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C.R.P(NPD)(MD).No.1928 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.04.2023

Pronounced on : 14.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(NPD)(MD).No.1928 of 2018

and

C.M.P(MD)No.8321 of 2018

Malairajan

... Petitioner/Defendant

Vs.

Ganesan Chettiar

... Respondent/Plaintiff

PRAYER : Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order dated 18.06.2018 made in I.A.No.258 of 2018 in O.S.No.60 of 2012 on the file of the District Munsif Court, Devakottai and to allow the same.

For Petitioner : Mr.K.Hemakarhikeyan

For Respondent : Mr.R.Sundar Srinivasan

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 18.06.2018 passed in I.A.No.258 of 2018 in O.S.No.60 of 2012 on the file of the District Munsif Court, Devakottai.



2. The learned counsel for the petitioner has submitted that the petitioner is the defendant in O.S.No.60 of 2012 on the file of the District Munsif Court, Devakottai. The respondent/plaintiff has filed the said suit for declaration, permanent and recovery of possession after removal of encroachment. The petitioner has not received any suit summon. Later the petitioner came to know about the ex-parte judgment and filed a petition under Section 5 of the Limitation Act to condone the delay of 252 days in filing set aside petition. The petition was returned for some defects. The petitioner was under impression that his counsel would look after the matter. The petitioner has been grazing the cattle and further the petitioner sustained fracture in his leg and so, he could not be able to contact his counsel. Now, the petitioner learnt that the returned petition was not represented within the time and there happened 312 days in representation. The Trial Court has not considered the reason assigned by the petitioner and has not shown any leniency. The delay is only in respect of representation and the matter between the Court and the party. In support his argument, the learned counsel for the petitioner has relied on the following citations:

(1) (2015) 15 SCC 208 (State of Tamilnadu /v/ Anbai Kingston Philips and Ors.), wherein it is held in paragraph No.8 as follows:

“8. The appeal, as mentioned earlier,



was filed within the stipulated period of limitation, but could not be re-presented for a long time as the defects were not rectified. The question all the same is whether there was sufficient reason for the delay in doing so....”.

(2) Common Order passed in **C.R.P(NPD)Nos.1249 & 2671 of 2019 dated 28.1.2022** of this Court, wherein it is held in paragraph Nos. 6 and 7 as follows:

“6.This Court is unable to doubt the bonafides of the revision petitioners. It is true that the suit filed in the year 1992 was disposed of only in the year of 2016 and the inordinate delay of more than 444 days caused great prejudice to the respondent. However, that does not mean that the application filed by the revision petitioners can be disposed of without giving an opportunity to the revision petitioners to prosecute the appeal on merits. The reason stated by the revision petitioners for the delay in representation cannot be ignored as the facts stated by the revision petitioners are not seriously disputed. This Court is of the view that the Court should not be more rigid. The Court should always consider the applications to condone the delay in representation liberally, so as to advance the cause of justice. The inconvenience caused to the respondent after the suit was decreed in favour of the respondent is a factor that should be considered to compensate the respondent.

7. In such circumstances, this Court is of the view that the delay in representation can be allowed on payment of cost to the respondent.....”.



3. Per contra, the learned counsel for the respondent has contended that the suit filed by the respondent was decreed ex-parte. The petitioner was set ex-parte on 05.06.2013 and after a lapse of 2 ½ years, ex-parte judgment was passed. The petitioner has not shown any interest in this case and kept mum for 2 ½ years after set ex-parte. Even the petitioner filed the petition to condone the delay of 252 days in filing the petition to set aside ex-parte decree and the same was returned for defects. The petitioner again committed delay 312 days in representation of the returned petition. The reason assigned by the petitioner is not acceptable and after receipt of summon in execution proceedings, the petitioner filed this petition to drag on the proceedings and to prevent the respondent to enjoy the fruits of decree. The petitioner's reason is not *bona-fide*. The Trial Court has correctly discussed these facts in the impugned order. Therefore, this Civil Revision Petition may be dismissed. In support of his argument the learned counsel for the respondent has relied on the judgment of the Hon'ble Supreme Court passed in **Civil Appeal No.2474 – 2475 of 2012 dated 24.02.2012**, wherein it is held in paragraph No.13 as follows:

“13. In our view, it is the right time to inform all the government bodies their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the



usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process.....Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of few.....”.

4. Heard both side and perused the records in this Civil Revision Petition.

5. It is clear that the respondent as plaintiff has filed the main suit in O.S.No.60 of 2012 on the file of the District Munsif Court, Devakottai against the petitioner for the reliefs of declaration and recovery of possession of the suit property after removing the encroachment. In that suit, an ex-parte decree was passed on 06.01.2016. The petitioner states that he filed the petition to condone the delay in filing petition to set aside ex-parte decree before the Trial Court and the same was returned for certain defects. The petitioner states that he was doing the profession of grazing cattle and he sustained fracture in his leg, he was under the impression that his counsel would look after his case and that on enquiry the returned petition was not represented within time and there is a delay of 342 days. The respondent has not denied the filing of the petition to condone the delay in filing set aside petition and the same was returned.



The respondent mainly contended that the petitioner has filed this petition to drag on the proceedings on receipt of notice in execution proceedings as the petitioner was set ex-parte on 05.06.2013 and ex-parte decree was passed on 06.01.2016. Once the petition is filed before the Court and the same was returned for certain defects, the matter is between the party and the court. Considering the citations relied by the learned counsel for the petitioner, the delay condone petition in respect of representation may be considered liberally and at the same time, the other party has to be compensated while considering inordinate delay. It is a settled principle of law that each and every litigant has to be given sufficient opportunity to put forth his respective case for disposal of a case on merits. The main case is for declaration of title and recovery of possession. Therefore, the case of the petitioner has to be considered and one more last opportunity has to be given to put forth his case. However, the argument of the respondent that the delay is an inordinate delay is also to be taken into consideration. Considering the above facts and circumstances, the delay is to be condoned by imposing certain condition to meet out the inconvenience caused to the respondent. Thus, this Civil Revision Petition is to be allowed on imposing cost.



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6. In the result, this Civil Revision Petition is allowed on condition that the petitioner shall pay a sum of Rs.3,000/- (Rupees Three Thousand Only) as cost to the respondent within a period of two weeks from the date of receipt of a copy of this order, failing which this Civil Revision Petition stands dismissed automatically without any further reference to this Court. Consequently connected Miscellaneous Petition is closed.

14.07.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

- 1.The District Munsif Court,
Devakottai.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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Pre - Delivery Order made in
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