



WEB COPY



C.R.P.(NPD)No.562 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE P. DHANABAL

C.R.P.(NPD).No.562 of 2022

and

C.M.P.No.2973 of 2022

1. Gunasekaran

2. Kaviarasan

3. Vasantharaj

... Petitioners

vs.

1.Lakshmi

2.Sathish Kumar

3.Ram Prasath

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 07.03.2020 passed by the learned III Additional District Judge, Salem in I.A.No.426 of 2019 in O.S.No.277 of 2014 and allow the Revision Petition.

For Petitioners : Mr.T.Sai Krishnan

For Respondents : Mr.V.Sekar

ORDER



C.R.P.(NPD)No.562 of 2022

WEB COPY

This Civil Revision Petition has been preferred as against the order passed in I.A.No.426 of 2019 in O.S.No.277 of 2014 on the file of the learned III Additional District Judge, Salem, dated 07.03.2020, wherein, these petitioners herein have filed a petition under Section 5 of the Limitation Act to condone the delay of 1227 days in filing the ex-parte decree, set aside petition and the same was dismissed by the Trial Court.

2. The case of the petitioners is that they are the defendants in the main suit. The respondents herein have filed a suit for declaration, partition and permanent injunction. These petitioners herein have entered into appearance in the suit through counsel and the first petitioner namely Gunasekaran was conducting the case on behalf of the other petitioners. While so, the Advocate has not informed about the stage of the case to the petitioners, thereafter, they came to know about the stage of the case when they received notice for passing final decree. His previous counsel was bedridden due to motor accident and thereby they are unable to contact their counsel therefore, there is a delay of 1227 days in filing exparte decree, set aside petition. The Trial Court has failed to consider the reason stated by the petitioners and dismissed the petition. Therefore, the order passed by the



C.R.P.(NPD)No.562 of 2022

Trial Court is liable to be set aside.

WEB COPY

3. According to the respondents, they are the plaintiffs in the main suit and they filed a suit for declaration of deeds as null and void and partition and permanent injunction. While so, the petitioners being the defendants have appeared through counsel before the Trial Court and the Trial Court has passed the preliminary decree as early as on 05.03.2016. The notice was issued in the final decree proceedings and thereafter, they have not taken any steps to set aside the exparte decree passed against them. They have filed a petition belatedly, without any valid reasons and the reasons stated by the petitioners are all not correct. Since, there is a huge delay of 1227 days, the Trial Court after taking into consideration of the long delay, correctly dismissed the petition. Therefore the present Revision Petition is liable to be dismissed.

4. The learned counsel appearing for the petitioners would contend that these petitioners are the defendants in the main suit and they appeared through counsel and their counsel met with an accident and thereby they are unable to contact with their counsel. Thereafter, they came to know about



passing of exparte decree only after serving notice in the final decree proceedings, hence they filed a petition before the Trial Court. The Trial Court without considering the reasons stated in the petition, dismissed the same. Therefore, the order passed by the Trial Court is liable to be set aside.

5. The learned counsel appearing for the petitioners also relied on the following Judgments:

(1) ***C.N.Ramappa Gowda Vs. C.C.Chandregowda*** reported in ***AIR 2012 SC 2528***;

(2) ***N.Balakrishnan vs. M.Krishnamurthy*** reported in ***AIR 1998 SC 3222***;

(3) ***Ummer vs. Pottengal Subida and Others*** reported in ***2018 15 SCC 127***;

(4) ***Bhivchandra Shankar More vs. Balu Gangaram More and Others*** reported in ***2019 6 SCC 387***;

(5) ***Manjula and Lambert Sandou and 5 Others*** in ***C.R.P.No.408 of 2021*** of this Court.



WEB COPY

6. The learned counsel appearing for the respondents would contend that the petitioners have appeared through counsel and they failed to conduct the case and thereby the case was set ex-parte and thereafter, they appeared in the final decree proceedings. Immediately, after entered into appearance in the final decree proceedings, they failed to take any steps to set aside the exparte decree passed against them and after huge delay, they filed application. Therefore, the Trial Court has passed the reasoned order stating that the huge delay has not been properly explained by them and dismissed the petition. Therefore, the present Revision Petition is liable to be dismissed.

7. The learned counsel appearing for the respondents also relied on the following Judgments of this Court:

(1) ***M.Duraisamy vs. Vasantha and another*** reported in **2023 1 CTC 444;**

(2) ***Vatchala vs. T.Paari*** reported in **2023 (2) MWN Civil 283.**

8. This Court heard both sides and also perused the records.

9. In this case, according to the petitioners, they filed application



WEB COPY

before the Trial Court for condonation of delay of 1227 days in filing ex-parte decree, set aside petition and the same was dismissed by the Trial Court. The reasons for the delay is that, they entered into appearance through counsel and their counsel met with an accident, hence, the counsel failed to inform about the stage of the case to the petitioners and therefore, the ex-parte preliminary decree was passed against them. Thereafter, they came to know about the ex-parte decree, after receipt of notice in the final decree proceedings. According to the respondents, the said delay of 1227 days has not been properly explained by the petitioners and they cannot blame the counsels since it is the duty of the parties to follow up the case. Therefore, the reason stated by the petitioners are unacceptable.

10. The suit is filed for declaration of gift settlement deed, dated 09.08.2010 and registered Will, dated 12.10.2007 as null and void and also for partition and permanent injunction. The Trial Court has granted preliminary decree only based on the evidences adduced by the respondents herein and the petitions were set aside. The reasons stated by the petitioners for the delay is that they entered into the matter through their previous counsel and the counsel met with an accident and hence, the counsel failed to



WEB COPY

inform the same to the petitioners. Though, there is a huge delay of 1227 days in filing petition to set aside the exparte decree, considering the nature of the suit filed by the respondents and the rights of the parties involved in this matter, it is appropriate to give one more chance to the petitioners to defend their case. It is true that the delay has to be properly explained but at the same time rights of the parties cannot be curtailed only for the reason of delay. The petitioners have only stated the reason that they are entrusted the matter to the previous counsel and the counsel did not inform about the case, due to his illness.

11. According to the respondents, even after receipt of the notice in the final decree proceedings, immediately, they have not filed the petition. It is true that the petitioners have not filed any petition immediately after appearance in the final decree application. However, only because of the delay, the rights of the parties cannot be curtail and the Court shall approach liberally while deciding the condoning delay application, when the substantial rights of the parties in respect of the properties involved in the case.

12. At this juncture, it is relevant to refer the Judgments cited by the



C.R.P.(NPD)No.562 of 2022

WEB COPY

petitioners counsel that (1) ***C.N.Ramappa Gowda Vs. C.C.Chandregowda*** reported in ***AIR 2012 SC 2528***; (2) ***N.Balakrishnan vs. M.Krishnamurthy*** reported in ***AIR 1998 SC 3222***; (3) ***Ummer vs. Pottengal Subida and Others*** reported in ***2018 15 SCC 127***; (4) ***Bhivchandra Shankar More vs. Balu Gangaram More and Others*** reported in ***2019 6 SCC 387***; (5) ***Manjula and Lambert Sandou and 5 Others in C.R.P.No.408 of 2021 of this Court.***

13. On a careful perusal of the above said judgments, it is clear that where the reasons assigned by the applicants are genuine, delay can be condoned and the requirement of explanation of each days delay is no longer good law and when there is no dilatory tactics or lack of bonafideness on the part of the petitioners and the proposition remedies provided as simultaneous cannot be converted into consecutive remedies cannot be applied in rigid manner.

14. Per Contra, the learned counsel appearing for the respondents has



produced the judgments that (1) *M.Duraisamy vs. Vasantha and another* reported in **2023 1 CTC 444**; (2) *Vatchala vs. T.Paari* reported in **2023 (2) MWN Civil 283**.

15. On a careful perusal of the above said Judgments, it is clear that, if there are no documents to support the contention of the petitioners, to condone the delay, the practice of leniency condoning delay by imposing cost is opposed to law.

16. In the case on hand, though the petitioners have not produced any documents to support their contention, considering the reasons stated in the petition and the nature of the case and in view of the judgments produced by the petitioners' counsel and considering the facts and circumstances of the case, it is appropriate to allow this application on payment of cost.

17. In the result this Civil Revision Petition is allowed on payment of cost of Rs.10,000/- [Rupees Ten Thousand only] to be deposited by the petitioners before the Trial Court on or before 20.08.2024. After deposit of the amount, the Trial Court has to number the Order 9 Rule 13 of CPC



C.R.P.(NPD)No.562 of 2022

petition and decide the same in accordance with law. The respondents are at liberty to withdraw the said amount deposited by the petitioners. There shall be no order as to costs. Consequently, the connected miscellaneous petition stands closed.

01.08.2024

ssi

Index :Yes/No

Internet : Yes/No

Neutral Citation :Yes/No

To:

10/12



C.R.P.(NPD)No.562 of 2022

WEB COPY

1.The III Additional District Judge,
Salem.

2.The Section Officer,
V.R.Section,
High Court of Madras.

P. DHANABAL, J.,

ssi



WEB COPY



C.R.P.(NPD)No.562 of 2022

C.R.P.(NPD).No.562 of 2022
and C.M.P.No.2973 of 2022

01.08.2024