



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.08.2021
Pronounced on : 25.10.2021

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P (NPD) (MD) .No.739 of 2019

1.Selvaraj
2.Samidoss (died)
3.Issac
4.Pitchai
5.Ponraj

...Revision Petitioners 1 to 5 /
Defendants

6.Gnana Suganthi
7.Sudarkani
8.Yesuraj
9.Sudari
10.Rajarathinasamuvel
11.Annapackiyam
12.Packiyaraj

...Revision Petitioners 6 to 12

(Petitioners 6 to 12 are brought on record as LRs of deceased 2nd petitioner vide Court order, dated 14.09.2020 made in CMP(MD)No.10385 of 2019 in CRP(MD)No.739 of 2019)

Vs.

Thangaiya Nadar

: Respondents

PRAYER:- Civil Revision Petition filed under Section 115 of Civil Procedure Code, to call for the records in I.A.No.1556 of 2017 in O.S.No.265 of 2003, dated 19.02.2019 on the file of the Principal District Munsif, Aruppukkottai and set-aside the same.

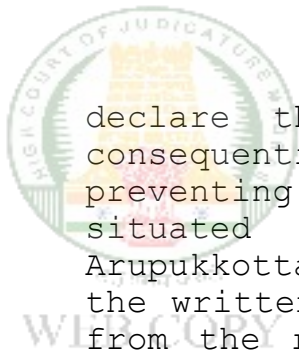
For petitioners : Mr.J.Gunaseelan Muthiah
For Respondent : Mr.S.Bharathi

O R D E R

The Civil Revision Petition is directed against the order passed in I.A.No.1556 of 2017 in O.S.No.265 of 2003, dated 19.02.2019 on the file of the learned Principal District Munsif Court, Aruppukkottai, in dismissing the petition filed under Section 5 of the Limitation Act.

2.The revision petitioners are the defendants. The respondent/plaintiff has laid the suit in O.S.No.265 of 2003 to

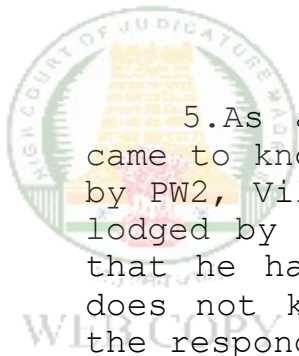
<https://hcservices.ecourts.gov.in/hcservices/>



declare that the suit property as a common passage and for consequential permanent injunction restraining the defendants from preventing the plaintiff using the suit property to reach his land situated in S.Nos.41/2 and 41/3 of Errachinnampatti Village, Arupukkottai Taluk. The revision petitioners/defendants have filed the written statements and were contesting the suit. It is evident from the records that when the suit was taken up for trial, the defendants have not turned up and hence they were called absent and set *ex-parte* and consequently *ex-parte* decree and judgment were passed on 30.07.2013. The petitioners/defendants have filed a petition under Section 5 of the Limitation Act in I.A.No.1556 of 2017 to condone the delay of 1442 days in filing the petition for setting aside the *ex-parte* decree passed on 30.07.2013. The learned District Munsif, Arupukkottai, after enquiry, has passed the impugned order, dated 19.02.2019 dismissing the said petition. Aggrieved by the order of the dismissal, the petitioners/defendants have come forward with the present revision.

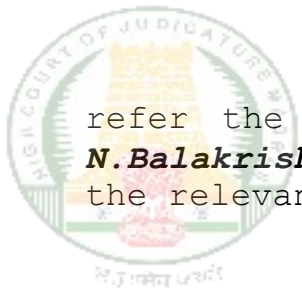
3.The case of the revision petitioners/defendants is that they were expecting an information from their advocate, but they have not received any information, that when they had attended an enquiry before the Village Administrative Officer in pursuance of a complaint given by the respondent / plaintiff, they came to know that the suit was decreed *ex-parte* on 30.07.2013, that the delay occurred is neither willful nor wanton and that they will suffer irreparable loss and hardship, if the delay is not condoned. The respondent/plaintiff has filed a counter statement raising serious objections to condone the delay by stating that the petitioners' village of Aladipatti is situated at a distance of 10 kilometers from Arupukkottai Court, that the contention of the petitioners that they were expecting information from their Advocate cannot be accepted, that the delay cannot be condoned on mercy grounds and that the petition is liable to be dismissed.

4.During enquiry, the petitioners/defendants have examined the 5th defendant as PW1 and Village Administrative Officer Balasubramaniam as PW2. PW2 has produced four documents and the same were exhibited as witness documents Ex.X1 to Ex.X4. PW1 in his cross examination would admit that the case proceedings were conducted by his brother Selvaraj, the first defendant, and that the reasons for the delay can be ascertained, if Selvaraj is examined. He would also admit that they were in touch with their Advocate for the past four years and thereafter, they have not received any information from their Advocate. He would also admit that he went to Chennai eight years back but the other defendants were in their native place in Arupukkottai. PW1 would also admit that himself and other petitioners were visiting Arupukkottai from their native place of Aladipatti Village from 2003 to 2013 for the past ten years and during that period, they met their advocate and got information about the case.



5.As already pointed out, according to the petitioners, they came to know about the ex-parte decree only at the enquiry conducted by PW2, Village Administrative Officer in pursuance of the complaint lodged by the plaintiff in the District Collectorate PW2 would say that he had examined Selvaraj and Issac on 16.07.2017 and that he does not know whether any ex-parte decree was passed in favour of the respondent/plaintiff and against the petitioners/defendants. He would further admit that he was not in a position to say as to whether the petitioners/defendants came to know about the passing of ex-parte decree only at the enquiry conducted by him. As rightly contended by the learned counsel for the respondent. PW1 in his cross examination would admit that since the plaintiff has been using the disputed place for the past one year, they had filed the petition. Neither the petitioners in their affidavit filed in support of this petition nor PW1 in his evidence has stated about using of the disputed place by the plaintiff and as to when the defendants came to know about the same.

6.In a petition filed under Section 5 of the Limitation Act, the applicant has to satisfy with the Court that he had sufficient cause for not making applications within the period stipulated. It is settled law that every day's delay must be explained but it is also settled law the Court should adopt liberal approach and the words 'sufficient cause' under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice. The learned counsel for the revision petitioner has relied on the decision of this Court reported in **1999 (3) LW 649** in the case of **Shanmuga Sadachara Servai Vs. Thirugnanam Servai and Another** and an unreported decision passed in **C.R.P(NPD)(MD)No.1825 of 2015** in the case of **Vincent Raja Vs. Durairaj (Died) and Others, dated 03.04.2019** and argued that the party should not be made to suffer for Advocate's fault and failure. There is no dispute about the proposition that the litigant should not suffer merely because of the Advocate's default. But the above legal position has no application to the case on hand. According to the petitioners/defendants, they met their advocate for a period of 4 years and thereafter, they have not received any information from their Advocate. It is for the party litigant to approach their advocate to get information about the case proceedings and they cannot be allowed to say that they were expecting the information from their Advocate about the case proceedings indefinitely. No doubt, generally the Courts should adopt a liberal view in condoning the delay under Section 5 of the Limitation Act, but at the same time, liberal approach cannot be made in all cases of delay and there must be *bona fide* reasons to condone the delay. Even in the decision relied on by the learned counsel for the petitioners reported in **(1999) 3 LW 649**, this Court has held that the words "sufficient cause" should receive a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of *bona fides* is imputable to the applicant. It is necessary to



refer the decision of the **Hon'ble Supreme Court** in the case of **N.Balakrishnan Vs. M.Krishnamurthy reported in 1998 (7) SCC 123** and the relevant passage is extracted here under:

"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 want of acceptable explanation whereas in certain other cases delay of 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 reversional jurisdiction, unless the exercise of discretion was on whole 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."

7.The Hon'ble Supreme Court in the case of **N.Mohan Vs. R.Madhu, [Civil Appeal No.8898 of 2019, dated 21.11.2019]** has specifically held that routine explanation is not sufficient but a reasonable and acceptable explanation is very much necessary. In the case on hand, as already pointed out, the petitioners have miserably failed to prove as to when they came to know about the ex-parte decree. Admittedly there is an inordinate delay of 1442 days in filing the petition under Order 9, Rule 13 of Civil Procedure Code for setting aside the ex-parte decree. The petitioners, in their affidavit filed in support of this petition have nowhere whispered, any reason or cause for the delay of 1442 days occurred in filing the petition for setting aside the ex-parte decree. As already pointed out, they have put the entire blame on their advocate and their Advocate's failure to give information is only the reason canvassed for the alleged delay. But as rightly contended by the learned counsel for the respondent, by no stretch of imagination, the said reason or ground can be considered as sufficient cause for condoning the delay. Moreover, though the 5th defendant as PW1 has specifically stated that the first defendant Selvaraj alone was taking care of the court proceedings and he only knew the reasons for the delay, they have not chosen to examine the said Selvaraj and they have also not offered any explanation for not examining him. It is also



explained, it is not proper on the part of the Court to condone the delay on sympathetic and mercy grounds.

8.In the presence case, the petitioners/defendant have not assigned any sufficient and satisfactory reason or explanation for the delay occurred and as such the decision of the learned trial Judge in dismissing the delay condonation applications cannot be found fault with. Hence, this Court concludes that this Civil Revision Petition is devoid of merits and the same is liable to be dismissed.

9.In the result, this Civil Revision Petition is dismissed and the order passed in I.A.No.1556 of 2017 in O.S.No.265 of 2003, dated 19.02.2019 by the learned Principal District Munsif, Aruppukkottai, is confirmed. No costs.

Sd/-

Assistant Registrar (A.D.II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsd

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Principal District Munsif,
Aruppukkottai.

+1 CC to M/s.J.GUNASEELAN MUTHIAH, Advocate (SR-32431[F] dated 25/10/2021)

+1 CC to M/s.S.BHARATHI, Advocate (SR-32432[F] dated 25/10/2021)

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RD/PM(10.11.2021) 5P 4C