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A.No. 4691 of 2021

in

C.S.No. 433 of 2013

V.BHAVANI SUBBAROYAN, J.

The applicants are the defendants 1, 2, 4, 10, 12 to 14 in C.S.No. 433 of 2013. They have filed the present application seeking to condone the delay of 1655 days in filing the petition to set aside the ex-parte decree passed on 23.12.2016 in C.S.No.433 of 2013 and to restore the suit to file.

2. Suit is filed by the plaintiff for the following reliefs:

(a) a declaration that the plaintiffs are the absolute and sole owner of the plaint schedule property,

(b) a direction to the defendants 1 to 13 to quit and deliver vacant possession of the suit property,

(c) a direction to the defendants 1 to 13 to pay damages for use and occupation at the rate of Rs.30,000/- per month in respect of the suit property from the date of plaint till the date of handing over vacant possession by the said defendants,



(d) a permanent injunction restraining the defendants 1 to 13 from in any manner alienating, conveying or encumbering or letting out the suit property to any person(s) and / or make any further improvements or constructions in the suit property,

e) a mandatory injunction directing the defendants 1 to 13 to demolish the existing structures that have been put up by them in the suit property and (f) for costs of the suit.

3. According to the applicants/defendants, they are illiterates and residing in Choolaimedu slum area along with 100 other slum dwellers. It is stated that they are earning their livelihood by engaging themselves as coolies/daily wage workers. While so, in the detailed account of the earlier suit in O.S.No. 7911 of 2007 filed before the XVIII Assistant City Civil Court, Chennai, the plaintiffs therein claimed themselves to be the owners of the properties in Choolaimedu slum area. However, after the deposition of PW1 in the suit, they have withdrawn the suit and filed five separate suits, namely, C.S.Nos.205, 418, 433, 434 and 776 of 2013. In all the aforesaid suits, summons were served on the defendants and also one Mr.Kannan, who has represented the defendants in the suits and with whom the defendants have entrusted the papers



relating to the case. The said Mr.Kannan, in turn engaged a counsel to defend the suits. In some of the suits, written statement were filed. As far as the present case is concerned, the defendants bona-fide believe that they have filed written statement and the case is pending. However, when they have received summons on 19.07.2017 in E.P.Nos.75 and 76 of 2017 in the other suit in C.S.No.418 of 2013, they came to know that an ex-parte decree was passed in C.S.No.418 of 2013. Therefore, they have filed an application in A.Nos.7506 of 2018 in C.S.No.418 of 2013 to condone the delay, and this Court has also condoned the delay and restored the suit in C.S.No.418 of 2013.

4. According to the applicants, even during the hearing of Application No.7506 of 2018 in C.S.No.418 of 2013, the applicants were of the firm belief that the instant suit in C.S.No.433 of 2013 is pending, in which they had filed their written statement. While so, as against the order passed in C.S.No.418 of 2013 dated 11.11.2020, O.S.A.No.13 of 2021 was filed by the plaintiff in C.S.No.418 of 2013. During the course of hearing of the said OSA, the applicants came to know that the present suit in C.S.No.433 of 2013 has been dismissed after the ex-parte decree dated 23.12.2016. Immediately, the present application has been filed by the



applicants for the relief narrated above.

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5. Counter affidavit has been filed by the contesting plaintiffs stating that the suit was filed for the relief of declaration and consequential recovery of possession. The applicants have been adopting dilatory tactics to drag on the proceedings to see that the plaintiffs could not take possession of the suit property. The applicants/defendants have been squatting on the property and refusing to budge by virtue of the present application. The applicants exposed themselves to one such dilatory tactics being adopted by them. It is not the case of the applicants that the learned counsel engaged by them had abandoned the case. On the other hand, the applicants themselves refer to the fact that their counsel along with the Advocate Clerk, have been pursuing the various cases filed against six slum dwellers. However, it is stated that their counsel, due to confusion and by inadvertence, did not file the written statement and hence, they were set ex-parte. In effect, the present application has been filed for condoning enormous delay of 1655 days in filing the application to set aside the ex-parte decree. The reasons stated in the affidavit filed in support of the present application are not sufficient to condone the huge delay. The applicants have not come forward with bona-fide reasons, but



their intention is only to drag on the proceedings. Therefore, the applicants are not entitled for condonation of delay even on payment of costs. The applicants have not defended the suit deliberately and they have been totally lethargic, inactive and not docile in defending the present suit. The inaction on the part of applicants, does not warrant condonation of huge delay. The contesting respondents/plaintiffs, therefore pray for dismissal of the application with exemplary costs payable to the plaintiffs.

6. On the above pleadings, this Court heard the learned Counsel on both sides, who elaborately reiterated the averments made in the application filed in support of the application as well as the counter affidavit. This is a case where the applicants seek to condone the delay of 1655 days in filing the petition to restore the suit, in which they were set ex-parte. In the affidavit filed in support of the petition, a reference was made to the five suits filed by different plaintiffs seeking the relief of declaration and recovery of possession of various parcels of the properties situated in Choolaimedu slum area. Admittedly, in some of the cases, written statement was filed and the suits are being contested.



7. According to the applicants, they were under the bona-fide belief that in the instant suit also, written statement was filed and it is pending, but only when O.S.A.No.13 of 2021 came up for hearing before this Court as against the order passed in the other suit, namely, C.S.No.418 of 2013, did the plaintiffs realize about their folly in not filing the written statement in the present suit. According to the applicants, their intention is not to drag on the suit proceedings and they were under the legitimate belief that they have already filed written statement in the present suit, as also the other four suits, in which, they were one of the parties. The applicants have also in the affidavit, tendered unconditional apology and fervently pleaded to condone the delay.

8. The learned counsel appearing for the applicants placed reliance on the judgment of the Hon'ble Supreme Court in the case of *Majji Sannemma alias Sanyasi Rao v. Reddy Sridevi and Others* reported in **2021 SCC Online SC 1260**. In that case, the Division Bench of the Andhra Pradesh High Court has condoned a huge delay of 1011 days in preferring the Second Appeal. Aggrieved by the same, the appeal has been preferred and the Hon'ble Supreme Court has observed that condoning the delay is a discretion to be exercised judiciously based on



facts and circumstances of each case. Even though law of limitation is a harsh statute which would affect the rights of the party, it has to be applied with all its reference as prescribed by the statute. It is further observed that where sufficient cause is made out, the Court, can by exercise of sound discretion, condone the delay to render complete justice.

9. In another decision, the Hon'ble Supreme Court, by order dated 25.02.2022 in *Special Leave to Appeal (C) Nos. 2054 - 2055 of 2022* in *Lingeswaran etc., v. Thirunagalingam*, which arose out of an order passed by this Court in CRP (MD) Nos.1688 and 1689 of 2019, by which, 467 days delay in filing the application to set aside the ex-parte decree, was condoned, has held that the law of limitation has not been enacted with the object of destroying the rights of the parties, but to ensure that they approach the Court for vindication of their rights without unreasonable delay. With such observation, the Hon'ble Supreme Court affirmed the order passed by the Madurai Bench of this Court and dismissed the Special Leave Petition.



10. Per contra, the learned Counsel appearing for the respondents/plaintiffs has placed reliance on the decision of this Court in the case of ***S.R.Vediappan and Others v. S.P.Ramalingam and Others*** reported in ***2020 SCC OnLine Mad 423***, in which, this Court refused to even condone the delay of 263 days in filing the First Appeal by observing that the delay has not been properly explained and the intention of the applicants therein is only to drag on the proceedings.

11. Heard the learned counsel for the parties and perused the records.

12. It is well settled that condonation of delay is a discretion to be exercised by the Court sparingly in order to render complete justice. The object with which law of limitation has been enacted, is not to oust the litigant from contesting the case on merits. In the present case, admittedly, the applicants were set ex-parte for not filing written statement. According to the applicants, there are five suits filed against them and others by different plaintiffs and they were under the impression that written statement was filed in the present suit also. However, only when O.S.A.No.13 of 2021 was taken up for hearing, did they realize that



the written statement was not filed in the present suit and they were set ex-parte on 04.04.2017.

13. Admittedly, in the connected case in C.S.No.418 of 2013, the defendant therein was set ex-parte and an application has been filed for condoning the delay and this Court was pleased to condone the delay and set aside the ex-parte decree. The appeal has been preferred against it and the same was also dismissed by the Division Bench of this Court. Thus, it is evident out of five suits, the written statement was filed in some of the suits and in few of the suits, written statement was not filed and the defendant was set ex-parte and subsequently the ex-parte decree was also set aside in the connected suit in C.S.No. 418 of 2013. Therefore, this Court feels it appropriate to condone the delay in the present case also and to offer one more opportunity to the defendants to defend the suit on merits.

14. Accordingly, this application is allowed. However, taking note of the huge delay in filing the present case by which the contesting respondents/plaintiffs would have been prejudiced, the applicants shall pay costs of Rs.5,000/- (Rupees Five Thousand Only) to the contesting



respondents/plaintiffs within a period of two weeks from the date of receipt of a copy of this order.

15. The defendants are hereby directed to deposit 25% of the amount claimed by the plaintiff in the suit for damages, from the date of filing of the plaint till the date of realization of the amount. The above amount has to be paid within a period of twelve weeks from the date of receipt of a copy of this order. It is made clear that it is only to avoid multiplicity of proceedings and to give quietus to the issue, this Court is inclined to pass the above order.

16. Post the matter in the first week of August, 2022 for "Reporting Compliance".

08.06.2022

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V.BHAVANI SUBBAROYAN, J.

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Pre-Delivery Order in

A.No. 4691 of 2021

in

C.S.No. 433 of 2013

08.06.2022



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Pre-Delivery Order in

A.Nos. 4312 & 4691 of 2021 in C.S.No. 433 of 2013

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Most Respectfully Submitted

by msm