



C.M.P.No.18007/2016 in
A.S.(SR).No.76968/2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.06.2023

PRONOUNCED ON : 23.06.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Petition No.18007 of 2016
in
Appeal Suit (SR). No.76968 of 2016

1. Amudha

2. Vijayalakshmi

... Defendants 5 & 6/Appellants

Versus

1. Muthu Chezhian

2. Vanitha

3. Ellanchezhian

4. Senthilkumar

5. Balasubramanian

6. Manimegalai

7. Suseela

8. Barakath Ali

9. Ramamurthi

10. Gurusami

11. Thirumaran

12. Sundaramurthy

13. Muralikumaran

14. K. Vasuki

... Plaintiffs/ Respondents 1 &



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- 15.Sowmiasri
- 16.Moideen
- 17.Hasan
- 18.Thillai Govindan
- 19.Murugan
- 20.Syed Ali
- 21.Chandrasekar
- 22.Shanmugam

23. Sri Medicals,
Rep. by its Proprietor,
No.59, Mela Veedhi,
Chidambaram,
Chidambaram Taluk.

24. Casino Bakery,
Rep. by its Proprietor,
No.58, Mela Veedhi,
Chidambaram,
Chidambaram Taluk.

... Defendants 1 to 4, 7 to 24/

Respondents 3 to 24

[Respondents 3 to 9, 11, 13 to 24 remained ex-parte before trial Court,
hence notice to them dispensed with]

Civil Miscellaneous Petition filed under Order XLI Rule 3(A) of the
Code of Civil Procedure praying to condone the delay of 324 days in
preferring the above Appeal Suit.

A.S.(SR).No.76968 of 2016 filed under Order SLI Rule 1 of the Code
of Civil Procedure against the Judgment and Decree dated 28.08.2015 made
in I.A.No.873 of 2011 in O.S.No.3 of 2008 on the file of the learned II
Additional District Judge, Chidambaram.



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For Appellants : Mrs.G.Sumitra
For R1 & R2 : Mr.A.Muthukumar
For R3 to R9,
R11, R13 to R24 : Ex-parte
For R10 & R12 : No appearance

JUDGMENT

(The Judgment of the Court was delivered by K.RAJASEKAR,J.)

This Civil Miscellaneous Petition has been filed by the defendants 5 and 6 to condone the delay of 324 days in filing the Appeal Suit against the final decree passed in I.A.No.873 of 2011 in O.S.No.3 of 2008, dated 28.08.2015 on the file of the learned II Additional District Judge, Chidambaram.

2. The petitioner states that the plaintiffs filed a suit in O.S.No.3 of 2008 for partition and separate possession claiming 9/40 share in the suit properties. After receiving the summons, they entrusted the matter to their elder brother Mr.Senthilkumar, who was arrayed as second defendant in the suit. But the second defendant colluded with the plaintiffs



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and acted against the interest of this defendants and allowed the suit to be decreed as ex-parte. Subsequently, final decree proceedings have been initiated and Commissioner for dividing the suit properties was also appointed. Thereafter, the defendants 5 and 6 came to know about the decree and filed a petition before the trial Court to set aside the ex-parte decree, dated 14.07.2010 passed against them along with the condonation of delay of 1714 days in filing the set aside petition. The trial Court has dismissed the same. Aggrieved over the same, the Civil Revision Petition has been filed before this Court and the same is pending.

3. Subsequently, the trial Court has passed final decree in I.A.No.873 of 2011 on 28.08.2015. The petitioners filed the copy application on 23.05.2016 for getting the certified copy of the final decree and was received on 25.05.2016. The sixth defendant /Manimegalai was suffered by viral infection resulting in severe joint pains and made her to immobilize for more than three months from January 2016. In the month of May 2016, she met her counsel at Chennai and gave instructions to file Appeal along with the Civil Revision Petition.



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4. By oversight, Civil Revision Petition alone challenging the preliminary decree was filed and no appeal was filed within time. Hence, the petitioners gave instructions to the present counsel to file this appeal. Accordingly, appeal has been filed along with the delay of 324 days.

5. The plaintiffs have filed counter and stated that the first respondent is deaf and dumb and since his brothers and sisters have not accepted for partition, he filed a suit in O.S.No.9 of 2006 on the file of the learned Principal District Judge, Cuddalore.

6. Before the trial Court, the defendants including the subsequent purchaser of some of the properties were remained ex-parte and the trial Court has decreed the suit, declaring 9/40 shares in favour of the plaintiffs. Thereafter, final decree petition was also filed in I.A.No.873 of 2011 and final decree was also passed.

7. At this juncture, the defendants 5 and 6 filed two separate petitions in I.A.No.387 of 2015 and I.A.No.434 of 2015 to condone the



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delay in filing 1714 days in setting aside the ex-parte decree, dated 14.02.010. Both the petitions were dismissed.

8. Aggrieved over the same, C.R.P.No.425 of 2017 and C.R.P.No.426 of 2017 were filed and this Court has dismissed both the C.R.Ps on 06.07.2021. Thereafter, the petitioner's brothers have separately filed two applications. One for setting aside the ex-parte decree and another for condoning the delay in filing the same. These two applications were also dismissed on merits. Thereafter, the petitioners mother have filed two similar petitions and the same were also dismissed.

9. As on today, preliminary decree has become final. Even though, the petitioners have come forward to challenge the ex-parte preliminary decree, they have not come forward to challenge the final decree, dated 28.08.2015. Each and every stage, the defendants have filed several applications only to set aside the ex-parte decree but they have not prefer any appeal in time.



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on record.

10. Heard both sides and also perused the materials available

11. The Hon'ble Supreme Court in Umpteen number of decisions, considered the scope of Section 5 of the Limitation Act reiterated that there should be sufficient cause for condoning the delay.

12. A decision of the Hon'ble Supreme Court reported in **2015 (1) SCC 680 [H.Dohil Constructions Company Private Limited vs. Nahar Exports Limited and another]**, wherein, the Apex Court held that the failure of the respondents therein, in not showing due diligence in filing appeals and enormous time taken in re-filing can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bonafides.

13. In a decision of a Division Bench of this Court, in which, one of us (**S.Vaidyanathan, J.**) was a member to the Bench, in **MANU/TN/0876/2018 (M/s. Ruskin Sea Foods Limited vs. M/s. Evergreen Sea Food Pvt. Ltd.)**, this Court dismissed the condone delay



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petition (765 days delay in preferring the appeal therein) and the relevant paragraph of the same reads as follows:

“32. Ordinarily, the 'Condonation of Delay' is a matter of discretion to be exercised by the Concerned Court. Also, it is true that the length and breadth of delay is not relevant, but the acceptance of explanation can only be a relevant criterion for the concerned Court to deal with/condone the aspect of 'Condonation of Delay'. However, in this regard, the Petitioner/concerned litigant is to offer/ascribe sufficient reasons or project sufficient cause or good cause to condone the delay with a view to enable the Concerned Court to take a liberal view with a view to secure the ends of justice.”

14. It is to be noted that the Court, in exercising discretion, particularly in the condone delay petitions, has to not only see the conduct, behaviour and attitude of a party relating to inaction or negligence, but also to find that the delay should not be huge. It is the basis phenomenon that the fundamental principles should weigh the scale of balance of justice in respect of both parties and the principles laid down by Courts cannot be



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given a go-by without taking liberal approach. There is a trend now-a-days that the delay is not taken in a serious manner.

15. Admittedly, in this case, the defendants 5 and 6 have been served summons for their appearance before the trial Court and they have also engaged advocate and filed written statement by joining hands with the second defendant. After filing written statement, they have not come forward to contest the suit and thereafter, preliminary decree for partition, allotting 9/40 shares in favour of the plaintiffs passed by the trial Court.

16. According to the defendants 5 and 6, that they were not aware about passing of the preliminary decree and their brother, second defendant has not informed them about the stage of the case. They came to know about the passing of preliminary decree after the plaintiffs filed petition for final decree in I.A.No.873 of 2011. Even thereafter, they have not participated in the final decree proceedings. After filing of the Advocate Commissioner's Report before the trial Court, final decree was passed on 28.08.2015. Admittedly, order in petition to set aside the ex-parte decree in I.A.No.387 of 2015, filed by the defendants and final decree was passed on



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same day. This shows that the plaintiffs were aware about the final decree which was passed on 28.08.2015, but they have not taken any steps to get the certified copy of the same. The plaintiffs have filed copy application only on 23.08.2016 and they have not stated any reason for the delay in making application to get the certified copy after 28.08.2015 till 23.08.2016.

17. Similarly, this defendants have challenged the dismissal of their set aside petition, but they have not shown any diligence in filing the petition to challenge the final decree. It is stated by the defendants that the sixth defendant was suffered from viral infection and she was immobilized for more than three months from January 2016 and they were able to file this condone delay petition before this Court only in the month of November 2016. There is no reason stated in the petition for not filing the appeal after passing of final decree and there is no reason stated for the delay between May 2016 till November 2016. This defendants have not preferred any supporting documents or any materials to support their case that the delay caused herein is not intended and they failed to show that inspite of their diligent steps, this delay has occurred.



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18. The above facts are clearly shows that the plaintiffs have not explained the delay either properly or satisfactorily so as to condone the delay on sympathetic grounds or they have not make some sufficient cause to enable the Court to take a view to secure the ends of justice for condoning the delay.

19. It is a specific case of the plaintiffs that the first respondent is a deaf and dumb person and he has come forward to file the suit in the year 2006 onwards and final decree was passed in the year 2015 itself. The narration of events given by the plaintiffs in their counter that after dismissal of the final decree petitions of the defendants 5 and 6 their brothers have separately filed two I.A.No.236 of 2015 and I.A.No.275 of 2015 to set aside the ex-parte decree along with condoning the delay and the same were also dismissed by the trial Court. Thereafter, the plaintiff's mother separately filed two other similar applications and those applications were also dismissed.

20. These facts shows that after jointly objected for partition by filing written statement and after passing of the final decree, defendants



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started filing applications one by one separately, with a view to defeat the rights of the first respondent, who is deaf and dumb and to defeat his rights to enjoy the fruits of decree. Hence, this Court is unable to exercise its discretion for the reasons stated supra.

21. In the result, the Civil Miscellaneous Petition to condone the delay of 324 days in preferring the above Appeal Suit is hereby dismissed with costs. Consequently, the Appeal Suit is dismissed at SR stage itself.

(S.V.N.,J.) (K.R.S,J.)
23.06.2023

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No
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To:

1. The II Additional District Judge,
Chidambaram.
2. The Section Officer,
V.R.Section, High Court,
Madras.



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