



C.R.P.No.510 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on 15.03.2024

Order delivered on 30.06.2024

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

C.R.P.No.510 of 2022

and

C.M.P.No.2688 of 2022

Loganathan M.N.

.... Petitioner

Vs

1. K.Kamalraj
S/o Kalaiazhagan
2. M.Bommi
W/o Mohanasundaram
3. M.Malliga
W/o Late Munusamy
4. T.Maragadham
W/o Thirunavukkarasi
5. R.Murugammal,
W/o Ramajayam
6. M.Rajesh
S/o Late K.Manoharan
7. M.Geetha,
D/o Late K.Manoharan



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8. P. Ezhumalai,
S/o Perumal

...Respondents

Prayer: Civil Revision Petition filed under Section 115 of C.P.C. against the fair and decreetal order dated 26.10.2021 made in I.A.No.434 of 2019 in O.S.No.88 of 2012 of the learned Principal Subordinate Judge at Ponneri.

For Petitioner : Mr.E.Prabu

For Respondents : Mr.R.Krishnaswamy for R1
R2 - died
R3 to R8 - No appearance.

ORDER

This Civil Revision Petition has been filed by the petitioner as against the order passed by the learned Additional Sub Judge, Ponneri in I.A.No.434 of 2019 in O.S.No.88 of 2012, condoning the delay of 451 days on payment of cost of Rs.2,000/- to be paid by the 1st respondent herein to the petitioner herein.

2. The petitioner has filed a suit in O.S.No.88 of 2012 for declaration that he is the absolute owner of the suit property by declaring the sale deed dated 26.09.2011 executed by the 8th respondent/ 8th defendant on behalf of respondents 2 to 7/defendants 2 to 7 in favour of the 1st respondent as null



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and void and consequently, direct the 1st respondent to demolish the structure in the suit and to vacate and handover the vacant possession of the suit property. The petitioner also prayed for permanent injunction restraining the 1st respondent from alienating, encumbering the suit property and to declare the partition deed dated 22.03.1954 as no relevance to the title of the petitioner over the suit property and to declare the Will dated 17.03.1972 and the Will dated 21.2.1974 executed by Periyathambi Naicker as null and void in respect of the suit property. All the respondents were served. The 1st respondent entered appearance. The other respondents were declared exparte. Though 1st respondent entered appearance, he failed to file his written statement for several years and therefore, he was declared exparte and the suit was decreed on 09.02.2018. The 1st respondent filed a petition to set aside the exparte decree with a delay of 451 days and the same was ordered on 26.10.2021. Aggrieved against the same, the present civil revision petition has been filed.

3. (i) Learned counsel for the petitioner would state that the affidavit filed in support of the condone delay petition is bereft of any details, vague and vexatious and also devoid of merits. The 1st respondent had stated that he had viral fever and jaundice and he was under treatment for one year and after



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recovery, he was very weak and was advised not to travel and to take bed rest and hence, could not contact his counsel to instruct him to file the written statement, which statement is apparently far from truth and highly unbelievable. The reasons stated are vague and casual reasons and does not satisfy the ingredients of good or sufficient reasons for condoning the delay as per Section 5 of the Limitation Act. The 1st respondent did not chose to depose either oral or documentary evidence to prove that he underwent treatment. The order of the trial Court, allowing the condone delay petition is cryptic and non-speaking order. Hence, the same has to be set aside.

(ii) Learned counsel, relying on the decision of the Hon'ble Supreme Court reported in *2015(1) SCC 680 (H.Dohil Constructions Company Ltd., v. Nahar Exports Ltd. and another)*, would state that the said decision is squarely applicable to the facts and circumstances of the present case, in which, it is held that unless the party seeking for condonation of delay gives sufficient cause for the delay, the delay should not be condoned.

4. (i) Per contra, the learned counsel appearing for the 1st respondent/contesting respondent would state that the 1st respondent was



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suffering from severe viral fever and jaundice and underwent treatment for nearly one year at his native place and hence, he could not contact his counsel to give instructions for filing the written statement and after recovery from his illness also he was very weak and was advised by the Doctor not to travel and to take complete bed rest. Thereafter, he came to know about the exparte decree passed in the suit and that too, for non-filing of written statement. Therefore, he filed the application to set aside the exparte decree along with the application to condone the delay of 461 days in filing the application to set aside the exparte decree. The trial Court, only after taking into consideration the respective pleadings of the respective parties, passed the impugned order dated 26.10.2021. He would further state that the reasons stated for condonation of delay are genuine. He further stated that along with the petitions for setting aside the exparte decree and condone delay petition, the 1st respondent also filed his written statement and the same was omitted to be filed along with the typed set filed in the revision petition. The CRP has been filed in the year 2022 and so far the suit is not proceeded on the representation that the suit proceedings are stayed by this Court, but the stay order was granted only for a limited period and the petitioner herein did not take steps to extend the stay order already granted.



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(ii) Learned counsel for the 1st respondent would state that time and again, various High Courts and the Hon'ble Supreme Court have held that the Courts must adopt a liberal approach in allowing the application filed under section 5 of the Limitation Act and should not follow any straight jacket formula in that regard. He would therefore, state that an opportunity to contest the suit has to be given and the 1st respondent's right of defending the suit cannot be shunted out at the threshold. He would further state that the delay was condoned on payment of cost and when the cost was tendered, it was refused and therefore, the same was sent by money order. The money order was also refused to be received by the petitioner herein and therefore, the cost was deposited into the Court.

(iii) In support of the above contentions, the learned counsel for the 1st respondent relied on the following judgments:

- i) 2007(14) SCC 771 (S.V.Matha Prasad v. Lalchand Maghraj & ors)
- ii) 1987(2) SCC 107 (Collector, Land Acquisition, Anantnag and another vs. Ms.Katiji & Ors)
- iii) 2013(11) SCC 341 (S.Ganesharaju(dead) through LRs and another



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vs. Nrasamma (dead) through LRs and Ors)

(iv) 2023 SCC Online SC 910) Raheem Sha and another vs. Govind Singh & Ors.)

5. Heard the learned counsel for the petitioner, the learned counsel for the 1st respondent and perused the materials available on record.

6. At the outset, it is to be noted that the suit was filed in the year 2012. The 1st respondent was set exparte on 09.02.2018, i.e., after a period of 6 years from the filing of the suit. Thus, it is seen that the 1st respondent did not file the written statement for more than 5 years. Thereafter, the 1st respondent has filed the petition to set aside the exparte order along with a petition to condone the delay of 451 days. Even for filing the petition to set aside the exparte order, there is a delay of nearly 1½ years.

7. Further, the reasons stated by the 1st respondent for non filing of the written statement is that he had viral fever and jaundice and he was under treatment for one year and after recovery, he was very weak and was advised not to travel and to take bed rest and hence, could not contact his counsel to



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instruct him to file the written statement are not sufficient reasons for condoning the delay as per Section 5 of the Limitation Act as the 1st respondent did not prove through oral or documentary evidence that he underwent treatment.

8. Admittedly, the exparte order was passed during the pendency of the suit for non-filing of written statement. The 1st respondent has not given proper reason for the enormous delay. Law or principles of limitation has got a definite purpose and object and it has definite consequences on the right and obligation of a party to the suit. If the reasons are not satisfactorily explained in seeking condonation of delay and if the delay is condoned, it will affect a particular party. Thus, the Court has to exercise its discretionary power judiciously. In the present case, the trial Court has condoned the enormous delay in filing the petition to set aside the exparte order on payment of cost of Rs.2000/-. There is no proper findings given by the trial Court for condoning such an enormous delay. The conduct, behaviour and attitude of a party relating to his inaction or negligence are relevant factors to be taken into consideration while dealing with the applications for condonation of delay. In the present case, the 1st respondent had slept over the matter for nearly 6 years



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and had filed the application to set aside the exparte order, that too, with a delay of nearly 1½ years, which act of the 1st respondent would go to show his gross negligence and lack of bonafide. Further, the judgments relied on by the learned counsel for the 1st respondent is not applicable to the present case. Thus, the order passed by the trial Court deserves indulgence by this Court.

9. For the aforesaid reasons, this Court has no hesitation in coming to the conclusion that the order dated 26.10.2021 passed by the learned Subordinate Judge, has to be set aside. Therefore, the order dated 26.10.2021 made in I.A.No.434 of 2019 in O.S.No.88 of 2012 passed by the learned Principal Subordinate Judge at Ponneri, is hereby set aside. Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

03.06.2024

vsi

Index : Yes / No

Internet : Yes / No

To



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The Principal Subordinate Judge
at Ponneri.

J. NISHA BANU, J.



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Pre-delivery order in
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