



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No. 4141 of 2022

And

C.M.P.No.21600 of 2022

M. Duraisamy

...Petitioner

Vs

1. Tmt. Vasantha

2. Tmt. Akila

...Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 01.04.2022 in I.A.No. 09/2021 in O.S.No.109/2017 passed by the Principal District Judge, Krishnagiri.

For Petitioner

: Mr. K.P. Mohan Balaji

ORDER

The suit was instituted for partition. The plaintiff and the defendants are relatives and coparceners. The suit was instituted for partition in the year 2017. Summons served to the defendants, including the revision petitioner, who is the second defendant in the suit. Since the revision



petitioner failed to file written statement within the time limit, he was set ex-parte on 28.02.2018. Even thereafter, the revision petitioner has not approached the court to set aside the ex-parte order. He waited for more than 2 ½ years and filed an interlocutory application in I.A.No. 9 of 2021 under Order IX Rule 7 CPC read with Section 151 of C.P.C. seeking to set aside the ex-parte order, passed against the revision petitioner in the suit on 28.02.2018.

2. Question arises whether such a long delay needs to be condoned by the trial court. Admittedly, the revision petitioner was set ex-parte on 28.02.2018 and the interlocutory application to set aside the ex-parte order was filed in the year 2022. If the parties are allowed to take such a long time, to participate in the suit proceedings, this Court is afraid whether the trial court would be in a position to dispose of the suits within a reasonable period of time. Party to the suit on receipt of summons are expected to be vigilant in their appearance and contesting the suit in the manner known to law. If they have slept over the right, they cannot wake up one fine morning and approach the court for setting aside the ex-parte order. Therefore, court will not come to an aid of a person, who is not vigilant in establishing his right. Court will not reopen the cases beyond the reasonable period of time.



3. Unconardonable delay cannot be condoned. If it is reasonable and meager, courts are taking lenient view and allowing the parties to participate in the suit proceedings. However, if the delay is enormous it cannot be condoned in a routine manner and the courts have to consider the genuinity of the reasons for such a long delay and only thereafter issues are to be considered. The principles in this regard are well settled and enormous and unexplained delay cannot be condoned by the courts in a routine manner. Law of limitation is substantive and condonation of delay is an exception. Thus, the law on limitation is to be followed scrupulously by the Courts in the interests of all the parties. If the long delay is condoned, the same would cause prejudice to other parties. Thus, in the interests of justice and to avoid any undue prejudice to the other parties, courts cannot condone the delay in a routine manner in the absence of any genuine and acceptable reason.

4. In the present case, the revision petitioner has stated that due to old-age and ill-ness, the revision petitioner was unable to contact his counsel. The suit was posted on 28.02.2018, for filing written statement finally and after that due to Corona Period, he did not meet his counsel. Pertinently, the Covid-19 period commenced from 23.04.2020. In the



present case, the revision petitioner was set ex-parte on 28.02.2018, two years prior to the commencement of Covid -19 and thus the reason stated is frivolous and unacceptable.

5. Regarding old age, the learned counsel for the revision petitioner states that the petitioner was aged about 63 years. Therefore, this Court do not find that the said reason stated is also acceptable. Even in case of serious ill-health, the revision petitioner ought to have furnished medical records to establish his ill-ness or otherwise. In the absence of any such medical records, or documents to establish the genuinity of the reasons, the trial court has rightly rejected the interlocutory application filed by the revision petitioner.

6. Presuming that in the present suit 22 defendants are contesting, if one after another ex-parte order is passed by the courts and the revision petitioner files such interlocutory application after several year, the very purpose and object of the civil suit filed by the plaintiff would be defeated and undoubtedly, it would result in miscarriage of justice.

7. Finally the learned counsel for the petitioner contended that the



petitioner may be allowed by imposing cost. The practice of leniently condoning the long delay by imposing cost is opposed to law. The legal principles at no circumstances be compromised by condoning the unexplained delay by imposing cost. The issues are to be decided on merits and by applying the legal principles established. If the Courts started taking a lenient view for condoning an uncondonable delay by imposing cost, then the legal principles are diluted and it would result in miscarriage of justice. Greater prejudice would be caused to the opposite party, who is forced to defend his case beyond a reasonable period of time and after the issues became lapsed. More-so, the parties are tactically adopting such procedures for prolongation of the litigation and thus, the Courts are not expected to compromise the legal principles and condoning the long unexplained delay by imposing cost. The cost cannot compromise the legal principles. The irreparable loss and prejudice caused to the other parties cannot be compensated by some cost. Thus the practice of imposing cost for allowing uncondonable long delay is to be deprecated.

8. District Judiciary is not expected to develop the practice of allowing the petition or condoning the uncondonable delay by imposing cost, which is opposed to legal principles and would result in miscarriage of justice. Thus,



the contention raised by the revision petitioner that the petition is to be allowed by imposing cost is not based on any acceptable legal principles and thus, this Court is not inclined to consider the said arguments advanced.

9. Accordingly, the present Civil Revision Petition stands dismissed.

However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is also dismissed.

15.12.2022

Index : Yes / No

Speaking order / Non-Speaking order

mrn/Svn

To

The Principal District Judge,
Krishnagiri.



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C.R.P.No. 4141 of 2022



S.M.SUBRAMANIAM, J.

mrn/Svn

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