



C.R.P.(MD).No.1168 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.07.2021

Reserved on : 27.09.2021

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

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C.R.P. (MD) .No.1168 of 2020

and

CMP (MD) No.7449 of 2020

Ponnammal : Petitioner/Respondent/Appellant

Vs.

1.Ramachandran

2.Pattamuthu : Respondents/Petitioners/Respondents

PRAYER: Civil Revision Petition has been filed under Article 227 of Constitution of India, to set aside the fair and decreetal order, dated 02.12.2019 made in I.A.No.2 of 2019 in A.S.No.66 of 2015 on the file of the Additional Sub Court, Tenkasi.

For Petitioner : Mr.S.P.Maharajan

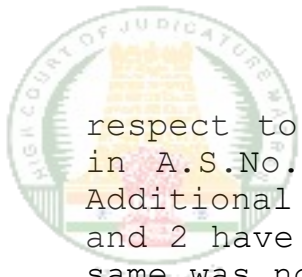
For Respondents : Mr.H.Arumugam

ORDER

The Civil Revision is directed against the order passed in I.A.No.2 of 2019 in A.S.No.66 of 2015, dated 02.12.2019 on the file of the Additional Sub Court, Tenkasi, allowing the petition filed under Section 151 CPC, to take the cross objections presented on 11.09.2015, on file.

2.The revision petitioner is the Appellant/plaintiff and she has filed the suit in O.S.No.562 of 2010, on the file of the Principal District Munsif Court, Tenkasi, against the respondents/defendants 1 and 2 herein and also against some other persons, for declaring that the suit property belongs to the plaintiff and for consequential permanent injunction restraining the defendants/ respondents 1 and 2 herein from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

3. The learned District Munsif, Tenkasi, after trial, has passed the judgment and decree dated 13.02.2015, dismissing the suit with respect to the reliefs claimed by the plaintiff, but granted permanent injunction as alternative relief, restraining the respondents/defendants 1 and 2 from interfering with the plaintiff's peaceful possession and enjoyment of the suit property except under due process of law. Aggrieved by the said dismissal of the suit with



respect to the main reliefs, the plaintiff has preferred an appeal in A.S.No.66 of 2015 and the same is pending on the file of the Additional Subordinate Court, Tenkasi. Thereafter, the respondents 1 and 2 have filed cross objections on 11.09.2015, but admittedly, the same was not taken on file.

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4. It is not in dispute that subsequently, the appeal in A.S.No.66 of 2015 was dismissed for default on 05.09.2016 and the same was restored to file as per the order passed in I.A.No.44 of 2019, dated 20.06.2019. When the hearing of the appeal was in progress, the respondents 1 and 2 have filed the above petition in I.A.No.2 of 2019, under Section 151 CPC, seeking orders to take the cross objections dated 11.09.2015 on file. The learned Appellate Judge, after enquiry, has passed the impugned order, dated 02.12.2019, allowing the said petition and thereby ordered to take the cross objections on the file of the said Court. Challenging the said order, the Appellant/plaintiff has come forward with the present revision.

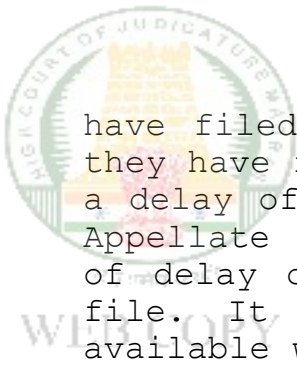
5. It is necessary to refer Order 41 Rule 22 CPC :

"22.Upon hearing, respondent may object to decree as if he had preferred a separate appeal- (1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross-objection to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellant Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

Explanation-A respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree, is, wholly or in part, in favour of that respondent."

6.A bare perusal of the above provision makes it clear and fixes the period of limitation as one month to be computed from the date of service of notice on the respondent, or his Pleader of notice of the hearing of the appeal, or within such further time as the Appellate Court may see fit it to allow.

7.In the case on hand, admittedly, the respondents 1 and 2 have received the Court notices on 27.07.2015 and 28.07.2015 respectively. As per Order 41 Rule 22 CPC, the respondents ought to



have filed the cross objections before 28.08.2015, but admittedly, they have filed the cross objections on 11.09.2015. Hence, there was a delay of 14 days in filing the cross objections. Admittedly, the Appellate Court has neither returned the cross objections for want of delay condonation application nor took the cross objections on file. It is not in dispute that the cross objections was/is available with the appellate Court records. But the respondents have not taken any steps for taking the cross objections on file. In view of the above, we can easily infer that both the respondents 1 and 2 as well the Appellate Court were at fault.

8.As already pointed out, the Appeal Suit itself was ordered to be dismissed for default on 05.09.2016, for want of prosecution. The Hon'ble Supreme Court in **Shri Badru (since deceased) through L.R. Hari Ram and others Vs. NTPC Limited (formerly National Thermal Power Corporation Ltd) and others** [Civil Appeal Nos.5557-5559 of 2019], dated 16.07.2019, has specifically held that cross objections had to be disposed of on its merits notwithstanding the dismissal of the appeals as provided by in Order 41 Rule 22 (4) of the Code by assigning reasons. In the present case, when the appeal suit was dismissed on 05.09.2016, admittedly, no order was passed in the cross objections either for returning or rejecting the same, nor chosen to decide the cross objections on merits.

9. It is the case of the respondents 1 and 2 that after completion of the arguments advanced by the learned counsel for the appellant and when their counsel was preparing for their side arguments, they came to know that the cross objections filed on 11.09.2015 was not at all taken on file nor was returned and the same is available with the Court records and that therefore, they were constrained to file the above application for taking the cross objections on file.

10.The main objection of the revision petitioner is that the respondents have not filed any application to condone the delay in filing the cross objections, that they have not taken any steps or action for taking the cross objections on file from 11.09.2015 till filing of the above petition and that they have not assigned any reason or explanation for the delay occurred in filing the appeal and for their non-action from 11.09.2015.

11.To counter the said arguments of the revision petitioner, the learned counsel for the respondents have relied on the following decisions :

(i) **2007 (2) CTC 470 :**

Savarimuthu Vs. Maricannu :

" 9.With regard to the contention that no Petition was filed to condone the delay in filing the Application under Order 9, Rule 13 of C.P.C., I am of the view that this cannot be held against the respondent at this juncture as



the Trial Court has exercised its discretion to set aside the ex-parte decree itself which means the delay aspect has been duly considered by the trial Court.

10. The Suit itself is for a declaration to declare that the Plaintiff is the absolute owner of the Suit property and also for recovery of possession. In such circumstances, in the interest of justice, the respondent is to be given a chance to contest the Suit on merits, rather than refusing to set aside ex-parte decree on technicalities. Therefore, the Trial Court has rightly allowed I.A.No.3900/1995."

(ii) **2007 (5) CTC 495 :**

Manickavasagam Vs. Ammayappa Pillai and another :

"7.... Moreover, if Registry had not numbered the restoration Petition, the appellant would have filed necessary Application seeking condonation of delay in filing the Restoration Petition. Even the Court could have directed the appellant to file appropriate Petition for condonation. For the fault of Registry in numbering the Restoration Petition, it may not be proper to shut down the case, by defence of limitation.

8. Courts have consistently held that there should be a pragmatic approach in dealing with the Restoration Application filed with delay and mere technicalities should not put against the litigants. In the instant case, the Lower Appellate Court has failed to consider that it is not the fault of the appellant, in moving Application for restoration, without necessary Petition for condonation."

(iii) **2021 SCC Online SC 244 :**

Sesh Nath Singh and another Vs. Baidyabati Sheoraphuli Co-operative Bank Ltd., and another :

"61. The condition precedent for condonation of the delay in filing an application or appeal, is the existence of sufficient cause. Whether the explanation furnished for the delay would constitute 'sufficient cause' or not would depend upon facts of each case. There cannot be any straight jacket formula for accepting or rejecting the explanation furnished by the applicant/appellant for the delay in taking steps. Acceptance of explanation furnished should be the rule and refusal an exception, when no negligence or inaction or want of bona fides can be imputed to the defaulting party.

62. It is true that a valuable right may accrue to the other party by the law of limitation, which should not lightly be defeated by condoning delay in a routine manner. At the same time, when stakes are high, the explanation should not be rejected by taking a pedantic and hyper technical view of the matter, causing thereby irreparable loss and injury to the party against whom the lis



terminates. The courts are required to strike a balance between the legitimate rights and interests of the respective parties.

63. Section 5 of the Limitation Act, 1963 does not speak of any application. The Section enables the Court to admit an application or appeal if the applicant or the appellant, as the case may be, satisfies the Court that he had sufficient cause for not making the application and/or preferring the appeal, within the time prescribed. Although, it is the general practice to make a formal application under Section 5 of the Limitation Act, 1963, in order to enable the Court or Tribunal to weigh the sufficiency of the cause for the inability of the appellant/applicant to approach the Court/Tribunal within the time prescribed by limitation, there is no bar to exercise by the Court/Tribunal of its discretion to condone delay, in the absence of a formal application.

64. A plain reading of Section 5 of the Limitation Act makes it amply clear that, it is not mandatory to file an application in writing before relief can be granted under the said section. Had such an application been mandatory, Section 5 of the Limitation Act would have expressly provided so. Section 5 would then have read that the Court might condone delay beyond the time prescribed by limitation for filing an application or appeal, if on consideration of the application of the appellant or the applicant, as the case may be, for condonation of delay, the Court is satisfied that the appellant/applicant had sufficient cause for not preferring the appeal or making the application within such period. Alternatively, a proviso or an Explanation would have been added to Section 5, requiring the appellant or the applicant, as the case may be, to make an application for condonation of delay. However, the Court can always insist that an application or an affidavit showing cause for the delay be filed. No applicant or appellant can claim condonation of delay under Section 5 of the Limitation Act as of right, without making an application."

12. In the case on hand, as already pointed out, the respondents have not filed any application to condone the delay in filing the cross objection. In the first decision case though the petition under Section 5 of Limitation Act was not filed, this Court has upheld the order passed in the petition filed under Order 9 Rule 13 CPC, setting aside the ex-parte decree on the ground that the trial Court has exercised its discretion to set aside the ex-parte decree itself, which would only mean that the delay aspect has been duly considered by the trial Court.

13. In the second decision case, since the petition to condone



the delay in filing the restoration petition was not filed, the restoration petition was dismissed as the same was filed beyond the period of limitation. This Court by observing that it was the fault of the Registry in numbering the restoration petition without filing of any petition for condonation of delay, that the Appellate Court would have directed the appellant to file appropriate petition for condonation and that there should be a pragmatic approach in dealing with the restoration application filed with delay and mere technicalities should not put against the litigants, allowed the Civil Miscellaneous Appeal and thereby set aside the order, dismissing the restoration petition.

14. In the third decision case, the Hon'ble Apex Court has observed that Section 5 of the Limitation Act does not speak of any application and in case, if the appellant satisfies the Court that he had sufficient cause for not making the application or preferring the appeal, within the time prescribed, the Court can very well admit the application or appeal, as the case may be.

15. In the present case, the Appellate Court, after considering the facts and circumstances and the conduct of the parties and other attending circumstances, by observing that no loss or prejudice would be caused to the appellant, if the delay is condoned and the cross objections are to be taken on file, allowed the petition. As already pointed out, there is some fault or inaction on the part of the Appellate Court also in keeping the cross objections in the records without returning the same or passing any orders on it. As rightly contented by the learned counsel for the respondents, the Appellate Court at the very beginning, could have directed the respondents to file necessary application for condonation of delay or the Court should have passed some orders while dismissing the appeal for default.

16. Considering the above, the decision of the Appellate Court in ordering to take the cross objections on file cannot be found fault with. But at the same time, considering the delay and non-action on the part of the respondents 1 and 2, this Court is of the view that they must be mulcted with costs. Since the appeal is pending from 2015 onwards, this Court is of the view that necessary directions are to be issued for early disposal of the appeal.

17. The respondents are directed to pay cost of Rs.5,000/- (Rupees Five Thousand Only) to the revision petitioner on or before 22.10.2021, failing which, the petition in I.A.No.2 of 2019, shall stand dismissed. The Appellate Court is directed to dispose of the appeal with cross objections or without cross objections, subject to the result of the petition in I.A.No.2 of 2019 within a period of two months from 22.10.2021.

18. With the above modification, the Civil Revision Petition is



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disposed of. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

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Sub Assistant Registrar(CS)

das

To

1.The Additional Sub Judge,
Tenkasi.

2. The Principal District Munsif Court, Tenkasi

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.

+1 CC to M/s.S.P.MAHARAJAN, Advocate (SR-30422[F] dated 28/09/2021)

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-30535 [F] dated 28/09/2021)

C.R.P.PD (MD) .No.1168 of 2020
27.09.2021

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