



CRP(MD).No.270 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

RESERVED ON : 08.09.2023

PRONOUNCED ON : 22.09.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD).No.270 of 2014
and MP(MD).No.1 of 2014

1.P.Muthupandi

2.S.Elango Selvan

.....Petitioners

Vs

1.Thirumalai Chellathai (died)

2.Arunachala Vadivu

3.Esakku

4.Mathiyammal

5.St.Mical

6.Christoper Chellaiah

7.Paul Grace

8.Arul Pandi

...Respondents

(Cause title amended vide Court order dated 31.07.2023)



CRP(MD).No.270 of 2014

(Respondents 3 to 8 are brought on record as legal heirs of the deceased 1st respondent vide Court order dated 31.07.2023)

PRAYER:- Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 04.12.2013 in I.A.No.407 of 2013 in O.S.No.313 of 2008 on the file of the Additional District Munsif Court, Tenkasi.

For Petitioners : Mr.D.Nallathambi
For R2 : No appearance
For R4 to R8 :Mr.T.S.R.Venkatramana
Senior Counsel
For Mr.J.Thomas Rajadurai

ORDER

Defendants 2 and 3 in a suit for declaration of title, mandatory injunction and recovery of possession are the revision petitioners.

2.The respondents herein had filed O.S.No.313 of 2008 on the file of the Additional District Munsif Court, Tenkasi for the relief of declaration of title, mandatory injunction and recovery of possession. The defendants were set exparte and an exparte decree came to be passed on 15.12.2009. Based upon the exparte decree, the decree holder had filed E.P.No.28 of 2010.



CRP(MD).No.270 of 2014

3. According to the revision petitioners, only after receipt of notice in the execution proceedings, they came to know about the fact that an ex parte decree came to be passed. Therefore, the defendants filed I.A.No.407 of 2013 to condone the delay of 223 days in filing an application to set aside the ex parte decree.

4. The plaintiffs/decreed holders strongly resisted the said application on the ground that the judgment debtors have come out with a false case and the delay has not been properly explained. Accepting the contention of the decreed holders, the trial Court had dismissed the condone delay application. Challenging the same, the present revision petition has been filed.

5. A perusal of the affidavit filed in respect of the condone delay application indicates that the first defendant had contended that, in the suit is the vendor of the defendants 2 and 3. The said first defendant had given assurance to the defendants 2 and 3 that he would engage a counsel and take of the proceedings and therefore, the defendants 2 and 3 were under the impression that the first defendant would take care of the case.

6. Secondly, defendants 2 and 3 have contended that in the last week of July 2008, they have left for Kottayam in Kerala as agricultural



CRP(MD).No.270 of 2014

coolie and therefore, they could not pursue the suit proceedings. The defendants have further contended that after receipt of notice in the execution proceedings, when they enquired with the first defendant, he was evasive in his reply and after verification of the Court bundle on 28.07.2010, they came to know about the exparte decree and therefore, there is a delay of 223 days.

7.The decree holders had filed a counter contending that on 06.08.2009, the defendants have been set exparte and an exparte decree came to be passed on 15.12.2009. However, the present application has been filed only on 02.09.2010, even though, the judgment debtors have appeared in the execution proceedings on 01.04.2010. The decree holders had further contended that an order of delivery had been passed on 04.10.2013 itself and only thereafter, the defendants have pursued the said application which clearly shows that they are not interested in defending the proceedings.

8.The trial Court had found that the defendants have not properly explained the reason for the delay in filing an application to set aside the exparte decree. Even though the defendants were aware of the exparte decree on 28.07.2010, they have filed the application only on



CRP(MD).No.270 of 2014

26.08.2010. Therefore, the present application has been filed only to drag on the proceedings and to prevent the plaintiffs from enjoying the fruits of the decree.

9. Based on the above said findings, the trial Court had dismissed the application.

10. The learned counsel for the revision petitioners had contended that the ex parte decree passed on 15.12.2009 would reveal that the Court has not discussed the pleadings or documents filed on the side of the plaintiffs but has simply decreed the suit on the ground that Exhibits A1 to A8 has been marked and the plaintiffs had proved the claim.

11. The learned counsel had relied upon the Division Bench Judgment of our High Court reported in **2011 (3) CTC 168 (Meenakshisundaram Textiles Vs. Valliammal Textiles Ltd.,)** to contend that even in an ex parte decree, the Court should consider the pleadings and evidence and arrive at a finding that whether the plaintiffs had made out a case for the decree or not. However, in the present case, the plaintiffs had not marked any one of the registered documents to prove their title.



CRP(MD).No.270 of 2014

12.The learned counsel had further relied upon the judgment of the Hon'ble Supreme Court reported in *AIR 1987 SCC 1353 (Collector, Land Acquisition, Anantnag and another Vs. Katiji and others)*, 2014 *SAR (Civil) 22 (Manoharan Vs. Sivarajan & others)* and (2015) 5 *SCC 588 (Maya Devi Vs. Lalta Prasad)* to contend that the delay is only 223 and it has been properly explained. The Court should also take into consideration that it is a suit for declaration of title, mandatory injunction and recovery of possession and may take liberal view in condoning the delay so as to the interest of the defendants is protected.

13.Per contra, the learned senior counsel appearing for the respondents had strenuously contended that all the three reasons assigned by defendants in condone delay applications have not been proved, but on the other hand, they have been falsified. When the defendants have not properly explained the delay, the question of condoning the delay, taking liberal view would not arise. He had further contended that when the defendants had not even filed a written statement and disputed the title of the plaintiffs, it should be presumed that the defendants have admitted the title of the plaintiffs. Therefore, the exparte decree passed



CRP(MD).No.270 of 2014

by the trial Court on the strength of Exhibits A1 to A8 cannot be found fault with.

14.The learned Senior Counsel had further relied upon the judgment of the Hon'ble Supreme Court reported in *AIR 2012 Supreme Court 1506 (Office of the Chief Post Master General and others Vs. Living Media India Ltd., and another)* to contend that when no proper explanation has been afforded for the delay, the delay petition has to be dismissed. He had further relied upon a judgment of the Hon'ble Supreme Court reported in *(2011) 4 SCC 363 (Lanka Venkateswarlu (dead) by Lrs. Vs. State of Andhra Pradesh and others)* wherein the Hon'ble Supreme Court had held that the condonation of delay is a discretionary power and it should be exercised reasonably when there is paucity of proper reason, the Court should not exercise its discretionary power to condone the delay. The learned Senior Counsel further relied upon a judgment of our High Court reported in *2009 (1) CTC 319 (C.Raghupathy Vs. C.Govindan and others)* to contend that the defendants cannot blame their counsel, but it is their duty to keep in touch with their Advocate. The failure on the part of the defendants would amount to negligence and they have to bear the consequences.



CRP(MD).No.270 of 2014

15.The learned Senior Counsel had further pointed out that the limitation is not merely a technical consideration, but it is a principle of public policy. He had further contended that the successful plaintiffs cannot be made to wait for an indefinite period when the defendants are not vigilant enough in defending the suit. Hence, He prayed for sustaining the order passed by the trial Court.

16.I have considered the submissions made on either side and perused the materials records.

17.The defendants 2 and 3 have been set exparte on 06.08.2009 and an exparte decree came to be passed as against them. The translated version of the exparte decree is extracted as follows:

“ First plaintiff present. Plaintiff was permitted to file proof affidavit on his side. Plaintiff was examined as PW1. Exhibits A1 to A8 marked. Claim proved. Hence, suit is decreed in favour of the plaintiffs as prayed for with costs. Two months time granted”

18.In the plaint, the plaintiffs had contended that the first item of the suit property belongs to their family by way of a registered sale deed dated 10.11.1933. They had further contended that though the fifth defendant is one of the daughters, she had relinquished her share. The



CRP(MD).No.270 of 2014

plaint further reveals that the second item of the suit property is the absolute property of Sorimuthu. However, neither the sale deed dated 10.11.1933 nor the document under which Sorimuthu became the absolute owner has been placed before the Court. The suit documents reveal that only the revenue records, legal notice and encumbrance certificate have been filed. The only sale deed that is marked in the suit is the document said to be in the name of the first defendant.

19.The Division Bench of our High Court in a judgment reported in **2011 (3) CTC 168 (Meenakshisundaram Textiles Vs. Valliammal Textiles Ltd.,)** in Paragraph No.21 has held as follows:

“21. From the above discussions, it is manifestly clear that even a judgment rendered ex parte and a decree is drawn on the basis of that judgment, it is appealable. In case that judgment and decree become final without there being any appeal, the decree is executable. In that sense, there is no difference between a judgment and decree and an ex parte judgment and decree. In view of the above, in the event the defendant is set ex parte, the Court should be extra careful in such case and it should consider the pleadings and evidence and arrive at a finding as to whether the plaintiff has made out a case for a decree. In this context, it may also be mentioned that though a detailed judgment is required in a contested



WEB COPY

matter, an ex parte judgment should show the application of the minimum requirement of consideration of the pleadings, issues, evidence and the relief sought for rendering such judgment.”

20. In the light of the above said judgment of the Division Bench, the exparte judgment dated 15.12.2009 is in clear violation of the law laid down in the judgment cited supra.

21. The Hon'ble Supreme Court in a judgment reported in **(1998) 7 SCC 123 (N.Balakrishnan Vs. M.Krishnamurthy)** in Paragraph Nos.12 and 13 has held as follows:

*12. A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under [Section 5](#) of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain Vs. Kuntal Kumari and State of West Bengal Vs. The Administrator, Howrah Municipality*.*

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or.



it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay, the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.”

22.The Hon'ble Supreme Court in a judgment reported in **(2001) 6 SCC 176 (M.K.Prasad Vs. P.Arumugam)** in Paragraph No.10 has held as follows:

10.....Even though the appellant appears not to be as vigilant as he ought to have been, yet his conduct does not, on the whole, warrant to castigate him as an irresponsible litigant. He should have been more vigilant but on his failure to adopt such extra vigilance should not have been made a ground for ousting him from the litigation with respect to the property. concededly to be valuable. While deciding the application for setting aside the ex-parte decree, the court should have kept in mind the judgment impugned, the extent of the property



CRP(MD).No.270 of 2014

WEB COPY

involved and the stake of the parties. We are of the opinion that the inconvenience caused to the respondent for the delay on account of the appellant being absent from the court in this case can be compensated by awarding appropriate and exemplary costs.....”

23.The judgment debtors have made an attempt to explain the delay by contending that the first defendant had assured to take care of the Court proceedings but he had evaded them. When the revision petitioners have been arrayed as parties to the suit, they should have been vigilant enough to defend the suit without relying upon the assurance of the first defendant who had already parted with the property. Therefore, certainly there is a lapse on the part of the revision petitioners. In view of the lethargic attitude of the revision petitioners, great inconvenience has been caused to the plaintiffs. Merely because there is some lapse on the part of the revision petitioners, that cannot be a ground to refuse the condone delay especially in view of the fact that the suit is declaration of title, mandatory injunction and for recovery of possession and the trial Court has granted an exparte decree by way of an unreasoned order.

24.There are no allegation to the effect that the defendants have deliberately remained exparte with some malafide intention. The



CRP(MD).No.270 of 2014

defendants have also filed their written statement along with the application to set aside the exparte decree. Therefore, this Court is of the view that the delay of 223 days could be condoned on terms. The revision petitioners are directed to deposit a sum of Rs.5,000/- to the credit of 'Legal Aid Services Committee', attached to this Bench, within a period of two weeks from the date of receipt of a copy of this order. On such deposit, the revision petition will stand allowed. In case of any default, the order of the trial Court dismissing the condone delay application will stand restored.

25.This Civil Revision Petition is allowed on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

22.09.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
mas



CRP(MD).No.270 of 2014

To
WEB COPY

1.The Additional District Munsif,
Tenkasi.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



CRP(MD).No.270 of 2014

R.VIJAYAKUMAR,J.

msa

Pre-delivery order made in

C.R.P(MD).No.270 of 2014
and MP(MD).No.1 of 2014

22.09.2023