



C.R.P. (NPD) Nos.717 and 718 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.01.2022

Delivered on : 07.03.2022

CORAM :

THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

C.R.P. (NPD) Nos.717 & 718 of 2017

and

C.M.P.No.3614 of 2017

Saigal Soundaressane

... Revision Petitioner
in both petitions

Vs.

1.Pouchepavady @ Pouchepagandy
2.Illangovane
3.Ilansegarin

... Respondents
in both petitions

Prayer : Civil Revision Petitions in C.R.P. (NPD) Nos.717 and 718 of 2017 filed under Article 227 of the Constitution of India, against the fair and decretal orders, dated 05.04.2014, in I.A.Nos.813 and 814 of 2012 respectively in I.A.No.204 of 2011 in O.S.No.73 of 1999 on the file of the Family Court at Pondicherry.



C.R.P. (NPD) Nos.717 and 718 of 2017

For Petitioner : Mr.Adithya Varadarajan
for Mr.A.E.Ravi Chandran
in both petitions

For Respondents : Mr.Prakash Adiapadam
in both petitions

COMMON ORDER

These Civil Revision Petitions have been filed against the orders, dated 05.04.2014, made in I.A.Nos.813 and 814 of 2012 in I.A.No.204 of 2011 in O.S.No.73 of 1999 on the file of the Family Court at Pondicherry, dismissing for default the petitions to condone the delay of 74 days in filing the application for restoration of I.A.No.204 of 2011 in O.S.No.73 of 1999 and to restore the I.A.No.204 of 2011.

2.For the sake of convenience, the petitioner and the respondents shall hereinafter be referred to as “defendant” and “plaintiffs” respectively.

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



WEB COPY

- The plaintiffs filed the suit against the defendant to declare the 1st plaintiff as the legally wedded wife and the 2nd and 3rd plaintiffs as the legitimate sons of the defendant.
- Admittedly, the defendant is a French National and is living at France.
- Therefore, the defendant filed his written statement through his Power Agent, disputing the very marriage between the 1st plaintiff and the defendant. He has also taken the plea of *alibi* on the date of alleged marriage.
- After framing the issues and recording evidence on either side, the trial Court insisted for the appearance of the defendant, since the defendant has to be enquired personally with regard to the material particulars and for proper adjudication of the issues, inasmuch as the plaintiffs have produced various letters allegedly written by the defendant to the 1st plaintiff, through which, the defendant has admitted his relationship and that he has financially supported the plaintiffs for their livelihood.



WEB COPY

- The application in I.A.No.151 of 2005 filed by the Power Agent of the defendant to dispense with the appearance of the defendant was dismissed by the trial Court and the revision preferred against the said order in *C.R.P.(PD) No.1393 of 2005* was also dismissed by this Court, stating that the Family Court, being a matrimonial Court, is free to lay down its own procedure to arrive at a settlement in respect of the subject matter of the suit or proceedings.
- However, even thereafter, the defendant did not appear before the Court. Therefore, the defendant was set *ex parte*.
- The suit was decreed *ex parte* by judgment and decree dated 30.01.2007.
- Thereafter, the defendant filed I.A.No.204 of 2011 to condone the delay of 1387 days in filing an application to set aside the *ex parte* decree.
- Even after giving several opportunities for appearance of the defendant and for enquiry in I.A.No.204 of 2011, the defendant did not appear before the Court and hence, I.A.No.204 of 2011 was dismissed for default on 12.04.2012.



C.R.P. (NPD) Nos.717 and 718 of 2017

WEB COPY

- Thereafter, the defendant filed two applications through another Power Agent, one Vedanayagi, viz., I.A.Nos.813 of 2012 to condone the delay of 74 days in filing the application to restore I.A.No.204 of 2011 and I.A.No.814 of 2012 to restore I.A.No.204 of 2011.
- However, neither the defendant nor his power agent appeared before the Court for enquiry for several hearings in those applications, hence, both the applications were dismissed for default on 05.04.2014.

4.Challenging the said order, dated 05.04.2014, made in I.A.Nos.813 and 814 of 2012, the defendant has filed the present Civil Revision Petitions.

5.The learned counsel for the defendant/revision petitioner submitted that the defendant is domiciled in France for the past 50 years with his family; the defendant's legitimate wife is one Dhanalatchoumy, who died at France on 28.05.2009 and the couple has five children. The learned counsel further submitted that the defendant is aged more than 80 years and he is staying with one of his daughters and he is suffering from physical disability, preventing him from walking in a normal manner, and for the



past 20 years, he is suffering from heart disease requiring continuous medication and treatment. He would further submit that, on the date of the alleged marriage on 04.12.1955, the defendant was travelling in ship and hence, the alleged marriage is imaginary.

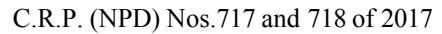
6.The learned counsel for the defendant further submitted that the defendant appeared in person before the Family Court on 28.03.2011 and while filing I.A.No.204 of 2011 to condone the delay of 1387 days in filing the application to set aside the *ex parte* decree, he filed yet another application under Section 13 of the Family Courts Act, to permit him to have legal assistance through Mr.J.Cyril Mathias Vincent, Advocate, however, till date, the said application is not yet numbered. The learned counsel further submitted that the defendant could not appear before the Court due to his old age and illness and he was unable to travel alone from France without help, but, the condone delay petition was dismissed for default for his non-appearance. Moreover, the defendant was confined to bed for treatment from 05.04.2012 till 16.07.2012, hence, he could not file the restoration petition on time.



7.The learned counsel for the defendant further submitted that the defendant appointed one Vedanayagi, his distant relative, as Power Agent, vide Power of Attorney dated 24.09.2012 executed at France to represent his case before the Family Court, and the said Power Agent filed I.A.Nos.813 and 814 of 2012 to condone the delay and to restore I.A.No.204 of 2011. The learned counsel would further submit that the Power Agent was more than 75 years old and she was called by the plaintiffs on 20.03.2013 and she was openly threatened not to attend the hearing which was posted on 21.03.2013. The Power Agent was prevented from attending the hearing on 21.03.2013 and subsequent dates, as a result of which, the applications to condone the delay of 74 days in filing the restoration petition in I.A.No.813 of 2012 and the restoration petition in I.A.Nos.814 of 2012 were dismissed for default. The learned counsel further submitted that the Power Agent has also filed an affidavit, dated 23.01.2017, to substantiate the same, hence, prayed that an opportunity may be afforded to the defendant to put forth his defence in the case, by allowing these Civil Revision Petitions.



8. Per contra, the learned counsel for the plaintiffs/respondents submitted that, even though many opportunities were given to the defendant, he has not appeared for enquiry before the Court. The learned counsel further submitted that the defendant has not produced any proof to show that he was confined to bed from 05.04.2012 till 16.07.2012, even if so, the delay between 16.07.2012 till filing of the applications on 26.07.2012 has not been explained. The learned counsel further submitted that, though the Family Court insisted for the appearance of the defendant on several occasions, and also passed an order to that effect, which was also confirmed by the High Court, the defendant failed to appear before the Family Court and allowed the suit to be decreed *ex parte*. Thereafter, the condone delay petition filed by the defendant to set aside the *ex parte* decree was dismissed for default. Further, the petitions for restoration and condonation of delay also were dismissed for default. Hence, the learned counsel submitted that the defendant is not interested in prosecuting the matter and prayed for dismissal of the present revision petitions.



10. The present revisions are against the orders dismissing the petitions for condonation of delay and for restoration, for default. It is well settled that, in a petition to condone delay or in a petition to restore, the Court has to test as to whether there is sufficient cause which prevented the party from filing the petition within the period of limitation or from appearing before the Court on the specific date of hearing, respectively.

11. Admittedly, the impugned applications for condonation of delay and restoration were filed on 26.07.2012 through the Power Agent of the defendant. The Power of Attorney is said to be executed on 24.09.2012, which appears to be subsequent to the filing of the impugned applications. I.A.No.204 of 2011 was dismissed for default on 12.04.2012. The reason stated by the defendant in the affidavit in support of condone delay petition is that the defendant was very old and was bed-ridden from 05.04.2012 to 16.07.2012 due to illness, however, there is nothing on record to satisfy the Court in respect of the same, nor the Power Agent appeared before the



C.R.P. (NPD) Nos.717 and 718 of 2017

Court to substantiate the cause. Be that as it may, the period between 16.07.2012 and 26.07.2012 is completely not explained.

12.The Power Agent has filed an affidavit along with this Revision stating the cause for non-appearance before the Court. In the affidavit filed by the Power Agent, she has stated that, after filing the impugned applications on 26.07.2012, she appeared before the Court on 01.11.2012, 04.01.2013, 05.02.2013 and 21.02.2013; after that, when the case was posted for enquiry on 21.03.2013, on the previous date, she was warned by the 2nd and 3rd plaintiffs not to come to Court and to conduct the case; in view of her old age and warning of dire consequences and the political influence and criminal antecedents of the plaintiffs, she did not appear on 21.03.2013 and the subsequent dates to pursue the impugned applications.

13.In the backdrop of the above, on a perusal of the impugned order in condone delay petition, it is seen that the defendant/Power Agent did not appear for several hearings and the defendant was directed to pay Rs.200/- towards day costs on 27.02.2014; even when the matter was called twice on 05.04.2012, the defendant/Power Agent did not appear, hence, the petition



was dismissed for default, so also the restoration petition.

WEB COPY

14.It is very clear that, after the alleged threat on the previous day of hearing on 21.03.2013, the impugned applications were dismissed for default only on 05.04.2014, i.e. after more than one year. In the interregnum, the Power Agent could have very well informed her Principal about the threat and to appoint any other Power Agent, or could have approached the Police for protection. Even the defendant, being fully aware of the Court proceedings and having appointed a Power Agent to prosecute his case, has failed to be diligent in prosecuting the case and has remained inactive after appointing a Power Agent. Though the defendant was very well aware of the necessity of his presence before the Court, after the dismissal of his petition by this Court to dispense with his personal appearance, the defendant ought to have been cautious enough to avoid any default on his part and he cannot shirk his obligations by citing his old age or illness associated therewith or helplessness, inasmuch as he is not in solitude at France, but admittedly living with his family.



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.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.”*

17.In **Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and others [2013 (12) SCC 649]**, the Hon'ble Apex Court has extracted the ratio laid down in **Balwant Singh v.**



Jagdish Singh and others [2010 (8) SCC 685] as follows :

WEB COPY

“12. ... The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right, has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.”

18. In the light of the above decisions and discussion in the foregoing paragraphs and also having regard to the inactive behaviour of the defendant, this Court is not inclined either to condone the delay or to restore the petition in I.A.No.204 of 2011.



C.R.P. (NPD) Nos.717 and 718 of 2017

19. Accordingly, these Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

07.03.2022

Internet : Yes
Index : Yes / No
Speaking order / Nonspeaking order

To

The Judge,
Family Court,
Pondicherry.

S. KANNAMMAL, J.



WEB COPY



C.R.P. (NPD) Nos.717 and 718 of 2017

mkn

C.R.P. (NPD) Nos.717 & 718 of 2017

07.03.2022