



CRP.No.1586 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.04.2023

CORAM :

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

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and

CMP.No. 9668 of 2020

Chelladurai

... Petitioner

Versus

R. Subramanian
Represented by its Power Agent
Ramamurthy

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, prays to set aside the fair and decretal order dated 03.12.2019 passed in I.A.No. 525 of 2017 in O.S.No. 243 of 2007 on the file of Principal Subordinate Judge, Chengalpattu.

For petitioner : Mr.K. Elango

For Respondent : Mr. R. Thiyagarajan
for Mr.K.M. Subramanian



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ORDER

WEB COPY The first defendant in O.S.No. 243 of 2007 is the revision petitioner.

He has filed the present Civil Revision Petition against the order dated 03.12.2019 passed in I.A.No.525 of 2017 in O.S.No.243 of 2007 on the file of Principal Subordinate Judge, Chengalpattu.

2. The I.A.No. 525 of 2017 has been filed by the revision petitioner under Section 5 of the Limitation Act, praying to condone the delay of 3376 days in filing the application to set aside the ex-parte decree dated 08.08.2008.

3. The suit in O.S.No.243 of 2007 was filed for declaration to declare that the plaintiff is the owner of the suit property and for consequential permanent injunction restraining the defendant from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property by the plaintiff.



4. The suit was filed on 06.08.2007. In the suit, notice was served to the revision petitioner/first defendant. However, the notice could not be served and it was returned unserved. Therefore, paper publication was effected as substituted service and thereafter, Ex.A1 to Ex.A6 were marked on behalf of the plaintiff. The plaintiff also examined one Ramaswamy Iyer as PW1 and thereafter on 08.08.2008 ex-parte decree was passed by the trial Court.

5. On 06.12.2017, the revision petitioner/first defendant has filed the instant application under Section 5 of the Limitation Act. According to the first defendant, in the affidavit filed in support of the application in I.A.No. 525 of 2017, among other things, it was stated that the first defendant has purchased the suit property by a registered sale deed dated 12.11.2004 executed by the second defendant and he has also obtained patta. However, he shifted his residence from Chennai to Namakkal and residing along with his family members. While so, recently, he came to know about the sale in favour of the plaintiff by M/s. Assure Constructions and the suit was filed by the plaintiff before the Court below. It is the



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specific contention that he was residing only at Namakkal and wantonly the plaintiff had shown his address at Chennai and served the notice in the suit, knowing fully well that he is not residing there. Therefore, it is specifically pleaded that he must be given an opportunity to contest the suit. The ex-parte decree has been passed without serving notice to enable him to defend the suit. The suit is vexatious and by virtue of the ex-parte decree passed in the suit, his substantial property right has been lost. Therefore, he has filed the instant application.

6. A counter affidavit has been filed by the plaintiff in the application in I.A. No. 525 of 2017 specifically stating that the revision petitioner/first defendant had executed Power of Attorney in favour of one Sivakumar. The said Sivakumar in turn sold the property to M/s. Assure Constructions on 14.06.2010. Subsequently, M/s.Assure Construction sold the suit property along with several others parcels of land in favour of the plaintiff and others. In fact, in connection with the sale one of the plots bearing plot number 20 belonging a suit in O.S.No.221 of 2011 was filed by M/s. Assure Construction. In O.S. No. 221 of 2011, the revision



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petitioner/first defendant was a party and he has filed his written statement in that suit. In O.S. No. 221 of 2011 reference was made to the instant suit in O.S. No. 243 of 2007 and therefore, the revision petitioner/first defendant cannot feign ignorance about the filing of the instant suit. In any event, when the revision petitioner/first defendant had executed Power of Attorney Deed in favour of one Sivakumar, he ought to have been diligent in contacting his Power Agent about the acts done by his Power Agent. However, the revision petitioner/first defendant simply stated that he was not at all in touch with the Power Agent and he was not aware that his Power Agent sold the properties to M/s. Assure Construction. Therefore, it was submitted that the revision petitioner/defendant had knowledge about the filing of the present suit and the ex-parte decree passed on 08.08.2008. The revision petitioner had gone into the deep slumber and had suddenly woken up and filed the instant application. According to the plaintiff, much water has flown under the bridge and at this stage, the application filed by the revision petitioner/first defendant need not be entertained. It is also submitted that the reasons stated in the petition filed by the revision petitioner/first defendant for condonation of delay is false. When the



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revision petitioner/first defendant had knowledge about the pendency of the suit, his statement in the present application is not only false but misleading.

Therefore, the plaintiff prayed for dismissal of the application.

7. The trial Court has allowed the parties to let in evidence in I.A.No.525 of 2017. The revision petitioner/first defendant examined himself as PW1 and marked Ex.P1 to Ex.P3. The respondent did not examine any witness or mark any documents. On consideration of the oral and documentary evidence, the trial Court refused to accept the theory that the revision petitioner/first defendant has no knowledge about the pendency of the present suit. The trial Court referred to the written statement filed by the revision petitioner in the suit in O.S.No.221 of 2011. In the written statement the revision petitioner/1st defendant referred to the instant suit and therefore, the trial Court refused to accept the plea of the revision petitioner herein. The trial Court has also pointed out that it is unbelievable to hear from the revision petitioner to state that he has not contacted his power agent at all for a long time and he has no knowledge about the alienation of his property by his agent. Therefore also the trial Court refused to condone



the delay and dismissed the application.

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8. The learned counsel for the revision petitioner placed reliance on several decisions to contend that an application under Section 5 of the Limitation Act, has to be considered liberally. He would submit that while considering an application under Section 5 of the Limitation Act, the Court need not adopt straight jacket formula to oust a litigant from defending the proceedings before the Court. He has also submitted that length of delay is not a criteria but the reasons for the delay has to be weighed by the Court while dealing with the application under Section 5 of the Limitation Act. For this purpose several decisions have been relied on by the counsel for the petitioner namely (i) **Sarasu v. Ravi**, reported in **2016 (5) CTC 117** (ii) **N. Balakrishnan v. M.Krishnamurthy** reported in **1998 (II) CTC 533** (iii) **C. Subramaniam v. Tamil Nadu Housing Board, represented by its Chairman and Managing Director** reported in **2000 (III) CTC 727** (iv) **G.P. Srivatasava v. R.K. Raizada & Ors.**, reported in **2000 (II) CTC 27** (v) **N.P. Srinivasan v. S.Santhalakshmi** reported in **2013 (3) CTC 220** (vi) **C.K. Lokesh v. P.E. Panduranga Naidu** reported in **1997-2-LW.645** (vii)



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Maniben Devraj Shah v. Municipal Corporation of Brihan, Mumbai,
reported in **(2012) 5 SCC 137 (viii)** **Lanka Venkateswarlu (dead) by LRs**
v. State of Andhra Pradesh and Ors, reported in **(2011) 4 SCC 363 (ix)**
B. Hashim v. S. Abitha reported in **2016 (3) MWN (Civil) 501 (x)** and
Mahaboob Bee and Ors v. Amina Bee (died) and another reported in
2017 (1) MWN (Civil) 626.

9. By pointing out the above decisions, the learned Counsel for the revision petitioner only prayed that an opportunity ought to have been given by the trial court to the revision petitioner to contest the suit on merits. However, an ex-parte decree is sought to be put against the revision petitioner/first defendant without giving adequate opportunity to defend the suit. The reasons pointed out by the trial Court that the revision petitioner had knowledge about the suit is a matter to be considered only during the course of trial and not at the time of considering the application for condoning the delay. The defence of the revision petitioner in the suit has to be considered and the suit has to be adjudicated on merits without shutting the doors of justice. Therefore, the learned counsel for the revision



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petitioner/1st defendant submits that the revision petitioner has to be given one more opportunity to contest the suit on merits and he prayed for allowing the Civil Revision Petition.

10. Per contra, the learned counsel for the respondent has taken this Court to the order passed by the trial Court and submitted that the reasons assigned by the revision petitioner for condonation of the delay are not only *ipsi dixit* but also false. There was a suit filed by M/s. Assure Construction in which the revision petitioner has filed his written statement. In the written statement, a clear reference has been made about the filing of the present suit. When the revision petitioner was examined as PW1 a specific question was posed to him as to whether he has intimated the postal department about the change of his address to Namakkal. However, the answer is an emphatic "no". Further, to a specific question posted to the revision petitioner as to whether he questioned his Power Agent Sivakumar for having alienated the property covered under the said Power of Attorney Deed, he has simply stated that he did not contact his Power Agent from 2016 until 2017. On the basis of the above, the trial Court has specifically



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held that a normal prudent person who had executed a Power of Attorney Deed cannot be expected to remain silent without ascertaining from his Agent about the status of the property covered under the Power of Attorney Deed. Therefore, the trial Court has rightly held that the reasons assigned by the revision petitioner/first defendant for condoning the delay are not only satisfactory but they are contrary to the facts pleaded in the application filed under Section 5 of the Limitation Act. He has also placed reliance on the decisions of this Court in the case of **United India Insurance Company v. Praveena Paul and others**, reported in (1993) 2 MLJ 174, dated 17.11.1992, wherein, in Paragraph No.6, it was held by the Division Bench of this Court as follows:-

In the instant case, the judgment was delivered by the tribunal on 04.12.1991. The application for obtaining the judgment and decree was made on 15.12.1991. There was delay of 11 days in making the application. It is seen that the copies were made ready on 16.03.1992. The appeal was filed on 23.10.1992. There is a delay of 131 days in filing the appeal. Even though the certified copies of judgment and decree were received on 16.03.1992, what all is stated in the affidavit



in support of the petition is that the certified copies of judgment and decree were sent to the Regional Office at Madras for scrutiny by the legal department to decide on the question of advisability of filing an appeal. The Managers concerned who had take a decision in the matter and advise the Divisional Office were not readily available as they were deputed to attend to certain policy matters of importance. Lastly it is stated that in Government undertaking like the petitioner, the administrative delay cannot be avoided for more reasons than one. In our view this is not a sufficient cause for condoning the delay. The petitioner has not chosen to give any sufficient cause for the delay of 131 days. The averment that the administrative delay cannot be avoided in Government undertaking for more reasons than one cannot be accepted and it is not a valid reason to condone the delay. The petitioner has failed to come forward as to how the delay has occurred. He must give fuller details with dates as to when the papers were sent to the Regional Office, when the managers concerned were deputed to attend policy matters of importance, when they advised the petitioner to file appeal and why such delay has occurred. The affidavit is bereft of details. It is well established that every day's delay has



to be explained properly and there must be reasonable and acceptable explanation for the delay. In this case except the averment that the administrative delay cannot be avoided, there is no acceptable reason for the delay with all particulars. We are not happy with the reasoning given in para 5 of the affidavit wherein it is stated, "I most respectfully submit in a Government Undertaking like the petitioner administrative delay cannot be avoided for more reasons than one. "This is not a valid and proper explanation for the delay. The Government undertaking cannot be equated with the Government and they are expected to give details with regard to the delay. We cannot condone the delay if it is simply stated, "administrative delay". Hence, we are of the view that this is a case where the petitioner has not satisfactorily explained the delay, which is inordinate, in filing the appeal. Accordingly, the petition is dismissed.

11. By pointing out the above decisions, the learned counsel for the respondent prayed for dismissal of the revision petition.



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WEB COPY 12. Heard both sides and perused the materials placed on record.

13. This is an application filed under Section 5 of the Limitation Act, to condone the delay of 3376 days in filing the application to set aside the exparte decree dated 08.08.2008. The revision petitioner is the 1st defendant in the instant suit in O.S.No. 243 of 2007. The respondent/plaintiff has filed the suit for a declaration and for consequential permanent injunction. According to the respondent/plaintiff, he purchased the suit property from his vendor M/s. Assure Constructions. His vendor M/s. Assure Constructions purchased the property from one Sivakumar, Power Agent of the revision petitioner/first defendant. The suit came to be filed since some third persons have attempted to interfere with the property of the plaintiff. Since the suit property is a vacant land the plaintiff filed the suit for declaration and consequential permanent injunction.



14. In the suit, notice was sent to the revision petitioner/1st defendant, but it could not be served. Therefore, after effecting paper publication and recording the exparte decree evidence of the plaintiff, the revision petitioner/1st defendant was set exparte on 08.08.2008. After 11 years the instant application in I.A.No.525 of 2017 was filed by the revision petitioner/1st defendant on two grounds.

15. The first ground is that he was not served with any notice in the suit and he had shifted his residence from Chennai to Namakkal and therefore, he cannot be expected to contest the present suit.

16. In I.A. No. 525 of 2017 the revision petitioner examined himself as PW1 and marked three documents. During the course of his cross examination he was specifically asked as to whether he has informed the postal department about his shifting of his residence, for which his answer was "No". When the revision petitioner/first defendant shifted his residence from Chennai to Namakkal, he ought to have been prudent to intimate the postal department about shifting of the residence so that any



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letters or communication that may be addressed to the plaintiff could be re-directed to the new address. When the revision petitioner did not give any such intimation, he cannot shift the blame for non-service of notice in the suit.

17. Notwithstanding the above, the plaintiff admittedly has given a Power of Attorney Deed in favour of one Sivakumar way back in 2006. The said Sivakumar has sold the property to M/s. Assure Constructions. The plaintiff has purchased one of the pieces of property from M/s. Assure Constructions. When the revision petitioner/1st defendant was confronted as to whether he enquired his Power Agent as to the status of the lands covered under the Power of Attorney deed, he has simply stated that he did not contact his Power Agent. Therefore, the trial court has taken an adverse inference by concluding that no prudent person could remain without contacting his Power Agent with whom a valuable property was parted with for sale.



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18. Yet another circumstances which writ larg against the case of the revision petitioner is that M/s. Assure Constructions has filed a suit as against the revision petitioner himself. In the suit, the revision petitioner has filed a written statement referring to the present suit filed by the plaintiff. However, he has not taken any steps to ascertain as to what has happened to the suit filed against him. While so, the averments made by the revision petitioner in I.A. No. 525 of 2017 as if he was not aware of the instant suit cannot be accepted. The averment that he was not served any notice and he must be given to opportunity to defend the suit after 11 years of passing exparte decree cannot also be accepted. It is no doubt true that while considering the application under Section 5 of the Limitation Act, the Court cannot must be liberal, but the theory of liberal approach cannot be invoked in the present case. In this case, the revision petitioner had exhibited absolute slackness in defending the suit. At least, when he filed written statement in the subsequent suit in O.S.No. 221 of 2011 the revision petitioner ought to have filed the present application for condoning the delay. Under such circumstances, this Court feels that this is not a fit case to exercise the powers conferred under Section 5 of the Limitation Act, to



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condone the enormous delay in filing the application to set aside the ex-parte decree. This Court has also to take note of the plight and the prejudice that may be caused to the plaintiff in the event of the application for condonation of the delay being allowed.

19. For all the above reasons, the order dated 03.12.2019 passed in I.A.No. 525 of 2017 in O.S.No. 243 of 2007 on the file of Principal Subordinate Judge, Chengalpattu is confirmed. The Civil Revision Petition fails and it is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

24.04.2023

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
MSM

To

1. The Principal Subordinate Judge, Chengalpattu.
2. The Section Officer, High Court, Madras.

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V.BHAVANI SUBBAROYAN, J.

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