



C.R.P.(MD)No.2789 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 05.12.2023

Delivered on : 12.12.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2789 of 2023
and
C.M.P.(MD)No.14570 of 2023

1.Rajeswari

2.Manikandan

3.Chitra

4.Thenmozhi

: Petitioners/Petitioners/
LRs of the 1st Defendant

Vs.

Rathinam (died)

1.Sakunthala

2.Ponraj

: Respondents 1 & 2/ Respondents 2 & 3
Plaintiffs

3.Deivakumar

: 3rd Respondent/4th Respondent/
2nd Defendant



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Prayer : This Civil Revision Petition filed under Section 115 of C.P.C., to set aside the fair and decreetal order dated 21.09.2023 passed by the Sub Court, Lalgudi in I.A.No.3 of 2023 in O.S.No.4 of 2018.

For Petitioners : Mr.T.Lenin Kumar

For Respondents : Mr.K.Prabhakar, for R1 & R2.

: No Appearance, for R3.

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.3 of 2023 in O.S.No.4 of 2018, dated 21.09.2023 on the file of the Sub Court, Lalgudi, dismissing the petition filed under Section 5 of the Limitation Act, to condone the delay of 1274 days in filing the petition for setting aside the ex-parte decree in O.S.No.4 of 2018, dated 03.12.2019 under Order IX Rule 13 of Code of Civil Procedure.

2. The respondents 1 and 2 as plaintiffs along with deceased plaintiff have filed the suit in O.S.No.4 of 2018, for recovery of possession, for damages and mesne profits.



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3. It is evident from the judgment passed in O.S.No.4 of 2018, dated 03.12.2019 that both the defendants have filed their written statement separately; that when the suit was posted for trial, the second defendant was called absent and set ex-parte and that the learned Subordinate Judge, after hearing the arguments of the plaintiffs side and other side, has passed the judgment and decree, dated 03.12.2019, granting the reliefs of recovery of possession. But the legal heirs of the deceased first defendant have filed the above application under Section 5 of Limitation Act to condone the delay of 1274 days in filing the petition under Order IX Rule 13 by alleging that ex-parte decree came to be passed against the defendants including the deceased first defendant. But admittedly, the first defendant has not adduced any evidence before the trial Court and it is not known as to why the first defendant was not set ex-parte before the trial Court. But the fact remains that the application under Section 5 of the Limitation Act has been filed as if, the first defendant was set ex-parte, as if the ex-parte decree came to be passed against the first defendant also and the Sub Court, Lalgudi has proceeded with the above application, as if the first defendant has remained ex-parte and ex-parte judgment and decree came to be passed.



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4. It is evident from the records that the decree holder has laid the execution petition in E.P.No.9 of 2020, seeking delivery of the suit property; that since the judgment debtor/first defendant had died, his legal representatives/revision petitioners herein were brought on record and that the Executing Court, after conducting enquiry, has passed an order, dated 28.01.2023, ordering the delivery of the suit property and that thereafter, the legal representatives of the first defendant have filed the application under Section 5 of the Limitation Act, that the respondents/plaintiffs have filed a detailed counter raising serious objections and disputing the averments raised in the affidavit filed in support of the said petition.

5. During enquiry, the petitioners as well as the respondents have not adduced any oral evidence. But the petitioners have exhibited five documents as Ex.P.1 to Ex.P.5. The learned trial Judge, upon considering the evidence available on record and on hearing the arguments of both side, has passed the impugned order, dated 21.09.2023, dismissing the petition. Aggrieved by the order of dismissal, the legal representatives of the first defendant have preferred the present revision.



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6. The revision petitioners in the affidavit filed in support of their petition filed under Section 5 of Limitation Act, have alleged that their father Ramasamy was suffering heart diseases and since they have not turned up to cross examine the plaintiff, he was set ex-parte and decree came to be passed on 03.12.2019; that their father Ramasamy, after continuous treatment had died on 29.07.2020; that the revision petitioners were subsequently impleaded in the execution petition in E.P.No.9 of 2020 on 21.04.2021 and after receipt of the Court notice, they have come to know about the original suit and execution proceedings; that though they have requested their counsel to file necessary petitions, he has not taken any steps and thereby cheated them; that they were cheated that they came to know about the judgment and decree only after the receipt of Court proceedings on 28.03.2023; that the revision petitioners have to be give an opportunity to prove their defence and that the revision petitioners will be put to loss and hardship, if the delay of 1247 days is not condoned.

7. The respondents/plaintiffs in their counter affidavit have stated that the revision petitioners were fully aware of the suit proceedings as well as the execution proceedings; that the petitioners have not produced



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any medical records or other documents to prove that their father was affected by heart disease and received treatment; that since the revision petitioners have entered into appearance in the execution proceedings and defended the same, their contention that they came to know about the judgment and decree only on 28.03.2023 is patently false and incorrect; that though they have taken part in the execution proceedings, they have not chosen to file the above application at that time; that the petitioners have not furnished proper and acceptable explanation for the delay and that therefore, the petition is liable to be dismissed.

8. At the out set, it is pertinent to note that the ex-parte judgment and decree came to be passed on 03.12.2019. Even according to the petitioners, their father Ramasamy died on 29.07.2020. As rightly contended by the learned counsel for the respondents/plaintiffs, the revision petitioners have not offered any reason or explanation for the delay occurred between 03.12.2019 from the date of decree till 29.07.2020 the date on which, the first defendant had died.



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9. No doubt, the petitioners have produced the medical records, but as rightly observed by the learned trial Judge that Ex.P.3 and Ex.P.4 are with respect to treatment taken on 24.06.2019 and 28.07.2020.

10. It is not the case of the petitioners that their father has been taking continuous treatment till his death. It is not in dispute that the above application under Section 5 of Limitation Act was originally filed on 31.03.2023 and the same was represented again on 03.06.2023 and the same was taken on file on 06.06.2023. Even according to the revision petitioners, they have entered into appearance in the execution proceedings through their Advocate on 11.08.2021 and they were set ex-parte on 27.09.2021 and that at their instance, the ex-parte order was set aside, vide order dated 26.04.2022.

11. It is also not in dispute that the fourth petitioner has engaged another counsel and entered into appearance on 22.08.2022 before the Executing Court and filed his counter and that the petitioners 1 to 3 have submitted their written arguments on 09.01.2023 and that the Executing Court has passed the order of delivery on 28.01.2023.



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12. Considering the above, the contention of the revision petitioners that they came to know about the judgment and decree passed in the suit only on 28.03.2023, after receiving the copies of the documents from the Court, is patently false. Though the petitioners have alleged that since their earlier counsel has not filed any application and thereby cheated them and that they have taken action against him, they have not elaborated anything further and they have not stated anything about the nature of the complaint or action allegedly taken against their earlier counsel.

13. As already pointed out, even in the execution proceedings, they have remained ex-parte and subsequently, they have taken steps for setting aside the ex-parte order and thereafter, proceeded with the enquiry. It is pertinent to note that since the revision petitioners have not chosen to comply with the order of delivery, the decree holder was constrained to apply to the executing Court seeking orders for break open and police aid and that the same were granted.



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14. More importantly, as rightly contended by the learned counsel for the respondents/plaintiffs, the present application in I.A.No.3 of 2023 was filed to condone the delay in filing the petition for setting aside the third ex-parte decree, dated 03.12.2019. It is evident that the first ex-parte decree came to be passed on 29.10.2010 and the second one on 11.07.2012. As rightly pointed out by the learned counsel for the respondents/plaintiffs, they have not canvassed any reason or explanation for the delay of 1247 days, which is very inordinate.

15. No doubt, the learned counsel for the revision petitioners would rely on the decision of the Hon'ble Supreme Court in Inre: cognizance for extension of limitation in M.A.No.21 of 2022 in M.A.No.665 of 2021 in suo motu Writ Petition (c) No.3 of 2020, dated 10.01.2022 and argued that if the above decision is applied the quantum of delay would be less. But, as rightly pointed out by the learned counsel for the respondents/plaintiffs, the petitioners have not advanced any explanation for the above delay also.

16. The Hon'ble Supreme Court in ***Perumon Bhagvathy Devaswom Vs. Bhargavi Amma (died) through Lrs*** reported in ***2008 SCC 321***, has



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specifically observed that the words 'sufficient cause' in Section 5 may receive a liberal construction where no inaction or negligence or mala fide is imputable to the applicant pressing the application for condonation of delay and that the length of the delay is immaterial, and the cause of the delay must be acceptable for condoning the same and that even if a delay is of a very short duration, then also such delay may not be condoned if the explanation or the cause of delay is not found to be satisfactory.

17. Recently, the Hon'ble Supreme Court in ***Sabarmati Gas Limited Vs. Shah Alloyes Limited*** reported in **2023 LiveLaw (SC) 9**, has given a simple and short definition for the term 'sufficient cause under Section 5 of Limitation Act as sufficient cause is the cause for which a party could not be blamed. In the case on hand, as rightly contended by the learned counsel for the respondents/plaintiffs, the petitioners' father and after his death, the petitioners have been wantonly and purposely dragging the proceedings with sole intention to prevent the decree holder from realizing the fruits of the decree. Though the decree came to be passed on 03.12.2019 and that the delivery was ordered in January 2023, the decree holder is unable to get the possession of the property.



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18. On considering the entire facts and circumstances of the case, this Court has no hesitation to hold that the revision petitioners have miserably failed to prove the sufficient cause for the inordinate delay occurred and as such, the impugned order dismissing the petition cannot be found fault with. Consequently, this Court concludes that the Civil Revision is devoid of merits and the same is liable to be dismissed.

19. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

12.12.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
das

To

- 1.The Sub Judge, Lalgudi.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
C.R.P.(MD)No.2789 of 2023
and
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Dated : 12.12.2023