

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 16..08..2021

Orders Pronounced on : 21..09..2021

CORAM

THE HON'BLE MRS.JUSTICE S.KANNAMMAL

Civil Revision Petition (NPD) No.1179 of 2017

and

C.M.P.No.5613 of 2017

Vijaya Ragavan (Deceased)
Rep. By its Legal Heirs

1.V.Subbulakshmi
2.Manoj Kumar

... Petitioners

-Versus-

Ameerunnisa Begum Sahib Endowment,
Rep. By its President,
Mr.Jalar Ameer Rehman,
No.76, Pycrofts Road,
Bharathi Salai,
Triplicane,
Chennai 600005.

... Respondent

Petition filed under Article 227 of the Constitution of India, praying to set aside the order and decree dated 06.01.2017 made in I.A.No.5529 of 2016 in O.S.No.392 of 2006 by the learned I Assistant Judge, City Civil Court, Chennai.

For Petitioners : *Mr.A.Prabhakaran*

For Respondent : *Mr.N.A.Nizzar Ahammed*

ORDER

This Civil Miscellaneous Petition has been filed seeking to set aside the order dated 06.01.2017 whereby the learned I Assistant Judge, City Civil Court, Chennai has refused to condone the delay of 3580 days in filing the application to set aside the exparte decree dated 04.04.2006 made in O.S.No.392 of 2006 and thereby dismissed the application.

2. The brief facts leading to the filing of the civil revision petition are as follows:- The revision petitioners herein are defendants and the respondent herein is the plaintiff in the suit. The revision petitioner will hereinafter be referred to as the petitioners and the respondent which is a religious charitable endowment will hereinafter be referred to as the respondent endowment. The petitioners are wife and son of late Shri. Vijaya Ragavan respectively. According

to the respondent endowment, the suit lands was originally rented to the mother of the said Vijaya Ragavan for residential purpose subsequently, the tenancy was attorned in favour of the deceased Vijaya Ragavan. As the deceased had committed wilful default in payment of from December 2001, the respondent had issued a notice 07.02.2005 thereby determining the tenancy ending with February, 2005 and calling upon the deceased to quit and deliver vacant possession of the suit premises. But the deceased had failed to deliver vacant possession. Therefore, after the termination of tenancy, the deceased was liable to pay damages @ Rs.250/- per month for use and occupation. Therefore, the respondent had to file the suit for ejectment, arrears of rent and for future damages. As the deceased did not appear despite summons, he was set ex parte, and the suit was decreed on 04.04.2006 as prayed for with costs.

3. According to the petitioners, they were not aware of the suit filed by the respondent for ejectment for damages and to their knowledge, no summons was served on the deceased and therefore, they were also not aware of passing of ex parte decree. They had come to know about the ex parte decree only when they were served notice in the execution proceedings in E.P.No.3994 of 2014 on the

file of the X Assistant Judge, City Civil Court. The deceased was not at all a tenant under the respondent in respect of the land and the suit property is not a wakf property. Therefore, according to the petitioners, the decree is nullity and not binding on them. Immediately on getting notice in the execution proceedings, they filed an application seeking to set aside the ex parte decree along with an application for condonation of delay of 3580 in filing the application seeking to set aside the ex parte decree dated 04.04.2006. The delay occasioned was neither wilful nor want but due to the fact that no summons was served. If the suit is not restored, they would be put to heavy and irreparable loss.

4. The respondent charitable endowment filing their counter inter alia contending that the suit property was a wakf property. Originally one Ethirajammal was a tenant under the endowing in respect of the suit property having purchased the superstructure with lease hold rights of the land owned by the respondent through a registered deed in the year 1941. After the death of Ethirajammal on 20.04.1965 her two sons Vijayaraghavan and Selvaraj inherited the property and divided the same and attorned the tenancy in respect of their

respective shares and were paying land rents to the charitable endowment regularly till January, 2002. Thereafter, when the rent was increased, the deceased had refused to pay the rent and thereby committed default in payment of rent. Hence, the suit was filed. In the suit summon was served on the deceased, but he failed to appear in court on 16.02.2006 either in person or through a counsel. Therefore, he was set ex parte and the suit was decreed on 04.04.2006. Pursuant to the ex parte decree, the respondent had initiated execution proceedings in E.P.No.1012 of 2009 for delivery of possession which was also ordered. The deceased and his wife the, 1st petitioner were present at that time. The application which was filed to remove the obstruction was also ordered. Subsequently, the said Vijayaraghavan had died and as the respondent could not get the particulars of the legal heirs of the deceased tenant, the execution petition came to be dismissed fo default. Subsequently, an application in E.P.No.3994 of 2014 was filed against the legal heirs of the deceased tenant. The petitioners were aware of the proceedings. They had approached the court with enormous delay of 3580 days which cannot be entertained. The petitioners did not explain the delay. Therefore, the application is liable to be dismissed.

5. The learned Assistant Judge having found that though the petitioners had come to know about ex parte decree when they were served with notice in the execution proceedings in the year 2014, they had filed the set aside application only on 22.02.2016 with a huge delay of 3580 days and, refused to conde the delay for want of sufficient cause. Hence, the petitioners have come up with the present revision petition.

6. The learned counsel for the petitioners submitted that the deceased was not at all a tenant under the respondent endowment. Had the deceased been served with summons in the suit, the deceased would have contested the suit properly. The petitioners, who are legal heirs of the deceased, had come to know about the ex parte decree only when they got notice in the execution proceedings and that the petitioners have to be given an opportunity to contest the suit on merits. In the counter itself, the respondent endowment had prayed the court to direct the petitioners to deposit a sum of Rs.30,000/- in order to show their bonafide in contesting the suit, but, without considering such statement of the respondent endowment, the learned Assistant Judge has dismissed the delay

condonation application. In support of his contentions, the learned counsel for the petitioners relied upon a judgement of a Division Bench of this Court in the case of Meenakshisundaram Textiles v. Valliammal Textiles Limited, [2011 (3) CTC 168] and the judgements of single judges of this court in the case of Brahmand Farm Lands Ltd v. K.Venkatesan, [2021 (3) CTC 387] and Tatanavar Brothers (Mine Owners) v. Shanmugam, [2021 (2) CTC 457].

7. The learned counsel for the petitioner further submitted that the respondent had not marked any documentary evidence to establish their title over the suit land and the documents which they had marked were not sufficient to decide the issue involved in the suit.

8. Per contra, the learned counsel appearing for the respondent contended that the only question that arises of consideration before this court is as to whether the delay had been properly explained or not and that the merits of the suit cannot be gone into by this court at this stage. The petitioners did not show sufficient cause for condonation of delay. The learned Assistant Judge after

having appreciated the facts that the petitioners had failed to prove the sufficient cause, rightly refused to condone the delay of 3580 days which does not warrant interference at the hands of this court. In support of his contentions, the learned counsel for the respondent relied upon the order of this court in K.Madhavan v. K.N.Sekar [C.R.P.(NPD) No.1727 of 2013 dated 29.07.2013 and Ammerunnissa Begum Sahiba Endowment v. M.A.Kajid @ Saleem and another [C.R.P.(NPD) No.2109 of 2018 dated 30.06.2021]

9. I have heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent and also perused the records available carefully.

10. The respondent filed certain document in the revision in the form of typed set of papers. The respondent endowment relying upon the registered document vide Doc.No.192 of 1941 dated 25.02.1941 and an affidavit said to have been sworn-in by the deceased before a notary public jointly with his brother claimed that the suit land belongs to the endowment and the

superstructure on it alone was put up by Mrs.Ethirajammal, the mother in law and the grandmother of the petitioners. The land was originally leased out to the said Mrs.Ethirajammal and after her death on 20.04.1965, her two sons have divided the superstructures between themselves.

11. The petitioners disputed the tenancy in respect of suit land. According to them, the suit land is not a wakf property. They disputed the fact that suit summon was served on the deceased Vijaya Ragavan. However, this court is conscious of the legal position that merits of the suit cannot be gone into in this revision petition and therefore, this court is not inclined to go into the merits of the contention of the parties.

12. Undoubtedly, the statute has granted the Courts with discretionary powers to condone the delay, however at the same time it also places an obligation upon the party to justify that he was prevented from abiding by the same due to the existence of “sufficient cause”. Although there exists no strait jacket formula for the Courts to condone delay, but the Courts must not only

take into consideration the entire facts and circumstances of case but also the conduct of the parties. The concept of reasonableness dictates that, the Courts even while taking a liberal approach must weigh in the rights and obligations of both the parties. When a right has accrued in favour of one party due to gross negligence and lackadaisical attitude of the other, this Court shall refrain from exercising the aforesaid discretionary relief. Therefore, what is to be gone into is, whether the petitioners had shown sufficient cause for condoning the delay.

13. Now, let this court to appreciate as to whether there was sufficient cause to condone the delay. Insofar as delay condonation is concerned, it has been consistently held by the Honourable Supreme Court that the expression 'sufficient cause' should be considered with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. Though the petitioners denied the service of summon on the deceased, the learned judge of the trial court had satisfied with the service of summons. The suit and execution petition were proceeded against the deceased Vijaya Ragavan until 2014 and it appears that, E.P.No.1012 of 2009, which was

pending against Vijaya Ragavan was dismissed on his death for default having not taken steps by the respondent endowment to bring on the legal heirs of the deceased on record. Thereafter, the respondent had filed another Execution Petition in E.P.N.3994 of 2014. According to the petitioners, they came to know about the ex parte decree only when they were served with notice in that Execution Petition. The reason assigned by the learned Assistant Judge for the refusal of condonation delay is that even though the petitioners got knowledge about the ex parte decree in the year 2014, they had chosen to file the set aside application with an inordinate delay. It is needless to state that the length of delay is not a matter for deciding the petition under Section 5 of the Limitation Act and rendering substantial justice is the paramount consideration. From the records, more particularly, 8th para of counter affidavit filed before the trial court, it appears that the learned Judge had lost sight of the statement made in the counter affidavit requesting the court to direct the petitioners to deposit a sum of Rs.30,000/- in order to show their bonafide in contesting the suit. As already stated supra, there is a dispute regarding tenancy. Earlier, on 28.03.2017, when revision came up for admission, while granting interim stay of execution proceedings, this court had directed the petitioners to deposit a sum of

Rs.30,000/- to the credit of the suit before the trial court within a period of four weeks from the date of receipt of copy of the order. Accordingly, the petitioners have shown their bonafide by depositing the amount before the trial court as directed by this court. On 14.07.2021, the learned counsel for the petitioner has filed a memo stating that conditional order of this court was complied with on 17.05.2021. Therefore, this court is of the view that an opportunity must be given to the petitioners to meet with the merits of the case. The decisions upon which reliance has been placed by the learned counsel for the respondent were rendered on a different set of facts. In the case of K.Madhavan v. K.N.Sekar, both the courts had found that the reasons adduced were false and consequently refused to condone the delay. In the other case of Ameerunnissa Begum Sahiba Endowment, a learned single Judge of this court had refused to condone the delay finding that there was no bonafide on the part of the respondents because though the respondents were able to engage a counsel to appear in the execution proceedings, they had deliberately failed to file a petition to set aside the ex parte decree immediately. As already stated supra, there is no strait jacket formula for the Courts to condone delay. Therefore, the decisions relied upon by the learned counsel for the respondent will not be application to the facts of the present case.

14. Considering the facts and circumstances of the case and the amount deposited by the petitioners as directed by this court and also the law on condonation of delay, this Court is inclined to take a lenient view overriding technicalities in order to subserve the cause of justice.

15. **In the result,** the civil revision petition is allowed. The amount deposited by the petitioners before the trial court pursuant to the conditional order of this court shall be invested in any one of the Nationalized Banks for a specific period and thereafter the same shall be reinvested periodically until the trial is concluded and the learned Judge of the trial court shall pass appropriate orders in respect of disbursement of the amount with accrued interest depending upon the decision being taken in the suit. It is made clear that this court has not expressed any opinion on the merits of the matter and the learned Judge of the trial court shall decide the issues involved in the suit independently on merits without being influenced by any of the views expressed by this court. Having regard to the fact that the suit has been filed for ejectment and the long pendency of the same, this court directs the I Assistant Judge, City Civil Court, Chennai, to

dispose of the suit in accordance with law, as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order. The parties to the suit are directed to cooperate with the trial court for early disposal of the suit. No costs. Consequently, connected CMP is closed.

16. After the order was pronounced, but before signing the order, the learned counsel appearing for the respondents has brought to the notice of this court that after the formation of TamilNadu Waqf Tribunal, Chennai, civil court has ceased to have the power and jurisdiction to try the suit and therefore, he prayed this court to direct the learned I Assistant Judge, City Civil Court, Chennai, to transmit the entire records of the original suit to The Tamil Nadu Waqf Tribunal, Chennai so as to enable the Tribunal to dispose of the case. The learned counsel for the petitioner has also not disputed the above position.

17. In view of the above submissions, this court passes the following order in modification of the order passed hereinabove at para 15.

18. This Civil Revision Petition is allowed and the order of the learned I Assistant Judge, City Civil Court, Chennai stands set aside in the following terms:-

(i) The learned I Assistant Judge, City Civil Court, Chennai, is hereby directed to transmit the records to the Tamil Nadu Waqf Tribunal, Tamil Nadu Slum Clearance Board Complex, II Floor, Kamarajar Salai, Chennai 600 004, within a period of three weeks from the date of receipt of a copy of this order.

(ii) On such receipt of the records from the I Assistant Judge, City Civil Court, Chennai, the Tamil Nadu Waqf Tribunal, Chennai is directed to take up the suit on file as per the procedure being followed by the tribunal.

(iii) Once the suit is taken on file, the Tribunal shall intimate the number of the suit and other details to the I Assistant Judge, City Civil Court, Chennai or the Registrar, City Civil Court, Chennai. On receipt of such particulars, the amount deposited by the petitioners before the trial court pursuant to the conditional order of this court shall be transferred to the Tamil Nadu Waqf Tribunal, Chennai and Tribunal, in turn, shall invest the same in any one of the Nationalized Banks for a specific period and thereafter the same shall be reinvested periodically until the trial is concluded and the Tribunal shall pass appropriate orders in respect of disbursement of the amount with accrued interest depending upon the decision being taken in the suit.

(iv) It is made clear that this court has not expressed any opinion on the merits of the matter and the Tribunal shall decide the issues involved in the suit

independently on merits without being influenced by any of the views expressed by this court.

(v) Having regard to the fact that the suit has been filed for ejectment and the long pendency of the same, this court directs the Tamil Nadu Waqf Tribunal, Chennai, to dispose of the matter in accordance with law, as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order.

(vi) The parties to the suit are directed to cooperate with the trial court for early disposal of the suit.

(vii) It is open to the petitioners as well as the respondents to produce the necessary documents during inquiry, if law permits.

(viii) The parties are directed to bear their respective costs throughout. Consequently, connected CMP is closed.

Index : yes / no
Internet : yes / no
Speaking / Non Speaking Order
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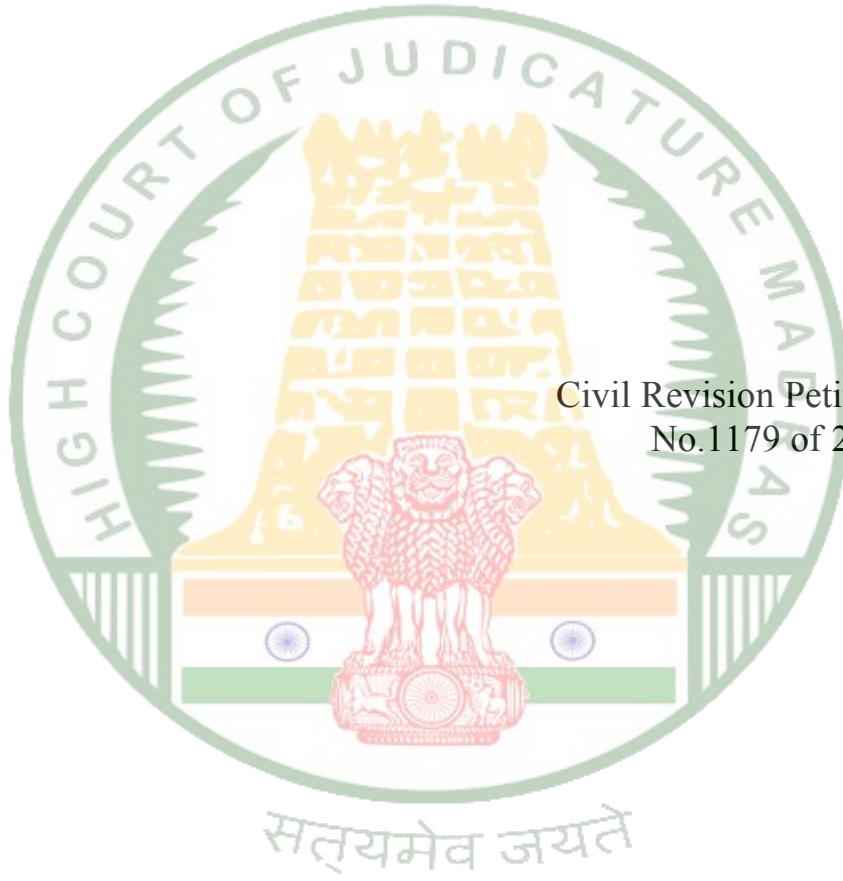
To

- 1.The Chairman, Tamil Nadu Waqf Tribunal, Tamil Nadu Slum Clearance Board Complex, II Floor, Kamarajar Salai, Chennai 600 004.
- 2.The I Assistant Judge, City Civil Court, Chennai.

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S.KANNAMMAL.J.

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