



C.R.P. (NPD) No.1061 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2022

CORAM :

THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

C.R.P. (NPD) No.1061 of 2020

and

C.M.P.No.5780 of 2020

Yesupillai (alias) Selvasigamani (died)

2.Lilly Deva Kirubai

3.Elango Immanuvel Raja

4.Srimathi Sheela

5.Magi

6.Reeta

7.Ida

8.Geetha

... Revision Petitioners

[Petitioners 2 to 8 brought on record as LR's of the deceased sole petitioner viz., Yesupillai (alias) Selvasigamani vide Court order dated 04.04.2022 made in C.M.P.No.16966 of 2021 in C.R.P.(NPD) No.1061 of 2020]

Vs.

1.Narayanan

2.Arumugam

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 19.03.2019 in I.A.No.919 of 2013 in O.S.No.433 of 2010, passed by the Principal District Munsif, Villupuram.



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P1 : Died
For P2 to P8 : Mr.T.K.Kulasekaran
For R1 : Mr.J.Agni Selvaraju
For R2 : No appearance

ORDER

This Civil Revision Petition has been filed against the order, dated 19.03.2019, in I.A.No.919 of 2013 in O.S.No.433 of 2010, passed by the Principal District Munsif, Villupuram, allowing the impugned application to condone the delay of 660 days in filing the petition to restore the suit which was dismissed for default.

2.For the sake of convenience, the deceased 1st petitioner shall hereinafter be referred to as “defendant” and the 1st respondent shall be referred to as “plaintiff”.

3.The facts leading to the filing of the present Civil Revision Petition are as follows :



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- The plaintiff filed the suit for declaration and permanent injunction in respect of the suit properties, claiming that he holds the title and he is in possession and enjoyment of the suit properties.
- The defendant resisted the suit by filing his written statement, wherein, he has taken a stand that he is the owner of the suit properties and he is in physical possession and enjoyment of the suit properties.
- While so, the suit came to be dismissed for default for non-appearance of the plaintiff on 14.11.2011.
- The plaintiff came up with the impugned application in I.A.No.919 of 2013 to condone the delay of 660 days in filing the petition to restore the suit,
- The trial Court, after considering the oral and documentary evidence on record, allowed the impugned application on payment of cost of Rs.500/- to the defendant.
- The plaintiff states that when he attempted to pay the cost to the counsel for the defendant, he refused to receive the same, stating that the defendant is going to file an appeal against the impugned order.
- The defendant has filed the present Civil Revision Petition



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challenging the order allowing the petition to condone the delay of 660 days.

4.The learned counsel for the revision petitioner/defendant would submit that the plaintiff has not shown sufficient cause for the delay and despite he being aware of the hearing date on 14.11.2021¹, the plaintiff has deliberately remained absent, which led to the dismissal of the suit. The learned counsel further submitted that the cause of delay projected by the plaintiff is not supported by any materials nor by evidence. Relying on the judgment of the Hon'ble Supreme Court in the case of **Lingeswaran v. Thirunagalingam [2022 Livelaw (SC) 227]**, the learned counsel contended that the law of limitation is founded on public policy and any delay beyond the limitation period can be condoned only when the applicant has proved the sufficient cause for the delay. Relying on the judgment of this Court in **Devarajan N. v. Babu. C. [2021 (2) TLNJ 241 (Civil)]**, the learned counsel submitted that, conduct, negligence and inaction of a party has to be taken into consideration while considering the application to condone the delay and in the absence of any sufficient cause, the counter-party should not be



unnecessarily made to face a litigation. The learned counsel further submitted that the trial Court has shifted the onus on the defendant to disprove the claim of the plaintiff, whereas, it is for the plaintiff to prove his claim. The learned counsel further relied on the judgments of this Court in ***Jayaraman C. v. Srinivasan and others [2021 (1) TLNJ 49 (Civil)]*** and ***Seethalakshmi B. v. A.Chockalingam and others [2020 (1) TLNJ 454 (Civil)]*** and concluded his arguments by submitting that, in the absence of any cogent evidence on the side of the plaintiff to prove the sufficient cause for the delay, the trial Court ought not to have allowed the impugned application and hence, prayed for dismissal of the impugned application.

5.Per contra, the learned counsel appearing for the 1st respondent/plaintiff would submit that the plaintiff went to Chennai to eke his livelihood, when the suit came up for hearing on 14.11.2011, where he was affected by jaundice and he underwent medical treatment at his house itself; only when he recovered from his illness and enquired his Advocate, he came to know that the suit was dismissed for default. The learned counsel would submit that the plaintiff, to prove his case, has examined himself as P.W.1 before the trial Court. The learned counsel further submitted that the



trial Court, after considering the oral and documentary evidence on record, has rightly allowed the impugned application on payment of cost of Rs.500/-

. However, when the plaintiff tried to pay the cost to the counsel for the defendant, he refused to receive the same, stating that they are prepared to prefer an appeal against the impugned order. The learned counsel further submitted that the plaintiff filed an application in I.A.No.312 of 2019 in I.A.No.919 of 2013, to deposit the cost of Rs.500/- before the trial Court and the same was allowed and the plaintiff has deposited the cost before the trial Court. The learned counsel further submitted that it is well settled that Courts should show a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with the applications to condone the delay and the doors of justice cannot be shut at the threshold. He further submitted that there is no strait-jacket formula to accept or reject the cause given by a party for the delay and it has to be looked into under the facts and circumstances of each and every case. He further submitted that the doctrine of explanation of each and every day's delay has to be applied in a rational common sense and pragmatic manner. In support of his arguments, the learned counsel relied on the following judgments :

i. Collector, Land Acquisition, Anantnag and another v. Mst.Katiji



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- and others [1987 AIR (Supreme Court) 1353]*
- ii. *Ram Nath Sao @ Ram Nath Sahu v. Gobardhan Sao [2002 AIR (Supreme Court) 1201]*
- iii. *GMG Engineering Industries and others v. ISSA Green Power Solution and others [Civil Appeal No.4472 of 2015]*
- iv. *Gowri Ammal v. Murugan and others [2006 (3) CTC 418]*

The learned counsel concluded his arguments by submitting that the trial Court has rightly allowed the impugned application, which requires no interference by this Court and prayed for dismissal of this revision petition.

6.This Court gave its anxious consideration to the rival submissions and also perused the entire materials available on record.

7.The suit is for declaration and permanent injunction. From the judgment in O.S.No.433 of 2010, dated 14.11.2011, it can be seen that the case was posted in the Special List and when it was taken up for hearing on 14.11.2011, the plaintiff did not appear and he was not represented by any counsel and he was called absent and the suit was dismissed for default. The petition to condone the delay in filing the restoration petition was



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allowed by the trial Court on payment of cost of Rs.500/-, against which, the present revision has been filed. Since there were rival contentions with regard to payment of costs, a report was called for from the trial Court. The trial Court has sent a report, dated 18.04.2022, stating that the plaintiff has deposited the cost before the trial Court and the restoration petition was taken on file in I.A.No.525 of 2013 on 16.09.2013 and the same is pending owing to the pendency of the present revision petition before this Court.

8.The only cause projected by the plaintiff for his non-appearance on 14.11.2011 is that he came to Chennai, where he was affected by jaundice. Though it is well settled that illness can be construed as a good cause, it is for the plaintiff to prove and satisfy the Court that the said illness has prevented him from filing the application to restore the suit well within the period of limitation. Moreover, in the case on hand, when the illness itself is disputed by the defendant, the plaintiff is required to prove the same through valid medical evidence. In **Arjun Singh v. Mohindra Kumar & others [AIR 1964 SC 993]**, the Hon'ble Supreme Court has observed that, *"the only difference between a "good cause" and "sufficient cause" is that the requirement of a good cause is complied with on a lesser degree of*



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proof than that of a "sufficient cause".” Therefore, it is clear that a “sufficient cause” deserves to be proved to the satisfaction of the Court, by oral and documentary evidence, especially when it is disputed on the other side.

9. On a reading of the affidavit filed in support of the impugned application, it can be seen that the plaintiff has stated that, though he was informed by his Advocate about the hearing of the case on 14.11.2011, he came to Chennai when the matter was taken up for hearing before the trial Court, and he suffered from jaundice and only after he recovered, on enquiring his Advocate, he came to know about the dismissal of the suit and filed the restoration application after a delay of 660 days. The plaintiff himself has admitted that he was well aware of the date of hearing on 14.11.2011, however, he has not taken any steps to appear before the Court and has gone to Chennai. Further, apart from making bald averments that he was suffering from jaundice, no clear date as to when he fell ill or when he recovered or when he enquired his Advocate, has been stated. Moreover, though the plaintiff has examined himself as P.W.1 before the trial Court, he has not produced any medical evidence to show that he was suffering from



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jaundice for more than 1 ½ years, which sounds unnatural.

10. On a perusal of the impugned order of the trial Court, it can be seen that the trial Court has observed that the defendant did not put any suggestion as regards the date of illness in the cross-examination of P.W.1; the defendant has not examined himself to prove the contents of his counter affidavit in the impugned application; the Special Sub-Inspector of Police (R.W.1) has deposed that, on 18.09.2013, the defendant lodged a complaint against the plaintiff and the 2nd defendant in Petition No.1001 of 2011 and in the said complaint, it is stated that O.S.No.433 of 2010 ended in favour of the defendant and the counter-parties are trying to grab his land and on enquiry, it was found that patta stood in the name of the defendant and plaintiff was in possession, however, there is no proof for same and the parties were advised to pursue their remedy before the pending suit in Civil Court; though it is stated in the counter-affidavit that the impugned application has been filed only pursuant to police complaint, the date of enquiry, i.e., 05.10.2013 is only after the filing of the impugned application on 04.10.2013; the defendant has not proved that the plaintiff has caused deliberate delay from the date of police complaint, i.e., 18.09.2013 till the



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date of filing of application, 04.10.2013.

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11. Therefore, on a complete reading of the impugned order of the trial Court, it can be noticed that the trial Court has entirely shifted the onus on the defendant for not having proved their counter arguments or for not disproving the case of the plaintiff. However, it is trite that the burden is on the party, who pleads a cause for the delay in not filing a petition within the period of limitation, to prove the same by adducing oral and documentary evidence. But, in the present case on hand, though the plaintiff has examined himself, has not satisfactorily proved the sufficient cause alleged by him.

12. Though in one breath, it is stated in the judgments relied upon by the learned counsel for the plaintiff that Courts should have a liberal, pragmatic and non-pedantic approach while dealing with the petitions to condone the delay, in the other, it has been held that the delay can be condoned only when there is no negligence, inaction or want of *bona fide* on the part of the applicant and the true test is to see whether the applicant has acted with due diligence. The present case of the plaintiff, when tested



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on the said criteria, would fail, for the simple reason that the plaintiff was very well aware of the date of hearing on 14.11.2011, however, he has not appeared before the Court nor has he made any arrangement for being represented before the Court. Even assuming for the sake of arguments that the plaintiff could not appear before the Court on the particular date for any valid reason which led to the dismissal of the suit for default, nothing prevented him from enquiring with his Advocate immediately after the date of hearing about the status of the suit and proceed further, however, that is not the case here. It is pertinent to note that the plaintiff's counsel was present in the open Court on 14.11.2011 and he knew about the dismissal of the suit.

13.The trial Court has largely proceeded on the footing that the defendant has not proved his counter statement that the plaintiff has filed the impugned application only to drag on the proceedings, after a police complaint came to be lodged against him by the defendant. Be that as it may, but that does not come in the way of the plaintiff in proving his case that he was prevented by a sufficient cause from filing the restoration petition within the period of limitation.



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14.In ***Basawaraj and others v. The Special Land Acquisition Officer [2013 (14) SCC 81]***, the Hon'ble Supreme Court, after referring to various decisions, has held that *“In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay.”*

15.In ***G.Jayaraman v. Devarajan [2007 (2) CTC 643]***, this Court has held as follows :

“16. ... The party claiming indulgence must prove that he has reasonable diligent in prosecuting the matter. This test for condoning the delay is not satisfied in this case. Liberal exercise of jurisdiction under Section 5 of the Act would cause prejudice to the plaintiff/decreed holder, who has been pursuing the money suit for quite a long time. In condoning the delay, there is improper exercise of discretion and therefore, the impugned order cannot be sustained.”

16.It is trite that *vigilantibus, non dormientibus, jura subveniunt*



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(Law comes to the rescue to those who are vigilant and not to those who sleep over their rights). Applying the said legal principle and in the light of the above decisions and the judgments relied upon by the learned counsel for the defendant, when the plaintiff has remained negligent and inactive for a period of more than 1 ½ years and when his case suffers from want of *bona fide*, the impugned order of the trial Court, condoning the delay, is perverse and the same needs to be interfered with.

17. Accordingly, the impugned order, dated 19.03.2019, in I.A.No.919 of 2013 in O.S.No.433 of 2010, is set aside and as a sequel, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

28.06.2022

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Internet : Yes
Index : Yes / No

To

The Principal District Munsif,
Villupuram.

S. KANNAMMAL, J.



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