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C.R.P.(NPD)No.36 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

C.R.P.(NPD)No.36 of 2016
and C.M.P.No.214 of 2016

S.Vivekanandan

S.Viswanathan (Deceased)
(cause title accepted vide order of Court
dated 21.12.2015 made in M.P.No.1/15
in CRP.SR.No.91970/15)

...Petitioner

Versus

Indian Bank, Coonoor Branch,
Rep. By its Branch Manager,
Coonoor, Udthagamandalam.

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to revise and set aside the order dated 14.08.2015 in I.A.No.407 of 2014 in O.S.No.28 of 2012, on the file of the Subordinate Judge of the Nilgiris at Udthagamandalam.

For Petitioner :M/s.Srinath Sridevan

For Respondent :M/s.Rita Chadrasekar
for Aiyar and Dolia



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O R D E R

The Civil Revision Petition is filed against the dismissal of petition to condone the delay of 425 days in seeking to set aside the ex-parte decree dated 22.02.2013 passed in O.S.No.28 of 2012 on the file of Subordinate Court, Udhagamandalam. The respondent Bank filed a mortgage suit for recovery of mortgage debt of Rs.6,31,948/-. When the suit was in the stage of cross examination of PW.1, the revision petitioner/defendant was set ex-parte owing to his failure to cross examine the witness. Subsequently, the ex-parte preliminary decree was passed on 22.02.2013 directing the revision petitioner/defendant to pay a sum of Rs.6,31,948/- with interest at the rate of 12% per annum on the said sum from the date of suit to the date of decree. The future interest was directed to be paid at 6% from the date of decree to the date of realization.

2. The revision petitioner filed a petition to set aside the ex-parte decree along with petition to condone the delay of 425 days in seeking to set aside the ex-parte decree. The revision petitioner in his affidavit filed in support of condone delay petition submitted that he could not file petition to set



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aside the ex-parte decree within the limitation period as certain documents were misplaced and the delay in filing the set aside application is neither willful nor wanton, but due to the bonafide reason stated therein.

3. The respondents filed a counter denying the averments found in the affidavit of the revision petition and submitted that inspite of several opportunities, the revision petitioner failed to cross examine of PW.1 and hence it resulted in ex-parte decree.

4. The trial Court after considering the rival submissions, came to the conclusion that the revision petitioner has not explained the delay satisfactorily and hence dismissed the application. Challenging the same, the above Civil Revision Petition is filed.

5. The learned counsel for the revision petitioner submitted that he was prevented from filing a petition to set aside the ex-parte decree within time as certain material papers available with him were misplaced. He also submitted that he obtained loan from the respondent bank for engaging in floriculture in Nilgiris District of Tamil Nadu. He also submitted that due to



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natural calamity, the floriculture farm fields were destroyed and hence, he could not continue with the floriculture and consequently he was prevented from repaying the loan amount. It was also submitted that the Nilgiris District Floriculture Small Farmers Association submitted a representation to the District Collector and also Government of Tamil Nadu, highlighting the difficulties faced by them due to natural calamities and disturbances in their farming activities. He also referred to the proceedings of the District Collector included in page No.164 of the additional typed set of papers, wherein, it was recommended that 50% of the actual loan amount could be received by bank as one time settlement and the remaining amount and interest etc., could be waived. It was further submitted by the revision petitioner that the farmers of Nilgiris District engaged in floriculture are in very difficult situation. In view of the natural calamity which destroyed their fields, it was impossible for them to pay the entire loan amount.

6. The learned counsel for the respondent bank submitted that the petitioner/defendant has not explained the delay by giving sufficient reasons. He also supported the order passed by the trial Court by taking this Court to the order impugned in revision.



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7. It is settled law that the Court shall take a liberal approach in considering the petition to condone delay. The procedural law is only a hand maid of the substantive law and when there is a conflict between the procedural law and substantive law, the former must give way to the latter. The suit is for recovery of money based on a mortgage created over the immovable property. Hence, the money advanced by the bank is well secured. Therefore by giving an opportunity to the revision petitioner/defendant to contest the suit on merit no prejudice will be caused to the respondent/plaintiff bank. The proceedings of the District Collector referred to above makes it clear that the persons engaged in floriculture in Nilgiris District of Tamil Nadu are affected by natural calamity and consequently they are in a difficult financial position. This Court is not expressing any opinion on the recommendations for waiver of portion of the amount or one time settlement. The said proceedings is taken into consideration as a piece of material to come to a conclusion that farmers of floriculture were facing a difficult situation at that point of time. Therefore, this Court feels that the revision petitioner should be given an opportunity to contest the suit on merit by putting forth his defence.



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8. The discretion of the Courts while exercising the jurisdiction under Section 5 of the Limitation Act had been very well explained by the Apex Court in a judgment in the case of **N.Balakrishnan Vs. M.Krishnamurthy** reported in **[(1998) 7 SCC 123]**, wherein the Hon'ble Apex Court 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 founder on public policy. It is enshrined in the maxim interest reipublicae up up 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 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 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



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altogether. It must be borne in mind that he is a looser 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.”

9. 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. Although the money advanced by the respondent is secured by mortgage created over an immovable property, taking in to consideration the length of delay in filing a petition to set aside the *ex-parte* decree, this Court feels it appropriate to direct the revision petitioner to deposit a portion of the decretal amount before the trial court.

11. Considering the fact that the suit is for recovery of money based on mortgage and the interest of the respondent bank is secured by a



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creation of mortgage on an immovable property, an opportunity shall be given to the revision petitioner/defendant to fight the case on merit. Therefore, this Court proposes to put the revision petitioner on terms.

12. Accordingly, this Civil Revision Petition is allowed by setting aside the fair and decretal order passed by the learned Subordinate Court, Udagamandalam, in I.A.No.407 of 2014, on condition that the petitioner shall deposit a sum of Rs.1,00,000/- (Rupees one lakh only) to the credit of O.S.No.28 of 2012, on the file of the Subordinate Court, Udhagamandalam, within a period of six weeks from the date of receipt of copy of this order and on such deposit, the learned Subordinate Judge, Udagamandalam is directed to take up the petition to set aside the exparte decree and dispose of the same within a period of four weeks thereafter. In case, the exparte decree is set aside, the court below is directed to dispose of the suit within a period of six months from the date of setting aside the exparte decree. Consequently, connected miscellaneous petition is closed.

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Index: Yes/ No

Speaking Order / Non-Speaking Order



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S.SOUNTHAR, J.

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To

The Subordinate Judge of the Nilgiris,
Udhagamandalam.

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