



C.R.P.NPD.No.1088 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	25/4/2023
Pronounced on	20/11/2023

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Civil Revision Petition NPD No.1088 of 2023
a n d C.M.P.No.7729 of 2023

The Commissioner
The Corporation of Chennai
Rippon Buildings, Chennai 600 003. ... Petitioner

Vs

J. Vanitha ... Respondent

Prayer: Petition filed under Article 227 of the Constitution of India against the fair and decretal order, dated 3/11/2022 passed in E.A.No.3 of 2022 in E.P.No.1224 of 2016 in O.S.No.1609 of 1996 by the learned X Assistant Judge in the City Civil Court, Chennai and to set aside the same.

For Petitioner ... Mr.R.Ramanlal
Additional Advocate General
Assisted by Ms.P.T.Ramadevi

For respondent ... Mr.A.R.Nixon



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ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order, dated 3/11/2022 passed in E.A.No.3 of 2022 in E.P.No.1224 of 2016 in O.S.No.1609 of 1996 by the learned X Assistant Judge in the City Civil Court, Chennai.

2. The facts in brief are that the respondent/Decree holder has filed C.S.No.2042 of 1995 seeking for declaration of title, mandatory injunction to remove the road and to pay a sum of Rs.50,000/- as damages, against petitioner/ Judgment Debtor Corporation of Chennai on the file of this Court. On account of enhancement of pecuniary jurisdiction of the District Courts, C.S.No.2042 of 1995 was transferred to the City Civil Court, Chennai and renumbered as O.S.No.1609 of 2010 and made over to XI Assistant City Civil Judge. The petitioner/Corporation of Chennai has though filed written statement, no evidence was adduced on its behalf, thereby said suit was ultimately decreed on 29.11.2002.

3. Aggrieved by the decreeing of the suit, the petitioner/Judgment



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Debtor has preferred an appeal in A.S.No.163 of 2006, however, the said appeal was dismissed for default on 12.07.2006, thereby the decree in O.S.No.1609 of 1996 was passed by the trial Court on 29.11.2002 has become final.

4. The respondent/decree holder has, filed E.P.No.622 of 2004, seeking to execute decree in OS NO. 1609/1996 for removal of the road and for delivery of possession, as per decree. Accordingly, possession of schedule property was recorded on 18.06.2007 and EP was terminated. The respondent/decree holder has also filed. E.P.No.624 of 2004 seeking for recovery of damage of Rs.50,000/- as per the decree. Petitioner Corporation/Judgment Debtor has deposited Rs.50,000/-, accordingly EP 624/2004 was terminated.

5. According to the respondent/decree holder, subsequent to the delivery of possession, in E.P.No.622 of 2004, the petitioner Corporation has laid Thar road over the E.P schedule of property, aggrieved by the same, the respondent/decree holder has filed W.P.No.34203 of 2012 and the said WP was disposed of.



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6. The respondent/decree holder has filed E.P.No.1224 of 2016 for a direction to remove the Thar, under Order 21 Rule 32 of C.P.C. Notice was served on petitioner/Judgment Debtor. Though petitioner/judgment Debtor appeared, no counter is filed thereby petitioner/judgment Debtor was set exparte. Ultimately said E.P was dismissed by the Execution Court as under:

“Moreover on verification of the Bailiff Report dated 04.05.2007 filed this E.P.No.622 of 2004 is reveals that in the bailiff report it is clearly stated “Road was delivered”. The letter written by the petitioner/Decree holder dated 03.05.2007 enclosed with the bailiff report also stated that “தாவா சொத்து வடக்கு தெற்காக ரோடாக உள்ளது” Hence in this circumstances this Court do not find any merit to allow this petition and hence this petition is dismissed without costs. ”

7. Aggrieved by the same, the respondent/Decree holder has preferred C.R.P (NPD) No.2426 of 2018 and the same was disposed of on 24/6/2018, and the matter was remanded back to Execution Court with further directions

In view of the above discussions, the order passed by the



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Court below in EP.No.1224 of 2016 in OS.No.1609 of 1996 dated 28.02.2018 is set aside. Accordingly, this Civil Revision Petition is allowed. The matter is remanded back to the Execution Court for fresh disposal. It is made clear that the execution Court is directed to appoint the concerned authority to identify the suit property with the help of the Surveyor and demarcate the suit property and pass orders on merits and in accordance with law within a period of three months from the date of receipt of copy of this order.

8. Accordingly, survey was conducted and report was filed by the Tahsildar by identifying the suit property which is a road. The respondent/Decree holder then has filed E.A.No.1 of 2022 to direct the Tahsildar to accompany at the time of execution of delivery warrant and same was allowed on 10.06.2022. At that juncture petitioner/judgment debtor has filed E.A.No.2 of 2022 and E.A.No.3 of 2022.

9. In E.P.No.1224 of 2016, the petitioner/Judgment Debtor was ex parte on 17/3/2017. The petitioner/judgment debtor has filed I.A.No.3 of 2022 for setting aside the ex parte order along with I.A.No.2 of 2022 for condoning the delay of 1922 days in filing the petition to set aside the ex parte order and both of them were dismissed by the



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Execution Court, by way of common order. Aggrieved by the same, the

CRP on hand is filed on following grounds:-

- 1) *the learned judge ought to have appreciated the bonafide cause for non- appearance by the petitioner/judgment debtor and ought to condone the delay in filing the application to set aside ex-parte.*
- 2) *The court below failed to appreciate that the application filed by petitioner/ judgment debtor under Order 21 Rule 106 r/w Section 151 CPC is one with vested interest, since, the petitioner/ judgment debtor is admittedly in possession of the schedule property. Hence, the civil revision is liable to be allowed.*
- 3) *The learned judge ought to have considered the fact that the suit was decreed without deposing evidence on the side of the defendant corporation and the above suit was decided against the corporation. Based on the decree the respondent has filed the present EP no. 1224/2016 against the corporation. The respondent/ decree holder is not the owner of the property. The executing court without appreciating the same has dismissed the application.*
- 4) *The learned judge ought to have seen that the report filed by the Tahsildar dated 29.07.2022 clearly demonstrates the schedule property as a public road used by the large public for so many years which is maintained by the greater Chennai Corporation.*

10. Heard Mr.R.Ramanlal, learned Additional Advocate General for the petitioner/Judgment Debtor Corporation and Mr.A.R.Nixon, learned counsel for the respondent.

11. It is submitted by the learned counsel for the petitioner/judgment



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debtor that the respondent/decreed holder does not have title over the suit property which exclusively belong to the petitioner / Judgment Debtor Corporation and same is being used as a road by the public and that the respondent/decreed holder has suppressed the material facts, gave a false statement before the Court and that the decree passed against the petitioner/judgment debtor is an inexecutable one.

12. It is further submitted by learned counsel for the petitioner that the petitioner Corporation has entrusted C.S.No.2042 of 1995 which was renumbered as O.S.No.1609 of 1996 to its Counsel, however, the suit was not properly defended and petitioner Corporation could not produce any evidence thereby, suit was ultimately decreed.

13. It is submitted by learned counsel for the Respondent/ Decreed holder that the petitioner/ Judgment debtor is aware that corporation was set ex parte, and that there are no valid reason for condoning the delay. It is also further submitted that schedule of property is a private property and not a public road and that execution court cannot go beyond the decree.

14. According to the respondent/decreed holder, after delivery of



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possession of the EP schedule property on 18.06.2007 in E.P.No.622 of 2004, the petitioner/Judgment debtor Corporation has laid Thar road over the schedule property.

15. After delivery of possession in favour of respondent/decree holder in E.P.No.622 of 2004, the E.P is fully satisfied and accordingly terminated, thereby nothing survives in the decree to be executed. If at all Thar road was laid by the petitioner/judgment debtor/Corporation subsequent to delivery of possession, in EP.No.622 of 2004 it can be interpreted that petitioner has taken possession of the property afresh. Thereby it is debatable as to whether the decree in O.S.No.1609 of 1996 can be pressed into service for removal of Thar.

16. Be that as it may, it is to be examine whether dismissal of both the EAs and declining to condone the delay by the execution court can be interfered with. This court has carefully gone through the affidavit and counter filed before the trial Court in both E.As and also the affidavit filed by the petitioner in this revision petition and finally, the impugned order passed by the execution Court. The petitioner is expected to explain the reasons for condone the delay in approaching the Court with



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a delay of 1992 days for setting aside the ex parte decree passed in the Execution Petition on 17/3/2017.

17. In C.R.P.(NPD) No.2426 of 2018, the petitioner/judgment debtor has appeared and participated thereby, the petitioner Corporation/Judgment debtor has knowledge about the orders passed in C.R.P.(NPD) No.2426 of 2018. The petitioner/ Judgment debtor has also participated in the proceedings in E.P.No.1224 of 2016. As per the impugned order, the petitioner/judgment debtor has appeared before the Execution Court on 14.02.2022, 25.02.2022, 11.03.2022, 21.03.2022, 28.03.2022, 10.06.2022, even though, the petitioner as judgment debtor was remained ex parte on 17/3/2017. Though the petitioner has remained exparte still he has participated in the EP proceeding. The explanation of the petitioner/judgment debtor in the affidavit that petitioner/judgment debtor was not aware of the proceedings of the Execution Petition earlier are factually incorrect. The petitioner Corporation/judgment debtor is having knowledge about pendency of the Execution Petition and the fact that it was set ex parte. However, no steps were taken immediately, to file an application for setting aside the ex parte order.



18. The Hon'ble Supreme Court in MAJJI SANNEMMA @

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1260, it has been held as follows:-

17. In the case of *Ramlal, Motilal and Chhotelal* (supra), it is observed and held as under:—

In construing s. 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in *Krishna v. Chattappan*, (1890) J.L.R. 13 Mad. 269, “s. 5 gives the Court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and



discretion ought to be exercised upon principles which are well understood; the words ‘sufficient cause’ receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant.”

18. In the case of *P.K. Ramachandran* (supra), while refusing to condone the delay of 565 days, it is observed that in the absence of reasonable, satisfactory or even appropriate explanation for seeking condonation of delay, the same is not to be condoned lightly. It is further observed that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds. It is further observed that while exercising discretion for condoning the delay, the court has to exercise discretion judiciously.

19. In the case of *Pundlik Jalam Patil* (supra), it is observed as under:—

“The laws of limitation are founded on public policy. Statutes of limitation are sometimes described as “statutes of peace”. An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. The principle is based on the maxim “interest reipublicae ut sit finis litium”, that is, the interest of the State requires that there should be end to litigation but at the same time laws of limitation are a means to ensure private justice suppressing fraud and perjury, quickening diligence and preventing



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oppression. The object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.”

20. In the case of *Basawaraj* (supra), it is observed and held by this Court that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case. It is further observed that the expression “sufficient cause” cannot be liberally interpreted if negligence, inaction or lack of bona fides is attributed to the party. It is further observed that even though limitation may harshly affect rights of a party but it has to be applied with all its rigour when prescribed by statute. It is further observed that in case a party has acted with negligence, lack of bona fides or there is inaction then there cannot be any justified ground for condoning the delay even by imposing conditions. It is observed that each application for condonation of delay has to be decided within the framework laid down by this Court. It is further observed that if courts start condoning delay where no sufficient cause is made out by imposing conditions then that would amount to violation of statutory principles and showing utter disregard to legislature.

21. In the case of *Pundlik Jalam Patil* (supra), it is observed by this Court that the court cannot enquire into belated and stale claims on the ground of equity. Delay defeats



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equity. The Courts help those who are vigilant and “do not slumber over their rights”.

22. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the averments in the application for condonation of delay, we are of the opinion that as such no explanation much less a sufficient or a satisfactory explanation had been offered by respondent Nos. 1 and 2 herein - appellants before the High Court for condonation of huge delay of 1011 days in preferring the Second Appeal. The High Court is not at all justified in exercising its discretion to condone such a huge delay. The High Court has not exercised the discretion judiciously. The reasoning given by the High Court while condoning huge delay of 1011 days is not germane. Therefore, the High Court has erred in condoning the huge delay of 1011 days in preferring the appeal by respondent Nos. 1 and 2 herein - original defendants. Impugned order passed by the High Court is unsustainable both, on law as well as on facts.

23. In view of the above and for the reasons stated above, the present Appeal is Allowed. The impugned order dated 16.09.2021 passed by the High Court condoning the delay of 1011 days in preferring the Second Appeal by respondent Nos. 1 and 2 herein is hereby quashed and set aside. Consequently, Second Appeal No. 331 of 2021 preferred by respondent Nos. 1 and 2 herein stands dismissed on the ground of delay. The present Appeal is accordingly Allowed. However, there shall be no order as to costs.



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19. In the case on hand, there is a clear material before the Court to show that the petitioner/judgment debtor was aware of the fact that he was set ex parte on 17.03.2017 and even then application for setting aside ex parte order has not filed at the earlier point of time. The explanation offered by the petitioner for condoning the delay in E.A.No.2 of 2022 is totally unsatisfactory. The trial Court has rightly dismissed both the petitions for condoning the delay and also setting aside the ex parte order dated 17/3/2017 in E.P.No.1224 of 2016.

20. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

20/11/2023

mvs/jai

Index: Yes/No

Neutral Citation: Yes/No

To

X Assistant Judge in the City Civil Court, Chennai



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Dr.D.NAGARJUN,J

mvs/jai

Pre-delivery order made in
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20/11/2023