

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2020

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P (PD) No.3797 of 2019

P.Arumugam
S/o.Palaniappan

... Petitioner

Vs.

1.Palanisamy
S/o.Karuppannan

2.Executive Officer,
Contonement Board,
Wellington,
Coonoor Taluk, Nilgiris District.

... Respondents

Prayer : Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 18.10.2019 made in I.A.No.1 of 2019 in O.S.No.122 of 2003 on the file of the District Munsif-cum-Judicial Magistrate, Kotagiri.

For Petitioners : Mr.K.S.Karthik Raja

For Respondents : Mr.J.Franklin
for R1
Mr.M.Vijayan
for M/s.King and Partridge for R2

ORDER

This Civil Revision Petition has been directed against dismissal of petition filed under Section 5 of the Limitation Act to condone the delay in filing the petition to restore the suit.

2. The petitioner is the plaintiff. He filed a suit for mandatory injunction and to declare the approval granted by the second respondent as null and void. The second respondent filed a written statement, thereafter, the matter was posted in the list and when the matter came up of hearing, the petitioner was called absent and therefore, it was dismissed for default on 10.11.2006.

3. It is the case of the petitioner/plaintiff, that his counsel failed to give any information and hence, he could not appear. Again, he approached the Legal Aid Services and the Legal Services Authority appointed the very same counsel to represent him and he was informed that the suit was dismissed for default on 10.11.2006. He was advised to file a petition to condone the delay of 4283 days in restoring the above case. Accordingly, the petition was filed and the delay had occurred due to the hospitalisation of petitioner's wife for serious ailment and hence non-appearance was not wilful or deliberate. In

support of his contention, the petitioner has filed a medical certificate obtained from the Doctor. The said petition to condone the delay was seriously opposed by the respondents before the Trial Court.

4. The learned counsel for the first respondent would state that the petitioner and his wife were involved in a criminal case wherein a FIR No.198 of 2018 dated 10.05.2018 was registered by the Wellington Police, Coonoor, the certified copy of the charge sheet was filed before the Court concerned.

5. According to the first respondent limitation for filing mandatory injunction is three years. Even assuming, there is no provision prescribing limitation period for mandatory injunction, the residuary provision under Article 137 of Limitation Act provides for three years only. Whereas, the delay is more than 12 years. Therefore, the delay cannot be condoned.

6. The second respondent has taken a stand that day-to-day delay has not been explained. The reasons given by the petitioner are false and are not sufficient for condoning the delay. The petitioner has filed a reply statement to the counter filed by the first respondent.

7. After considering the materials placed before this Court, it is seen that the Trial Court dismissed the petition on the ground that the medical certificate produced by the petitioner is a false certificate. The Doctor, who has given the certificate is none other than the daughter of the petitioner. While the matter stood thus, perusal of the F.I.R., would disclose that in the final report filed by the Police, the petitioner was shown as first accused and his daughter Saravana Kumari was shown as fifth accused and she had given the certificate. Therefore, the Trial Court has considered that the conduct of the petitioner in filing the certificate was with an ulterior motive to mislead the Court and to defeat the ends of justice. Further, even though the petitioner's wife is not well and undergoing treatment, the delay of 12 years for not contacting his counsel are not satisfactorily explained. Relying on the judgment of this Court in the case of **Jebasundari and Others Vs. S.Tharmar**, reported in **2018 (6) CTC 331**, the trial Court dismissed the petition.

8. In the considered opinion of this Court, the person who approaches the Courts with unclean hands is not entitled to any discretion relief. Further, the delay of 12 years has not been satisfactorily explained. Even though the counsel has not given any information, a duty is cast upon the litigant to diligently pursue the litigation by contacting his lawyer. The reason stated by

the petitioner that due to old age and ill health of his wife, he could not contact his counsel for the past 12 years can not be accepted. As the latin maxim ***“Vigilantibus non dormientibus jura subveniunt”*** - meaning that law assists those who are vigilant and not those who sleep over their rights.

9. In this case, the petitioner has suddenly woken up from the deep slumber after a period of 12 years. The law of limitation prescribes three years period for the relief of mandatory injunction. It will not stop running on account of ill health of the litigant for a period of 12 years. The petitioner is not entitled to the relief sought for in the suit on account of delay.

10. Therefore, I do not find any infirmity or illegality in the order dated 18.10.2019 passed by the District Munsif-cum-Judicial Magistrate, Kotagiri in I.A.No.1 of 2019 in O.S.No.122 of 2003 and it does not require any interference. Accordingly, this Civil Revision Petition is dismissed. There shall be no order as to costs.

20.08.2020

ms/asi

M.GOVINDARAJ, J.

ms/asi

To

- 1.The District Munsif-cum-Judicial Magistrate,
Kotagiri.
- 2.The Executive Officer,
Contonement Board,
Wellington,
Coonoor Taluk, Nilgiris District.



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