



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.07.2021

Pronounced on : 30.07.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P. (MD).No.2150 of 2019 and
CMP(MD).No. 11298 of 2019

N. Nallaiya : Petitioner/Petitioner/Defendant

Vs.

A. Sekar Arunachalam : Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order passed in I.A.No.671 of 2018 in O.S.No.172 of 2013 dated 06.07.2019, on the file of the Principal Subordinate Court, Thenkasi.

For Petitioner : Mr. H. Arumugam

For Respondent : Mr.S. Rajakarthikeyan

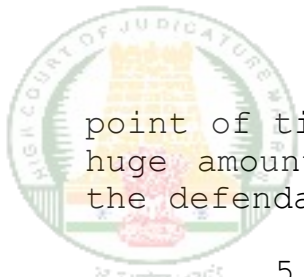
O R D E R

The Civil Revision is directed against the order passed in I.A.No.671 of 2018 in O.S.No.172 of 2013 , dated 06.07.2019 on the file of the Principal Subordinate Court, Thenkasi, dismissing the petition filed under Section 5 of the Limitation Act.

2. The revision petitioner is the defendant. The respondent / plaintiff has laid the suit in O.S.No.172 of 2013 for recovery of Rs.10,00,000/- and future interest for the principal amount of Rs.8,80,000/-, due on the promissory note alleged to have been executed by the defendant in favour of the plaintiff on 21.04.2012.

3. It is evident from the records that since the defendant has not chosen to file the written statement, he was set ex parte and decree was passed on 10.07.2014. It is further evident from the records that the property of the defendant was ordered to be attached before the Judgment in I.A.No.392 of 2013, that after passing of the decree, the plaintiff / decree holder has laid the execution petition in E.P.No.43 of 2015 for recovery of the decree amount by sale of the property attached before the Judgment and that the execution petition is pending.

4. The defendant has taken a specific stand that he has neither borrowed any amount nor executed any promissory note at any



point of time, that the plaintiff has no capacity to advance such a huge amount of Rs.8,80,000/- to the defendant and that therefore, the defendant is not liable for the suit claim.

5. It is not in dispute that the defendant has also not entered into appearance in the execution proceeding and hence he was set ex parte. Thereafter, the revision petitioner / defendant has filed the above application in I.A.No.671 of 2018 under Section 5 of the Limitation Act to condone the delay of 1449 days in filing the petition for setting aside the ex parte decree passed against him. The learned Subordinate Judge, after enquiry, has passed the impugned order on 06.07.2019 dismissing the said petition. Aggrieved by the said dismissal order, the defendant has come forward with the present revision.

6. The main contention of the revision petitioner is that when he was taking treatment for his stomach pain in January 2014, he suffered jaundice, that he proceeded to Karaiyaru and was taking country treatment for a long period and that since he could not come out of the house, he was unable to meet his counsel, that when he subsequently contacted his counsel he came to know that ex parte decree was passed against him on 10.07.2014, that he immediately had taken steps and filed the petition for setting aside the ex parte decree and the petition for condoning the delay in filing the same on 18.08.2014 and the same were received in G.L.No.7507, that the above said petitions were neither returned nor numbered, that since the said petitions could not be traced out, with no other option, he was forced to file fresh petitions and that therefore, it has become just and necessary to condone the delay in filing the petition for setting aside the ex parte decree.

7. The defence of the respondent / plaintiff is that after getting decree on 10.07.2014, he filed an execution petition in E.P.No. 43 of 2015 and the same is pending, that the petitioner has not even chosen to furnish the details of the delayed period in his affidavit filed in support of the petition, that the petitioner has not produced any medical evidence to substantiate his ill health and treatment and that the petitioner has filed the above application only to drag on the matter. As rightly contended by the learned counsel for the respondent, the petitioner has not even mentioned the quantum of delay, which is sought to be condoned, in the affidavit filed in support of this petition.

8. As already pointed out, the petitioner has canvassed the following two reasons for the delay:

(i) He was suffering from jaundice and hence, he was taking countryside treatment for a very long period from January 2014.



(ii) Though the petitioner has filed applications for setting aside the ex parte decree and for condoning the delay in filing the said petition, the same were neither numbered nor returned.

9. Before entering into further discussion, it is necessary to refer the decision of the Hon'ble Supreme Court and this Court, relied on by the counsel for the petitioner.

(i) **Manoharan Vs. Sivarajan and others [2014 SAR (Civil) 22] :**

"9. In the case of **State of Bihar & Ors Vs. Kameshwar Prasad Singh & Anr** it was held that power to condone the delay in approaching the Court has been conferred upon the Courts to enable them to do substantial justice to parties by disposing the cases on merit. The relevant paragraphs of the case read as under:

"11. Power to condone the delay in approaching the Court has been conferred upon the Courts to enable them to do substantial justice to parties by disposing of matters on merits. This Court in *Collector, Land Acquisition, Anantnag V. Mst. Katiji* (1987)ILLJ 500 SC held that the expression 'sufficient cause' employed by the legislature in the Limitation Act is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice-that being the life purpose for the existence of the institution of Courts. It was further observed that a liberal approach is adopted on principle as it is realised that:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.



4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

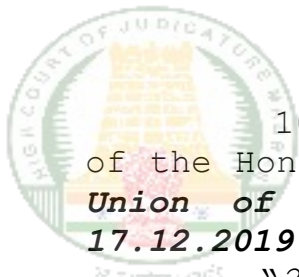
ii) **Improvement Trust, Ludhiana Vs. Ujagar Singh and others [2010 (6) SCC 786] :**

"16. While considering the application for condonation of delay no straitjacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not. Each case has to be weighed from its facts and the circumstances in which the party acts and behaves. From the conduct, behaviour and attitude of the appellant it cannot be said that it had been absolutely callous and negligent in prosecuting the matter."

iii) **Ajay Kumar Gulecha Vs. J.Vijayakumar and another [2015 (i) CTC 811]:**

"8. Heard Mr. R. Thiagarajan, learned counsel for the petitioner. No doubt, the delay of 1753 days is huge. Law of limitation has been enacted not for destroying the rights of the parties. In this case, the property involved is very valuable one measuring about 2.30 Acres along with a building. When rights on such a valuable property is involved in the suit, the rights of the parties should be decided on merits."

In the third decision above referred, the property involved therein is worth about crores of rupees and it was decided that the defendants should be given an opportunity to contest the suit on merits. Moreover, there is no dispute about the legal position laid down by the Hon'ble Supreme Court and in the second decision, above referred, has rightly observed that each case has to be weighed from its facts and circumstances.



10. At this juncture, it is necessary to refer the decision of the Hon'ble Supreme Court in the case of **University of Delhi Vs. Union of India and others in CA.Nos.9488-9489 of 2019 dated 17.12.2019** and the relevant passage is extracted hereunder:

“20. From a consideration of the view taken by this Court through the decisions cited supra the position is clear that, by and large, a liberal approach is to be taken in the matter of condonation of delay. The consideration for condonation of delay would not depend on the status of the party namely the Government or the public bodies so as to apply a different yardstick but the ultimate consideration should be to render even handed justice to the parties. Even in such case the condonation of long delay should not be automatic since the accrued right or the adverse consequence to the opposite party is also to be kept in perspective. In that background while considering condonation of delay, the routine explanation would not be enough but it should be in the nature of indicating “sufficient cause” to justify the delay which will depend on the backdrop of each case and will have to be weighed carefully by the Courts based on the fact situation. In the case of *Katiji (Supra)* the entire conspectus relating to condonation of delay has been kept in focus. However, what cannot also be lost sight is that the consideration therein was in the background of dismissal of the application seeking condonation of delay in a case where there was delay of four days pitted against the consideration that was required to be made on merits regarding the upward revision of compensation amounting to 800 per cent.”

11. In the case on hand, as already pointed out, the petitioner has given explanation that he was suffering from jaundice and he was taking countryside treatment. It is pertinent to note that the petitioner has not even chosen to produce any evidence to show that he had actually jaundice at that time and that he had taken countryside treatment therefor. As rightly observed by the learned trial Judge, the petitioner has not even mentioned the date from which he was suffering from ill health, when he went to Karaiyaru, period of treatment and when he returned. The petitioner has furnished SR number of the petition alleged to have been filed by him in 2014 itself. Even according to the petitioner, those applications were neither returned nor numbered and the same could not be traced out till filing of the fresh petitions in 2018. As rightly observed by the trial Court, the petitioner has no where stated anything as to what steps he had taken for the past four years. It is not the case of the petitioner, that he preferred any complaint to the Presiding Officer of the concerned Court or to the Principal District Court. As already pointed out, there is a delay of 1449 days and no doubt, the delay is inordinately. It is pertinent to mention that Execution Petition is pending from 2015



12. Considering the above facts and circumstances, as rightly observed by the learned trial Judge, this Court is also of the view that the petitioner has filed the above petition with inordinate delay with sole intention to prevent the decree holder from realising the fruits of the decree. Though the suit was filed in the year 2013, even after a lapse of 8 years, the decree holder is unable to reap the benefits of the decree. Hence, the decision of the trial Court in dismissing the petition in I.A.No.671 of 2018 cannot be found fault with. Consequently, this Court concludes that the revision is devoid of merits and the same is liable to be dismissed.

13. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

trp

To

The Principal Subordinate Judge, Thenkasi.

+1 CC to MR.H.ARUMUGAM, Advocate (SR-25037[F] dated 02/08/2021)
C.R.P. (MD).No.2150 of 2019 and
CMP(MD).No. 11298 of 2019
30.07.2021

MGJ(10.08.2021) 6P 3C