



C.R..P.No.757 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2024

CORAM

THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

C.R.P.No.757 of 2023

and

C.M.P.No.5862 of 2023

Devandran

...Petitioner

vs.

Chinnaraj

... Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of the C.P.C. to set aside the Fair and Decretal Order dated 16.11.2022 made in I.A.No.333 of 2022 in O.S.No.22 of 2017 on the file of the Principle District Munsif Court, Dharmapuri.

For Petitioner : Mr.C.Prabakaran

For Respondent : No appearance

ORDER

The 3rd defendant viz., Thiru.Devandran has preferred this Civil Revision Petition having aggrieved by the order dated 16.11.2022 made in I.A.No.333 of 2022 in O.S.No.22 of 2017 on the file of the Principle District Munsif Court, Dharmapuri.



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2. Heard Mr.C.Prabakaran, learned counsel appearing for the petitioner. Though the respondent has entered appearance through a counsel, he was not represented.

3. The revision petitioner herein had filed the above said petition under Section 5 of the Limitation Act to condone the delay of 1,515 days in filing the application under Order IX Rule 13 of the C.P.C. on the following grounds:

(i) though he received the summons for the hearing on 23.03.2017, when he contacted the plaintiff (his brother) he told him that he is going to withdraw the case and upon believing his words he did not conduct the suit by engaging the counsel.

(ii) when he came to his native during the corona lockdown period, he came to know about the *exparte* judgment and when the plaintiff was attempting to mutate the revenue records, he came to know about the same.

(iii) thereafter, he engaged a counsel and came to know about the *exparte* judgment.



4. In the said application, before the Trial Court, though notice was served to the respondent, respondent had neither appeared before the Court nor chose to file his counter.

5. Mr.C.Prabakaran, learned counsel appearing for the petitioner would strenuously argue that the revision petitioner, mainly believed the words of the respondent/plaintiff who is none other than his brother and with a fond hope that he would withdraw the case, as he was eking his livelihood by working in Bangalore. He would further contend that the petitioner came to his native during the corona lockdown he came to know about the *exparte* judgment passed in the said suit.

6. The suit was filed by the plaintiff against his family members for the relief of partition and for permanent injunction in O.S.No.22 of 2017. On first hearing date (on 23.03.2017), the present revision petitioner/3rd defendant did not appear before the Trial Court and he was set *exparte*. It appears that thereafter, witnesses of the plaintiff are examined and after hearing the arguments of the plaintiff's side, the *exparte* judgment was passed on 30.08.2017.



7. The moot question is whether the reasons mentioned in the affidavit filed in support of the petition in I.A.No.333 of 2022 is acceptable or not.

8. The well established principle of law in the matters filed under Section 5 of the Limitation Act is that the Court has to view the delay leniently in order to advance the cause of justice. On the other hand, whether the petitioner has shown sufficient cause in the application filed under Section 5 of the Limitation Act.

9. It is worth mentioning of the observation made by the Hon'ble Supreme Court of India in the case of ***Pathapati Subba Reddy vs. The Special Deputy Collector (LA)***, wherein, it is held as follows:

*“23. In **Basawaraj and Anr. vs. Special Land Acquisition Officer**, this Court held that the discretion to condone the delay has to be exercised judiciously based upon the facts and circumstances of each case. The expression ‘sufficient cause’ as occurring in Section 5 of the Limitation Act cannot be liberally interpreted if negligence, inaction or lack of bonafide is writ large. It was also observed that even though limitation may harshly affect rights of the parties but it has to be applied with all its rigour as prescribed under the statute as the courts have no*



choice but to apply the law as it stands and they have no power to condone the delay on equitable grounds.

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24. *It would be beneficial to quote paragraph 12 of the aforesaid decision which clinches the issue of the manner in which equilibrium has to be maintained between adopting liberal approach and in implementing the statute as it stands.*

Paragraph 12 reads as under:

*“12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. “A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.” The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute.”*



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25. *This Court in the same breath in the same very decision vide paragraph 15 went on to observe as under:*

“15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”



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10. The Supreme Court in ***Improvement Trust, Ludhiana Vs.***

Ujagar Singh and others reported in **2010 (6) SCC 786**, has held as follows:

“... While considering an application for condonation of delay, no straight jacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not. It has been further stated therein that each case has to be weighed from its facts and circumstances in which the party acts and behaves.”

11. The revision petitioner has received the suit summons for the hearing on 23.03.2017. Admittedly, he did not appear before the Trial Court on the said hearing date and was set *exparte*. Thereafter, the case came up for so many hearings for the examination of the plaintiff's witnesses. The Trial Court, after examining the plaintiff 's witnesses and upon hearing the arguments of the plaintiff, has passed the *exparte* judgment. The corona lockdown was declared on 24.03.2020. For the summons dated 23.03.2017, the petitioner's contention that he came to know about the *exparte* judgment dated 30.08.2017 only during the corona lockdown is not believable and acceptable. Of course, technicalities should



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not come in the way of administration of justice. However, the reasons mentioned for the huge delay of 1,515 days shown by the petitioner is not acceptable.

Based on the aforesaid discussions, this Civil Revision Petition stands dismissed. There shall be no order as to costs. Connected C.M.P. stands closed.

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Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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R.KALAIMATHI, J.

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