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Crp(npd).No.2315 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **05.04.2022**

CORAM :

THE HONOURABLE MR.JUSTICE **S.SOUNTAR**

C.R.P.(NPD) No. 2315 of 2015

and

M.P.No. 1 of 2015

M.Ponvel

... Petitioner

vs.

1. Tmt.K.Kanagavalli
2. Thiru. M.Kumaravel
3. Tmt.M.Komala
4. M. Renuka
5. Tmt. M.Kanchana
6. Tmt. M.Gowri
7. Tmt.Padmavathy
8. Tmt. Uma @ Umamaheswari
9. Tmt.M.Mohana

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, 1908, 227 of the Constitution of India, 1950, to set aside the fair and decreetal order of the Sub-Court, Tambaram, passed in I.A.No.875 of 2013 in O.S.No.510 of 2009 dated 23.01.2015.

For Petitioner : Mr.P.S.Ratnamani

For Respondent : Mr.R.Mahalingam [R1]



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ORDER

WEB COPY The first defendant in the suit for partition has filed this Civil Revision Petition. The first respondent herein has filed a suit for partition against the revision petitioner and other respondents in O.S.No.510 of 2009 on the file of Subordinate Judge, Tambaram and the said suit was decreed as *ex-parte* on 18.08.2010.

2. The revision petitioner/first defendant filed a petition to set aside the *ex-parte* decree with a delay of 836 days in I.A.No.875 of 2013 in O.S.No.510 of 2009. In support of his petition for condoning the delay, he filed an affidavit stating that he was a heart patient, and at relevant point of time he had undergone a bypass surgery and bed ridden for long time, therefore, he was not in a position to contact his counsel to proceed with the matter. He would further aver that, he came to know of the preliminary *ex-parte* decree for partition only when the Advocate Commissioner visited the property and immediately, he had taken steps to set aside the *ex-parte* decree. He would further submit that the delay in filing the petition to set aside the *ex-parte* decree was not due to any willful act.



3. The first respondent filed a counter opposing the condone delay petition. The learned Subordinate Judge, after considering the submissions of both the parties, dismissed the condone delay petition.

4. Aggrieved by the same, the first defendant has come up by way of this revision.

5. The contesting first respondent/plaintiff was served and represented by his counsel. The respondents 2 to 9 are only co-defendants. From the memo dated 04.04.2019 filed by the revision petitioner, it is seen that the respondents 2 to 9 were given up and they remained *ex-parte* before the Lower Court and the same is recorded. Hence, this Court proceeded to dispose of this Revision after hearing the petitioner and contesting first respondent.

6. The Revision Petitioner in order to explain the delay of 836 days, had stated that he was a heart patient and he had undergone bypass surgery and hence, he was not in a position to follow his case, which resulted in passing of *ex-parte* preliminary decree.



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7. Considering the nature of the relief sought for in this suit, viz., relief of partition, the close relationship between the parties, the length of delay in filing the petition to set aside the *ex-parte* decree and the reasons adduced by the revision petitioner in his affidavit, I am of the view that an opportunity shall be given to him to contest the suit on merits. Since there is a considerable delay in filing the petition, this Court feels it appropriate that cost shall be imposed on the petitioner to compensate the first respondent/plaintiff.

8. While considering the petition to condone the delay under Section 5 of the Indian Limitation Act, 1963, the Court must take a liberal approach as held in the case of **Collector, Land Acquisition & Anr. Vs. Mst. Katiji & Ors.** reported in **[AIR 1987 SCC 1353]**, wherein the Apex Court has observed as follows:

“3. The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression “Sufficient cause” employed by the legislature 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 is common knowledge that



this Court has been making a justifiably liberal approach in matters instituted in this Court. Bu the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized 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.”

9. The Apex Court in a judgment in the case of ***N.Balakrishnan Vs. M.Krishnamurthy*** reported in ***[(1998) 7 SCC 123]***, has observed that while exercising the discretion under Section 5 of the Limitation Act, 1963, the Courts are guided by following principles:

“10. The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up



necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae ut sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

*12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under [Section 5 of the Limitation Act](#) should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain Vs. Kuntal Kumari* [AIR 1969 SC 575] and *State of West Bengal Vs. The Administrator, Howrah Municipality* [AIR 1972 SC 749].*

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show



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utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quiet a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss.”

Therefore, it is clear when the delay is not due to the malafide intention of the petitioner, acceptance of the reasons adduced by him is the Rule and refusal is an exception. Applying the principles enunciated in the above referred decisions, I am inclined to take liberal approach in considering the petition filed by the revision petitioner to condone the delay in seeking to set aside the *ex-parte* decree.

10. Hence, this Civil Revision Petition is allowed on payment of Rs.10,000/-(Rupees Ten Thousand only) as cost to the first respondent/plaintiff within a period of six(6) weeks from the date of receipt of a copy of this order, failing which, the Revision stands

~~dismissed.~~



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WEB COPY 11. Considering the fact that the suit is of the year 2009, the learned Subordinate Judge, Tambaram is directed to dispose of the suit within a period of six(6) months from the date of receipt of a copy of this order. Connected miscellaneous petition is closed.

05.04.2022

Index : Yes
Internet : Yes
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To

The Sub-Court,
Tambaram,



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S.SOUNTHAR, J.

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