

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No. 3010 of 2018

1. The State of Tamilnadu

Represented by District Collector,
Erode District.

...Petitioners/Defendants/Petitioners

2. Tashildar, Taluk Office,

Anthiyur Taluk,
Erode District

Vs.

Karuppayammal

...Respondent/Plaintiff/Respondent

Prayer: Civil Revision Petition filed under Section 115 of C.P.C, against the fair and decreetal order dated 23.01.2018 made in I.A.No. 1501/2017 in O.S.No. 87 of 2016 on the file of the Principal District Munsif Court, Bhavani.

For Petitioners : Mr.Y.T.Aravind Gosh, AGP

For Respondent : Mr.E.C.Ramesh

O R D E R

This civil revision petition has been filed by the state, challenging the order dismissing an application for condonation of delay of 268 days in filing an application to set aside the exparte decree in O.S.No. 87 of 2016.

2. The said suit was initiated by the respondent seeking a decree for permanent injunction restraining the petitioners namely, District Collector, Erode and others from interfering with her possession of the suit property. The plaintiff claims title to the property under the settlement deed dated 09.03.2006 said to have been executed by her husband, Kalisamy. It is also claimed that the said Kalisamy obtained the property under the sale deed dated 18.11.1981. The suit was decreed exparte on 05.11.2016.

3. The petitioners filed an application seeking to set aside the exparte decree along with an application for condonation of delay of 268 days. The written statement has also been filed along with an application to set aside the exparte decree. It is seen from the said written statement that the petitioners claimed that the said lands have been acquired for providing house sites to Adhidraavidars. The acquisition proceedings have culminated in an award and possession has also been taken by the Government.

4. The reasons assigned for the delay is that they could not obtain the documents relating to the acquisition immediately and hence, the written statement could not be filed. The Trial Court has dismissed the application concluding that the reasons do not constitute sufficient cause within a meaning of Section 5 of the Limitation Act. Aggrieved, the petitioners have come up with this revision.

5. I have heard Mr. T.Aravind Gosh, learned Additional Government Pleader for the petitioners and Mr. E.C.Ramesh, learned counsel for the respondent.

6. Mr. T.Aravind Gosh, learned Additional Government Pleader appearing for the petitioner would vehemently contend that the Trial Court was not right in dismissing the application for condonation of delay. He would also fault the Trial Court for concluding that the reasons given are not bonafide. He would submit that valueable property belonging to the government would be lost, if the exparte decree is not set aside.

7. Contending contra, Mr.E.C.Ramesh, learned counsel for the respondent would submit that the delay has not been satisfactorily explained. The fact that the documents were not available or could not be immediately traced is not a ground for condoning a lengthy delay of 268 days. I have considered the rival submissions.

8. The question of condonation of delay is one of discretion. If the Court finds that there is a sufficient cause or a plausible reason for a delay, normally, the delay should be condoned irrespective of the fact that whether the delay is on the side of the government or on the side of a private party. There cannot be a different yardstick adopted because the applicant happens to be the government. In fact, the Hon'ble Supreme Court in Delhi University Vs. Union of India reported in 2019 SCC online 1634 has held that if the Court finds that the delay is bonafide and is not activated by malafides, the delay should normally be condoned and only in extraordinary circumstances where it is shown that the applicant had obtained

as unreasonable advantage by the delay should the Court refuse to condone the delay.

9. In view of the above pronouncement of the Hon'ble Supreme Court, I am of the considered opinion that the trial Court was not right in dismissing the application for condonation of delay. Hence, the order of the trial Court in dismissing the application is set aside, I.A.No. 1501 of 2017 will stand allowed, the delay of 268 days in seeking to set aside the exparte decree will stand condoned.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

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To:-

1. The Principal District Munsif Court,
Bhavani.

2. Tashildar, Taluk Office,
Anthiyur Taluk,
Erode District

3. The District Collector,
Erode.

C.R.P.No. 3010 of 2018

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KJ (CO)
GMY (20/10/2020)