

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (NPD) Nos.3370 & 3371 of 2018

S.Ranjitmal

... Petitioner in both CRPs.

Vs.

1. M.Mehabooba Beevi

2. Rukmaniammal

... Respondents in both CRPs.

Common Prayer: The Civil Revision petitions filed under Article 227 of Constitution of India, to set aside the impugned order passed by the learned District Munsif, Ambattur on 10.04.2018 in I.A.Nos.1732 & 1731 of 2016 in O.S.No.119 of 2008.

For Petitioner

in both CRPs

: Mr.D.Bharatha Chakravarthy

For Respondents

in both CRPs

: Mr.S.Kingston Jerold

COMMON ORDER

The plaintiff in O.S.No.119 of 2008 aggrieved by the dismissal of his application to condone the delay of 340 days in seeking restoration of the suit that was dismissed for default has come up with this Civil Revision petitions.

2. The suit was filed by the plaintiff seeking declaration of his right over the suit 'B' Schedule property and for a consequential injunction. According to the plaintiff, the defendant who is the neighbouring owner objected to his putting up constructions claiming certain rights over a portion of the property that belonged to him forcing him to file the suit.

3. Pending the said suit, the plaintiff compromised the matter, paid consideration and purchased a portion of a land to which the defendant had set up title under a Sale Deed dated 24.04.2007. After such sale, the earlier suit in O.S.No.332 of 2006 was dismissed as withdrawn. Thereafter when the plaintiff attempted to put up construction in the property the defendant again obstructed forcing him to file a suit.

4. The suit was filed in the year 2008. It was pending for nearly seven years. Eventually, it came to be dismissed for default on 11.09.2015.

The plaintiff would claim in his affidavit filed in support of this application that his counsels from Chennai were looking after the case. Since the case was pending for several years, they had entrusted it with a local counsel at Ambattur. It appears that the local counsel at Ambattur had noted the year of the suit wrongly as O.S.No.119 of 2009 instead of O.S.No.119 of 2008. This resulted in the petitioner not appearing on the fateful date i.e., on 12.09.2015, when the suit was dismissed for default. He further claimed that the plaintiff had lost one of his sons during that period and therefore he could not follow up the matter with his counsel. Claiming that the above said reasons constitute sufficient cause, the plaintiff sought for condonation of delay 340 days in filing an application to restore the suit.

5. This application was resisted by the defendants contending that the reasons assigned in the petition will not constitute sufficient cause within the meaning of Section 5 of the Limitation Act. It was also contended that the plaintiff is not interested in the suit and the application has been filed only to drag on the proceedings.

6. The trial Court upon a consideration of the reasons offered concluded that the fact that there was a communication gap between the

counsel at Chennai and the local counsel are all internal matters and the Court is not concerned with it. On the said reasoning, the learned trial Judge dismissed the application for condonation of delay.

7. I have heard Mr.D.Bharatha Chakravarthy, learned counsel appearing for the petitioner and Mr.S.Kingston Jerold, learned counsel appearing for the respondents.

8. Mr.D.Bharatha Chakravarthy, learned counsel appearing for the petitioner would contend that the fact that there was a communication gap was not denied and the trial Court has categorised it as an internal issue. He would also point out that a litigant who seeks condonation of delay has to show sufficient cause. That sufficient cause may be something very external to the proceedings also. Once, the petitioner is able to show a plausible cause which is not shown to be *malafide*, the Court should always lean in favour of condonation of delay.

9. Contending contra, Mr.S.Kingston Jerold, learned counsel appearing for the respondents/defendants would contend that the defendant is a old lady and the plaintiff was trying to harass her and encroach upon her property.

10. Once the Court is satisfied that there is a plausible reason for the delay, then, as rightly submitted by Mr.D.Bharatha Chakravarthy, learned counsel appearing for the petitioner, the Court must always lean in favour of condonation of delay as Courts are expected to do justice and not to legalise injustice on technical grounds.

11. The Hon'ble Supreme Court in ***University of Delhi Vrs. Union of India reported*** reported in ***2019 SCC on-line 1634*** has held that the Court must always adopt a liberal approach in matters regarding condonation of delay. Applying the Principles of Law enunciated by the Hon'ble Supreme Court in the said decision, I am of the considered opinion that the delay should be condoned and the plaintiff should be given an opportunity to contest the suit on merits. Therefore the order of the trial Court is set aside and application in I.A.No.1731 of 2016 will stand allowed and the delay of 340 days in filing the petition for restoration of the suit will stand allowed.

12. Adverting to CRP No.3371 of 2018, it is filed against the order made in I.A.No.1732 of 2016 which is an application under Order IX Rule 9 of Code of Civil Procedure for restoration of the suit. No doubt,

under Order LXIII Rule 1 (C) of the Code of Civil Procedure, an order dismissing an application under Order IX Rule 9 of Code of Civil Procedure is an appellable order and therefore a revision will not lie.

13. However, in the case on hand, the dismissal of the application in I.A.No.1732 of 2016 is only as a consequence of the dismissal of I.A.No.1731 of 2016 namely the application for condonation of delay. In ***G.Ramegowda, Major, etc.-Vs- The Special Land Acquisition Officer*** reported in ***1989(1) LW 580(SC)*** the Hon'ble Supreme Court has held that a consequential order will automatically go if the main order is set aside. The Hon'ble Supreme Court had observed ***"if the basis goes, the consequence disappears"***. (Emphasis Supplied) In ***E.Vaidhiyalngam Vs Madras Secretariat Cooperative House Building Society Ltd*** reported in ***1995 (1) LW 655***, a Division Bench of this Court have an occasion to consider a similar situation where an application for condonation of delay in filing a petition to set aside abatement, a petition to set aside abatement and a petition to bring on record the legal representatives were taken up by the appellate Court together and upon dismissal of the delay petition, all the other petitions were dismissed and the appeal itself was also dismissed as

abated. There was one Revision filed against the order refusing to condone the delay and that came to be allowed. Upon the delay being condoned, the appellate Court restored the other two applications as well as the appeal and the other two applications were allowed. Then the appeal got transferred to this Court and was heard by a Division Bench. During the course of the hearing of the appeal, objections were raised on the ground that once the appeal had been dismissed without a second appeal being filed, the appeal cannot be heard on merits.

14. Repelling the said contention, the Division Bench held that the other orders being consequential in nature, will automatically stand set aside. Applying the same principle to the case on hand, the order made in I.A No.1732 of 2018 will stand automatically set aside and the said I.A will stand restored to be disposed of by the trial Court on merits.

15. With the above observations, both the Civil Revision petitions are allowed. No costs.

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Index: Yes/No

Speaking order / Non speaking order

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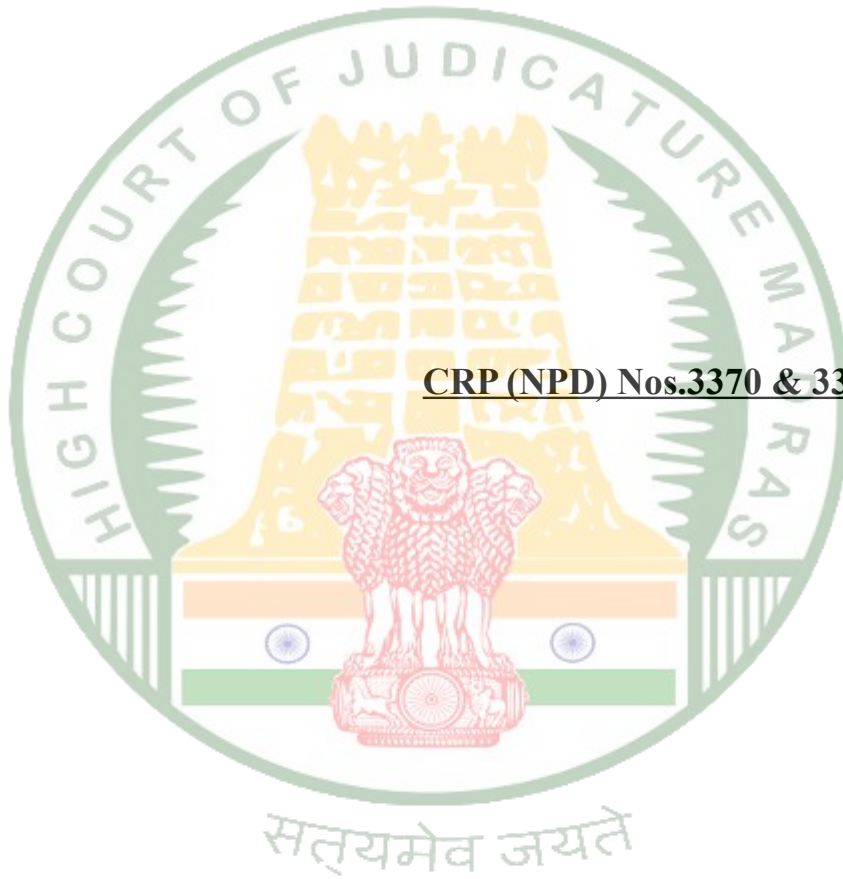
1. The District Munsif,
Ambattur.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



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R.SUBRAMANIAN, J.

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