of the compromise which could have been in issue if at all in appeal or revision by holding that compromise was arrived at under pressure and allurements. How can this question be up for determination when this became final under this very same statute ?..."

21. Yet again in *Hope Plantations Ltd. (supra)*, this Court laid down the law in the following terms:

"17. One important consideration of public policy is that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities; and the other principle is that no one should be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fair play and justice."

22. It was further held:

"31. Law on res judicata and estoppel is well understood in India and there are ample authoritative pronouncements by various courts on these subjects. As noted above, the plea of res judicata, though technical, is based on public policy in order to put an end to litigation. It is, however, different if an issue which had been decided in an earlier litigation again arises for

determination between the same parties in a suit based on a fresh cause of action or where there is continuous cause of action. The parties then may not be bound by the determination made earlier if in the meanwhile, law has changed or has been interpreted differently by a higher forum.

....

29. *There is a distinction between 'issue estoppel' and 'res judicata' [See Thoday vs. Thoday # 1964 (1) All. ER 341]*

30. *Res judicata debars a court from exercising its jurisdiction to determine the lis if it has attained finality between the parties whereas the doctrine issue estoppel is invoked against the party. If such an issue is decided against him, he would be estopped from raising the same in the latter proceeding. The doctrine of res-judicata creates a different kind of estoppel viz estoppel by accord.*

31. *In a case of this nature, however, the doctrine of 'issue estoppel' as also 'cause of action estoppel' may arise. In Thoday (supra) Lord Diplock held :*

"... 'cause of action estoppel' is that which prevents a party to an action from asserting or denying, as against the other party, the existence of a particular cause of action, the non-existence or existence of which has been determined by a court of competent jurisdiction in previous litigation between the same parties. If the

cause of action was determined to exist, i.e., judgment was given on it, it is said to be merged in the judgment#.If it was determined not to exist, the unsuccessful plaintiff can no longer assert that it does; he is estopped per rem judicatam."

32. The said dicta was followed in Barber vs. Staffordshire Country Council, (1996) 2 All ER 748. A cause of action estoppel arises where in two different proceedings identical issues are raised, in which event, the latter proceedings between the same parties shall be dealt with similarly as was done in the previous proceedings. In such an event the bar is absolute in relation to all points decided save and except allegation of fraud and collusion. [See C. (a minor) Vs. Hackney London Borough Council, (1996) 1 All ER 973]."

But a further reading of the judgment, in our view lays down the ratio otherwise:

"26.When an ex-parte decree is passed, the defendant (apart from filing a review petition and a suit for setting aside the ex-parte decree on the ground of fraud) has two clear options, one, to file an appeal and another to file an application for setting aside the order in terms of Order 9, Rule 13 of the Code. He can take recourse to both the proceedings simultaneously but in the event the appeal is dismissed as a result whereof the ex-parte decree passed by the Trial Court merges with

the order passed by the appellate court, having regard to Explanation appended to Order 9, Rule 13 of the Code a petition under Order 9, Rule 13 would not be maintainable. However, the Explanation I appended to said provision does not suggest that the converse is also true.

..

28. It is true that although there may not be a statutory bar to avail two remedies simultaneously and an appeal as also an application for setting aside the ex-parte decree can be filed; one after the other; on the ground of public policy the right of appeal conferred upon a suitor under a provision of statute cannot be taken away if the same is not in derogation or contrary to any other statutory provisions.”

As such the consecutive filing of appeal u/s. 96 C.P.C after exhausting their remedy under Or.9 R.13 will not operate as a bar but it is vice versa. In case of an order passed in appeal proceedings, it will bar the further proceedings under Or.9 R.13.

19. On the issue of sufficient cause the judgment of the Hon'ble Supreme Court in ***Basawaraj and Others vs. The Spl. Land Acquisition Officer, CDJ 2013 SC 718*** relied on by the respondent it is held:

“ 15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the

court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

20. The learned Senior counsel would reiterate the very same arguments, which we have already recorded in the previous portion of the judgment and contend that the application shall be decided within the parameters laid and it shall not be condoned without justification in violation of the statutory provisions, which tantamounts to showing utter disregard to the legislature.

21. The above judgment was rendered in a Land Acquisition matter

where a party approached the Court with a delay of 5 ½ years claiming negative equality. The relief granted inadvertantly or by mistake was sought to be extended in favour of the appellant in a highly belated appeal. But, I consider the judgment of Hon'ble Supreme Court in **M.K.Prasad Vs. P. Arumugam, CDJ 2001 SC 404** would be apt to apply to the present case wherein it is held as under:

“ 7.In construing Section 5 of the Limitation act, the court has to keep in mind that discretion in the section has to be exercised to advance substantial justice. The court has a discretion to condone or refuse to condone the delay as is evident from the words "may be admitted" used in the section. While dealing with the scope of Section 5 of the Limitation Act, this Court in Ramlal & Ors. v. Rewa Coalfields Ltd. [AIR 1962 SC 361] held:

"Section 5 of the Limitation Act provides for extension of period in certain cases. It lays down, inter alia, that any appeal may be admitted after the period of limitation prescribed therefor when the appellant satisfies the court that he had sufficient cause for not preferring the appeal within such period. This section raises two questions for consideration. First is, what is sufficient cause; and the second, what is the meaning of the clause "within such period"? With the first question we are not concerned in the present appeal. It is the

second question which has been decided by the Judicial Commissioner against the appellant. He has held that "within such period" in substance means during the period prescribed for making the appeal. In other words, according to him, when an appellant prefers an appeal beyond the period of limitation prescribed he must show that he acted diligently and that there was some reason which prevented him from preferring the appeal during the period of limitation prescribed. If the Judicial Commissioner has held that "within such period" means "the period of the delay between the last day for filing the appeal & the date on which the appeal was actually filed" he would undoubtedly have come to the conclusion that the illness of Ramlal on February 16 was a sufficient cause. That clearly appears to be the effect of his judgment. That is why it is unnecessary for us to consider what is "a sufficient cause" in the present appeal. It has been urged before us by Mr.Andley, for the appellant, that the construction placed by the Judicial Commissioner on the words "within such period" is erroneous.

In construing S.5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation

prescribed has expired the decree holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be lightly- heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the court to condone delay and admit the appeal. This discretion has been deliberately conferred on the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in Krishna v. Chathappan, ILR 3 Mad 269,

"Section 5 gives the court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bonafide is imputable to the appellant."

Again in The State of West Bengal v. The Administrator, Howrah Municipality & Ors. [1972 (1) SCC 366 and G.Ramegowda, Major & Ors. v. Special Land Acquisition Officer, Bangalore [1988 (2) SCC 142 this Court observed that the expression "sufficient cause" in Section 5 of the Limitation Act must receive a

liberal construction so as to advance substantial justice and generally delays be condoned in the interest of justice where gross negligence or deliberate inaction or lack of bonafide is not imputable to the party seeking condonation of delay. Law of limitation has been enacted to serve the interests of justice and not to defeat it. Again in N. Balakrishnan v. M.Krishnamurthy [1998 (7) SCC 123] this Court held that acceptability of explanation for the delay is the sole criterion and length of delay is not relevant. In the absence of anything showing malafide or deliberate delay as a dilatory tactics, the court should normally condone the delay. However, in such a case the court should also keep in mind the constant litigation expenses incurred or to be incurred by the opposite party and should compensate him accordingly. In that context the court observed:

"It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of

positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court."

8. *In the instant case, the appellant tried to explain the delay in filing the application for setting aside the ex-parte decree as is evident from his application filed under Section 5 of the Limitation Act accompanied by his own affidavit. Even though the appellant appears not to be as vigilant as he ought to have been, yet his conduct does not, on the whole, warrant to castigate him as an irresponsible litigant. He should have been more vigilant but on his failure to adopt such extra vigilance should not have been made a ground for ousting him from the litigation with respect to the property, concededly to be valuable. While deciding the application for setting aside the ex-parte decree, the court should have kept in mind the judgment impugned, the extent of the property involved and the stake of the parties. We are of the opinion that the inconvenience caused to the respondent for the delay on*

account of the appellant being absent from the court in this case can be compensated by awarding appropriate and exemplary costs. In the interests of justice and under the peculiar circumstances of the case we set aside the order impugned and condone the delay in filing the application for setting aside ex-parte decree. To avoid further delay, we have examined the merits of the main application and feel that sufficient grounds exist for setting aside the ex-parte decree as well.”

22. The Hon'ble Supreme Court had considered the merits of the appeal also for condoning the delay in filing the appeal. In the present case also an argument has been advanced that the judgment passed by the Trial Court is also non sustainable in the eyes of law. It is just to apply our mind on this aspect also.

23. On perusal of the typed set, we have noted that the judgment of the Trial Court was very cryptic and without any discussion as to the facts. The judgment of the Trial Court is reproduced hereunder:

“

JUDGMENT

Suit for declare that the plaintiff is the owner of the 'B' Schedule property shown in the schedule hereunder; and for direct the defendant to deliver the 'B'

schedule property after removal of the superstructure illegally put up by the defendant over the 'B' schedule property and; for permanent injunction restraining the defendant her men, servants, agents from in any way proceeding with any further construction over the 'B' schedule property; and for cost.

This Court framed the following issues:

- 1. Whether the plaintiff is entitled for declaration to declare for declaration to declare him as owner of the 'B' schedule property?*
- 2. Whether the plaintiff is entitled for a recovery to possession of 'B' schedule property after removing superstructure in the 'B' schedule property?*
- 3. Whether the plaintiff is entitled for permanent injunction as prayer to?*
- 4. What are the other reliefs the parties are entitled to ?*

Judgment pronounced. In the result the suit is decreed as prayed for with cost."

24. It is well settled that a judgment shall contain the precise statement of facts pleaded by both sides, the issues framed on the basis of those pleadings, discussion as to the facts and evidence adduced by the parties both oral and documentary and the reasons for coming to the conclusion on every issue framed.

25. The above two line judgment does not conform to the requirement of law. In fact it cannot be considered as a judgment at all.

26. A Division Bench of this Court in Meenakshisundaram Textiles vs. Valliammal Textiles Ltd, 2011(3) CTC 168

“ 6. In terms of the above provisions, every judgment should contain a concise statement of the case, the points for determination, decision thereon and the reasons for such decision. A judgment which does not contain the bare minimum facts, the point for determination, the evidence adduced and the application of those facts and evidence for deciding the issue would not qualify it to be called as "judgment". The judgment should contain the brief summary of the facts, the evidence produced by the plaintiff in support of his claim and the reasoning of the learned Judge either for decreeing the suit or its dismissal. The Civil Procedure Code does not say that the Court is bound to grant a decree in case the defendant is absent. Judgment means cognitive process of reading a decision or drawing conclusion. Judgment is the basic requirement for a court and it means a decision or conclusion reached after consideration and deliberation. To put it differently, the basics of a judgment are to support by most cogent

reasons that suggest themselves the final conclusion at which the Judge has conscientiously arrived.”

27. In the case of ***N.Maheswari Vs. Mariappan and others, 2013 (2)***

CTC 388, it has been held thus:

“11. In so far as the case in hand is concerned, it is a typical example of mis-carriage of justice as the trial Court after framing three issues, did not discuss anything with regard to those issues by evaluating the evidence and simply decreed the suit in a slipshod manner; that too, against the second defendant also when the plaintiff himself admits that he has not pressed the suit against the second defendant.

12. When such a judgment has been passed by the trial Court, this Court cannot close its eyes and direct the revision petitioner to go to the Appellate Court when the judgment and decree is apparently on the face of it illegal. Hence, I have no hesitation in exercising the powers under Article 227 of the Constitution of India in interfering with the judgment passed by the trial Court and the same is set aside as illegal and opposed to the provisions of C.P.C.”

28. The above judgment will illustrate the illegality committed by the Trial Court. In the interest of justice, I have no hesitation to declare that the

cryptic, unreasoned two line judgment does not stand the legal scrutiny. Without wasting much time, I condone the delay in filing the appeal and set aside the ex-parte decree passed in O.S.No.202 of 2008 and further direct the Trial Court to dispose of the suit within a period of six months from the date of resumption of physical hearing of Courts.

In fine, the Civil Revision Petition is allowed. There shall be no order as to costs. Connected miscellaneous petition is closed.

21.09.2020

Index : Yes / No
Internet : Yes / No
Speaking/ Non Speaking Order

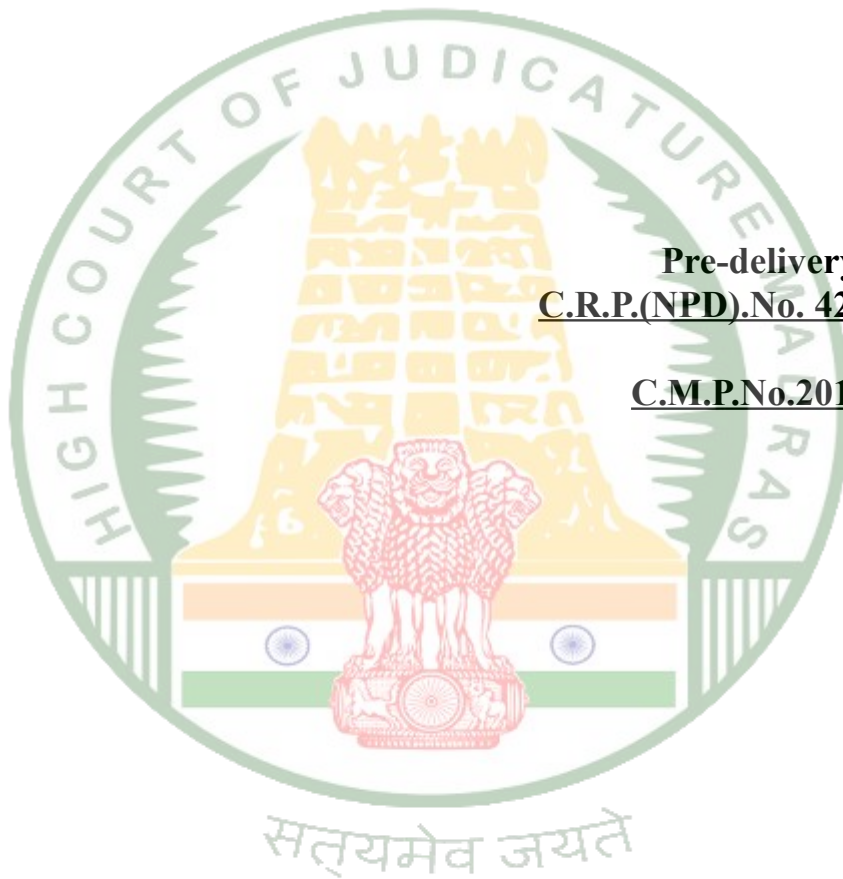
To
The Judge,
Sub Court
Tambaram

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C.R.P.(NPD)No.4287 of 2017

M.GOVINDARAJ, J.

kpr



**Pre-delivery order in
C.R.P.(NPD).No. 4287 of 2017
and
C.M.P.No.20174 of 2017**

21.09.2020

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