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CRP. PD.No.4202 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 01.10.2024

Pronounced on: 19.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.B.BALAJI

CRP. PD. No.4202 of 2022
and CMP. Nos.21022 & 22004 of 2022

Kathirvel (died)

1.Dhanalakshmi

2.Karthikeyan

3.Ramathal

4.Mani @ Loganathan

5.Shanmugam

... Petitioners

Vs

K.Mani

... Respondent

Prayer: The Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 26.08.2022 in I.A. No.1 of 2021 in O.S. No.174 of 2004 on the file of District Munsif Court, Sulur.

For Petitioners : Mr.S.Gunaseelan
For Respondent : Mr.L.Mouli

ORDER

The plaintiffs, aggrieved by the order in I.A. No.1 of 2021 in O.S. No.174 of 2004 on the file of the District Munsif Court, Sulur are the Revision Petitioners.

<https://www.mhc.tn.gov.in/judis> 2. The learned District Munsif, Sulur condoned the delay of 4318



days in filing the Application to set aside the exparte decree taken out by the second defendant in I.A. No.1 of 2021.

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3. I have heard Mr.S.Gunaseelan, learned counsel for the revision petitioners and Mr.L.Mouli, learned counsel for the respondent.

4. The learned counsel for the revision petitioners would submit that the Trial Court has casually condoned the delay of 4318 days without noticing the fact that the second defendant as petitioner in the said I.A. No.1 of 2021 was examined and cross examined and during cross examination, he admitted to the fact that he engaged a lawyer in the year 2019 itself, but however, the Application came to be filed only in 2021 and the delay in the interregnum period has not been explained at all.

5. He would further submit that the Trial Court, erred in holding that no notice was served on the respondent, that is the second defendant and in any event, the Trial Court failed to follow the settled legal propositions laid down by the Hon'ble Supreme Court and ought not to have condoned the inordinate delay of 4318 days, especially when no sufficient cause has been shown. He would therefore pray for the revision being allowed.



6. The learned counsel for the petitioners would place reliance on the following decisions:

(i) *Basawaraj & Others Vs. The Special Land Acquisition Officer*, reported in (2013) 14 SCC 81;

(ii) *Majji Sannemma @ Sanyasirao Vs. Reddy Sridevi & Others*, reported in (2021) 18 SCC 384;

(iii) *K.B.Lal Vs. Gyanendra Pratap and Others*, reported in 2024 (3) ALD 80; and

(iv) *A.Sagunthala Vs. Rajathi* in CRP. No.68 of 2023 dated 12.01.2023

7. Per contra, Mr.L.Mouli, the learned counsel for the respondent would invite my attention to the impugned order and state that the Trial Court had passed a well-reasoned order and has perused the records and found that no notice has been served on the respondent and also found that the death of the first defendant who is none else then the father of the revision petitioners was not even brought to the notice of the Court and therefore, he would justify the findings arrived at by the Trial Court and would seek for the revision being dismissed.

8. The learned counsel for the respondent would place reliance on the following decisions:

<https://www.mhc.tn.gov.in/judis> (i) *Chandra and three others Vs. M.Devendran*, reported in 2019



(4) CTC 61;

(ii) *Meenakshisundram Textiles Vs. Valliammal Textiles Limited*,

reported in 2011 (3) CTC 168; and

(iii) *Ramachandran and others Vs. Balakrishnan and others*,

reported in 2020(4) CTC 843.

9. I have carefully considered the submissions advanced by the learned counsel on either side.

10. Admittedly, the case appears to have had a checkered history. Originally, the suit was filed before the Subordinate Court, Tiruppur in the year 1997 and was assigned O.S. No.382 of 1997. It was subsequently transferred to the District Munsif Court, Palladam, where it was re-numbered as O.S.No.174 of 2004. Thereafter, pending final decree Application, the suit was transferred to the Principal District Munsif Court, Coimbatore. Before the Sub Court, the defendant entered appearance. However, he was set exparte for not filing the written statement. The defendant took out an Application to set aside the exparte decree and the same came to be allowed and the written statement was received. After issues were framed and case was pending trial, the matter was transferred to the District Munsif Court, Palladam. Subsequently, the

<https://www.mhc.tn.gov.in/judis/> case was dismissed for default since the plaintiff did not appear on



17.03.2005. The plaintiffs filed an Application in I.A. No.875 of 2007 for restoring the suit. In the said Application, the plaintiff has made an endorsement that his father/first defendant had passed away after presentation of the said petition and the Application was surviving only against the second defendant viz., the respondent herein.

11. The Trial Court in the impugned order has found that the petition copy was not served on the second defendant or his learned counsel. However, I.A. No.875 of 2007 came to be allowed on 07.02.2008, since the second defendant had not chosen to file a counter.

12. It is seen that subsequently, the suit was restored to file and posted in the list on 25.04.2008 and on the same day, the plaintiff examined himself as P.W.1 and filed his proof affidavit and also marked documents. The Court has also recorded the fact that the first defendant died and since there is no representation on behalf of the second defendant, the second defendant was set exparte and the suit was decreed.

13. Thereafter, the plaintiffs have filed a final decree Application in I.A. No.696 of 2013 and subsequently, on the ground of territorial jurisdiction, the final decree Application was transferred to the Principal District Munsif Court, Coimbatore. It is seen that on 17.06.2016, the



notice sent to the second defendant was returned as 'no such addressee' and thereafter, paper publication was ordered and effected, consequent to which the second defendant was set exparte. An Advocate Commissioner was also appointed for dividing the suit property. However, at that stage, the final decree petition came to be dismissed for default. I.A. No.1 of 2019 was filed by the plaintiffs to restore the final decree Application. According to the second defendant, he was not served with Court notice or postal notice and hence, he took out an Application in I.A. No.1 of 2021 for condoning the delay in setting aside the exparte decree.

14. It is also seen that the second defendant examined himself as P.W.1 in I.A. No.1 of 2021, second defendant has also been elaborately cross examined.

15. In his cross examination, the second defendant has admitted that he received notice in I.A. No.1 of 2019 and only then he came to know about the death of the first defendant. He also claims to be a purchaser of the suit property from the first defendant and that the property is a self acquired property of the father of the plaintiffs. He has also admitted to the fact that his address mentioned as reflected in the suit is correct. He has further admitted that he continues to reside only in the said property even as on the date of tendering evidence before the Court.

<https://www.mhc.tn.gov.in/judis> He has also stated that he has engaged a lawyer even in 2019 as soon as



he received notice in I.A. No.1 of 2019 and he has perused the Court records.

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16. Unfortunately, the Trial Court has condoned the delay without appreciating the said vital admissions of the second defendant in cross examination regarding notice of the proceedings in I.A. No.1 of 2019 and no reasons having been assigned for not approaching the Court immediately thereafter. Having slept over the matter for close to three years, the second defendant has chosen to file the Application only in the year 2021. Therefore, even if the respondent had no notice in the earlier instances, atleast in I.A. No.1 of 2019 had been filed to restore the final decree Application that was dismissed for default, the respondent/second defendant ought to have contested the same. However, the respondent/second defendant allowed the final decree Application to be restored.

17. The Trial Court has beneficially viewed the fact that the revision petitioners have not reported the death of the father to the Court and no notice was served in I.A. No.875 of 2007 on the second defendant. Unfortunately, the Trial Court failed to see that the proceedings which had taken place long back were no longer relevant to decide the Application for condonation of delay of 4318 days.



18. The specific case of the respondent/second defendant is that he had no notice about the restoration of the suit after it was dismissed for default on 17.03.2005. That is the only ground on which the Application has been filed seeking condonation of delay.

19. Per contra, it is the specific case of the petitioners that the respondent/second defendant was throughout aware of the proceedings and was sitting on the fence and watching and only at the last leg of the final decree proceedings, he has chosen to file the Application with an inordinate delay of 4318 days. It is also the case of the revision petitioners that the delay has not been properly explained and the respondent/second defendant has also not stated as to how he came to know about the exparte order.

20. I find that the Trial Court has not dealt with the material aspects of the matter and instead diverted its attention to the proceedings in I.A. No.875 of 2007 and the death of the first defendant. These, in my considered opinion are wholly irrelevant to decide the condonation of delay Application taken out by the second defendant, especially when he has admitted to the fact that he was served with notice in I.A. No.1 of 2019 which was filed to set aside the dismissal of the final decree



Application and the fact that he had also perused the records by engaging a Counsel. While that being so, nothing prevented the respondent/second defendant to move an application for condonation of delay immediately thereafter. However, admittedly, the petition had been filed only on 29.03.2021. The respondent has therefore, not satisfactorily explained the delay, despite having knowledge of the proceedings, atleast in 2019 itself. Therefore, the Trial Court has clearly committed an error in entertaining the Application for condonation of delay and proceed to allow it on payment of costs of Rs.3,000/-.

21. The findings of the Trial Court that no prejudice would be caused to the revision petitioner as the suit is only for partition, does not stand the test of reason.

22. The Hon'ble Supreme Court in *Basawaraj's* case, (referred herein supra), held that "*sufficient cause*" means that the party should not have acted in a negligent manner or there was a want of bonafide on its part in view of the facts and circumstances of the case.

23. In *Majji Sannemma @ Sanyasirao's* case, (referred herein supra), the Hon'ble Supreme Court held that the Court while exercising its discretion to condone the delay has to exercise it judiciously and



“sufficient cause” cannot be liberally interpreted if negligence, inaction or lack of bonafides is attributed to the party. In the present case, I have already found that there is total inaction on the part of the respondent/second defendant for almost two years and therefore, in view of the same, delay would definitely defeat equity and the Court cannot come to the rescue of a litigant who has slept over his rights.

24. In *K.B.Lal's* case, (referred herein supra), the Hon'ble Supreme Court held that when the person seeking condonation of delay had admitted that he had inspected the case file and came to know about the order of the Trial Court and no Application was filed immediately thereafter, then it would amount to gross negligence and the delay cannot be condoned. The facts of the said case are almost identical to the facts of the present case. In the present case as well, the respondent/second defendant admitted that he received notice in I.A. No.1 of 2019 and thereafter inspected the records and came to know about the order passed by the Trial Court.

25. In *A.Sagunthala's* case (referred herein supra), this Court while deciding an Application for condonation of delay of 2755 days held that the concept such as “liberal approach”, “justice oriented approach” or “substantial justice” cannot be employed in jettison the substantial law of



limitation and the principles laid down are to be scrupulously followed while condoning the delay.

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26. The learned counsel for the respondent relied on the decision of the Hon'ble Division Bench of this Court in *Meenakshi Sundaram Textiles's* case (referred herein supra) and *Ramachandran's* case (referred herein supra).

27. In the first case, the Hon'ble Division Bench of this Court held that even while passing an ex parte decree, the Court should be extra careful and should consider pleadings and evidence to arrive at a finding as to whether the plaintiff is entitled to a decree. The Hon'ble Division Bench of this Court finding that the judgment of the Trial Court was not in conformity with the provisions of the Code of Civil Procedure, 1908 set aside the same. This ratio may not be applicable to the facts of the present case, where there is a huge and inordinate delay in filing the Application for setting aside an ex parte decree.

28. In the second case, this Court placing reliance on the ratio laid down in *Meenakshi Sundaram's* case (referred herein above) condoned the delay of 1216 days in seeking to set aside the ex parte decree.

<https://www.mhc.tn.gov.in/judis> However, in the facts of the said case, this Court found that there was no



negligence and the setting aside Application along with condonation of delay petition was filed immediately on receipt of the notice of the final decree proceedings. Unfortunately in the present case, I have already held that there has been inaction on the part of the respondent/second defendant for a period close to two years and therefore, there is no justification for the inordinate delay that has been occasioned purely due to the negligence on the part of the respondent/second defendant. Therefore, I am afraid that the said decision would also not come to the rescue of the respondent/second defendant.

29. In *Chandra's* case (referred herein supra), this Court in a suit for specific performance held that the decree being discretionary in nature, cannot be granted in a routine manner and the Court must apply its mind and give reasons for decreeing the suit. However, in the present case when there is abundant material to show that the respondent was very much residing in the very same address and he has admitted to the said fact in his cross examination and also further admitted that he engaged a learned counsel to represent him in I.A. No.1 of 2019 and that he has perused the Court records, did not choose to take any steps thereafter for a period of almost two years. Therefore, such conduct of the respondent/second defendant can only be termed as grossly negligent and

<https://www.mhc.tn.gov.in/judis> inaction on his part and the same would not come within the purview of



“sufficient cause” under Section 5 of the Limitation Act, 1963.

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30. The Trial Court also, unfortunately, on irrelevant considerations has proceeded to condone the delay and the said order is clearly unsustainable in the eye of law. For all the above reasons, the present Civil Revision Petition is allowed and accordingly, order dated 26.08.2022 in I.A. No.1 of 2021 in O.S. No.174 of 2004 passed by the learned District Munsif, Sulur is hereby set aside. Connected Miscellaneous Petition is also closed. No costs.

19.10.2024

Index: Yes/No
Speaking order/Non-speaking order
rkp

To

1.The District Munsif Court, Sulur.

2.The Section Officer,
VR Section,
Madras High Court,
Chennai.



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CRP. PD.No.4202 of 2022



P.B.BALAJI, J.

rkp

**Pre-Delivery Order in
CRP. PD. No.4202 of 2022
and CMP. No.22004 of 2022**

19.10.2024



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