A.No. 6801 of 2023
And
O.P.No. 424 of 2010

C.V.KARTHIKEYAN, J.

This application has been filed to condone the delay of 1939 days to review an order dated 11.07.2016 passed in O.P.No. 424 of 2010.

2. In the affidavit filed in support of the application, quite apart from stating why a review should lie against the order dated 11.07.2016, the petitioner has also explained the reasons for the delay. The petitioner was the second respondent in the review petition. It is represented that the counsel did not inform about the order dated 11.07.2016 and only when the petitioner received notice in the Execution Petition did he come to know about the order. It is stated that thereafter he had to engage another counsel and file an application seeking review of the order dated 11.07.2016. It is stated that in that process, a delay had occurred and the delay is about 1939 days. The delay would be roughly more than 5 years and touch about 6 years.

3. A cursory examination would make it clear that the delay has not been properly explained. The only reason given is that the counsel for the petitioner had not informed the petitioner about the order and that the petitioner had to engage another counsel and for those aspects, the petitioner had taken nearly about 6 years.

4. Quite apart from that particular aspect, the learned counsel had widened the scope of arguments by stating that the order dated 11.07.2016 requires to be reviewed as the present petitioner had actually filed a counter and in the order, it is stated that the counter had not been filed. It is stated that therefore, there is an error on the face of the record and that if the counter had been taken note of, then probably the nature of the order would have differed. The learned counsel for the petitioner made a fervent plea that the Court should examine the application from that particular angle.

5. It is also stated that the petitioner herein was only a guarantor to the loan obtained by the first respondent and it is stated that the issue of limitation had been pleaded in the counter affidavit. But however, the contract of guarantee has been produced as a document and it is very clear that the guarantee is a continuing guarantee. The company which had obtained the loan had suffered orders of winding up and liquidation. Naturally TamilNadu Industrial Investment Corporation Ltd., had every right to proceed against the guarantors as they were an unsecured creditor. The learned counsel for the applicant also stated that the proceedings against the applicant would be barred by the law of Limitation Act . Specific attention was drawn to Article 137 which provides for limitation period of three years to initiate any action where specific period is not given in any other provision of the Limitation Act.

6. A perusal of the records however show that the witness for the petitioner in the Original Petition was cross examined by a learned counsel. During the course of cross examination, the issue of limitation had not been put as a suggestion. What was actually suggested during the course of cross examination was about repayment by the first respondent to a sum of Rs.28/- lakhs towards principle and about Rs.23.53 laksh towards interest. It was also stated that the petitioner Corporation, namely, Tamil Nadu Industrial Investment Corporation Ltd., was a party to the BFIR proceedings which had been initiated at that particular point of time and that ICICI Bank had initiated further action under the SARFAESI Act and the ICICI Bank and State Bank of Mysore had the first and second charges on the fixed assets of the respondent and that the petitioner, namely, the Tamil Nadu Industrial Investment Corporation Ltd., did not have any hold over the properties. The petitioner Corporation was therefore an unsecured creditor. It is stated that during the course of cross examination, it had been further stated that the loan was sanctioned with a repayment period of 12 months from the date of sanction and that an amount of Rs.28/- lakhs had been paid within a period of 12 months. The last remittance was received in November 1997 and thereafter, there was no further remittance. The only suggestion was that the petitioner, namely, Tamil Nadu Industrial Investment Corporation Ltd., had not taken due and diligent steps for recovery of the loan sanctioned. The issue of limitation was never put during the course of cross examination.

7. The reasons for the delay are very flimsy as stated earlier. The only two reasons which had been given are, (1) the counsel for the applicant had not informed the order and (2) The applicant had taken time to appoint a new counsel. The delay is exordinary, nearly about 6 years.

8. The learned counsel had called upon this Court to consider that particular delay as a secondary aspect and consider the nature of the order passed as a primary aspect and consider the fact that in the order it had been mentioned that the second respondent had not filed the counter. It is contended that the said fact was the fulcrum of the order which necessitated the nature of the order passed which was a decree against the present applicant.

9. But however, the consideration of the counter would not have swerved the mind of the Court particularly since there was cross examination of the witness for the petitioner. In the order dated 07.11.2016, after reducing the facts stated in the petition and the evidence recorded, the learned Judge had also stated that there was no dispute about the status of the respondent. There was no dispute, since the applicant herein was a guarantor and as guarantor, his obligation is continuing with that of the principal debtor. There cannot be any quarrel to that proposition. The facts stated by the learned Judge are not disputed, namely the borrowal of loan and execution of the guarantee. Again that observation by the learned Judge cannot be faulted since there was actually a repayment of the loan which would indicate that there was an initial borrowal and there was also an execution of guarantee. The guarantee agreement is a document now relied on by the learned counsel.

The learned Judge had thereafter stated that he had perused the entire materials on record and thereafter was of the opinion that the petitioner was entitled for the relief sought in the petition. I would therefore not find fault with the nature of the order passed and certainly the arguments assailing that particular order cannot be taken into consideration by this Court.

10. The only fact which now prevails is the reason for the delay. The reason for the delay is very flimsy. There has been no additional affidavit filed giving further reasons. It would be unfortunate if the Court were to condone the delay of five years and more for these two reasons namely, that the Advocate did not inform the nature of order passed by the Court and that the client had to engage a new counsel. These reasons, adopted by any litigant as against any legal professional cannot withstand the scrutiny of this Court. The reason should focus on the disability on the part of the applicant to not come to Court within a reasonable period of time. He cannot claim ignorance of the order. He had called upon the Advocate to cross examine the witness for the petitioner. He therefore should have been more diligent to find out the nature of the result of such cross examination and how the Court had viewed such cross examination. He had left five years to pass by and later has blamed the previous counsel and also stated that he took time to engage a new counsel.

11. The efforts taken by the learned counsel for the applicant are deeply appreciated and I must place on record the strenuous and forcible arguments put forth to emphasise that this Court should review the earlier order passed but unfortunately I am not able to bring myself to accede to such request made by the learned counsel. The delay is not properly explained. There is no other option, but to dismiss this Application.

12. The Application is dismissed. No costs.

Vsg 22.04.2024

C.V.KARTHIKEYAN, J.

vsg

A.No. 6801 of 2023
And
O.P.No. 424 of 2010

22.04.2024