



CRP. PD.No.3971 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 01.10.2024	Pronounced on: 04 .10.2024
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CORAM:

THE HONOURABLE MR. JUSTICE P.B.BALAJI

CRP. PD. No.3971 of 2022
and CMP. No.20664 of 2022

Aparna

... Petitioner

Vs

Arulmighu Visveswara Swamy
and Veeraragava Perumal Temples,
Tiruppur, rep. by its Executive Officer

... Respondent

Prayer: The Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 04.08.2022 made in I.A. No.232 of 2020 in O.S. No.10 of 2013 on the file of the learned Principal Subordinate Court, Tiruppur by allowing this Civil Revision Petition.

For Petitioner	: Mr.N.S.Suganthan for Mr.K.Naveenkumar
For Respondent	: Mr.N.M.Abdul Majeed for Ms.G.Sumitra



ORDER

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The revision is preferred against the order in I.A.No. 232 of 2020 in O.S.N.10 of 2013 on the file of the Sub Court, Tiruppur, whereby the Trial Court has condoned the delay of 657 days in filing an application to set aside the exparte decree dated 06.04.2017.

2.I have heard Mr.M.S.Suganthan for Mr. K. Naveen Kumar, learned counsel for the petitioner and Mr. N.M.Abdul Majeed for Ms. G. Sumitra, learned counsel for the respondent.

3.The learned counsel for the petitioner would take me through the impugned order and state that the Trial Court, without assigning any reasons, has condoned the inordinate delay of 657 days merely on the premise that an opportunity should be given in adherence to principles of natural justice.

4.The learned counsel for the petitioner would place reliance on the following decisions:



1. *H.Dohil Constructions Company Private Limited vs Nahar Exports Limited and Another* reported in (2015) 1 SCC 680.

2. *Union of India owning Southern Railway vs Kommu Sumathi and Others* reported in 2021 SCC Online Mad 427.

3. *Shanthimalai Trust vs Arunachala Education and Environment Development Trust* reported in 2020-5-LW 361.

4. *T.Lakshmi vs M.Vasantha and Others* reported in 2022 SCC online Mad 1406.

5.Per contra, the learned counsel for the respondent would submit that the defendant is a temple and the written statement has also been filed along with the application to set aside the exparte decree which has been filed with an application to condone the delay. He would therefore state that no prejudice would be caused to the respondent/plaintiff, if the impugned order is confirmed, thereby affording an opportunity to the defendant to contest the suit. He would further state that the defendant has assigned sufficient reasons in I.A No. 232 of 2020 for condonation of delay in seeking to set aside the exparte decree. He would therefore pray for the revision being dismissed.



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6.I have considered the submissions advanced by the learned counsels on either side. I have also gone through the decisions on which reliance is placed by the learned counsel for the petitioner.

7.Admittedly the Trial Court has chosen to allow I.A No. 232 of 2020 in a cryptic fashion, holding that no one can be left unheard and therefore an opportunity should be given. Unfortunately, the Trial Court has not even discussed the reasons assigned by the petitioner in the said interlocutory application in order to find out whether sufficient cause has been shown in the first place.

8.I have gone through the affidavit filed in support of the application seeking to condone the delay of 657 days. The respondent herein has stated that they have engaged a counsel to represent the defendant temple and that on 06.04.2017, no appearance was made on behalf of the defendant and therefore, an exparte decree came to be passed. They further claim that the temple never had knowledge of exparte decree and only when the petitioner commenced certain activities in the subject property, they came to know about the exparte decree



passed as early as on 06.04.2017. He further claimed that the executive officers have been frequently changed and therefore, at times, the written statements to be filed before the Courts are inadvertently not filed. Excepting the above, there is no other reason set out in the affidavit. The said application has been strongly opposed by the revision petitioner on the ground that no such work was done by the respondent in the suit property as alleged by the revision petitioner and the reasons are more generic in nature regarding Executive Officers being transferred frequently.

9.Despite strong objections taken by the revision petitioner, the Trial Court has not chosen to discuss the merits and demerits of the reasons assigned by the defendant temple and as already discussed only with a view to afford an opportunity, the Trial Court has proceeded to condone the delay of 657 days.

10.It is trite law that in a Section 5 application, it is incumbent on the petitioner seeking condonation of delay to show just and sufficient cause, explaining the delay and only on such explanation being acceptable to the Court, the delay can be condoned. Here the Trial Court has not ventured to undertake such an exercise.



11. In view of the Trial Court not even advertent to the affidavit and counter in the interlocutory application seeking condonation of delay, I have independently gone through the same. I do not find any sufficient cause or justifiable reasons assigned by the respondent seeking condonation of due delay of 657 days. In fact, the respondent temple admits that they have engaged a counsel on receipt of suit summons. Therefore, to generalize and put the blame on frequent transfer of Executive Officers is no ground to explain the inordinate delay in the present case.

12. Further, according to the respondent, they came to know about the ex parte decree only when the revision petitioner started doing some work in the suit property. The said fact has been specifically denied by the revision petitioner. In such circumstances, the respondent temple was bound to satisfy the Court and establish the averments set out in the affidavit in support of Section 5 application. No such attempt has been made by the respondent.

13. In *H.Dohil Constructions's case* (referred herein supra) the Hon'ble Supreme Court held that filing an application for condonation of



delay, without disclosing reasons, much less satisfactory reasons, only results in the party concerned not deserving any indulgence by the Court in the matter of condonation of delay. In the present case also the affidavit is vague and does not even disclose as to when the respondent/defendant came to know about the exparte decree. In any event, when they are duly represented by a counsel, it is not open to the respondent/defendant to even contend that they had no knowledge about the exparte decree, especially when it is not their case that the advocate engaged by them never informed them about the exparte decree.

14.In *Union of India's* case (referred herein supra), this Court came down very heavily on the public authorities being frequently negligent and committing dereliction of duty in respect of dealing with matters before the Court and further held that mechanical way of condoning delay is undoubtedly impermissible and rejected an application for condonation of delay of 264 days in filing an appeal.

15.In *T. Lakshmi's* case (referred herein supra), this Court held that though Courts are vested with power of discretion to condone delay, it does not mean that enormous delay can be condoned mechanically and



only if the reasons are candid and convincing Courts are empowered to exercise discretion for the purpose of condoning the delay. It is further held in the said case that power of discretion is privileged and discretionary powers have to be exercised cautiously and uniformly to avoid prejudice to either of the parties.

16.The learned counsel for the respondent relied on the decision of *Shanthimalai Trust's* case (referred herein supra) where this Court invoking the power under Article 227 of the Constitution of India held that the Court could not have proceeded ex parte within 30 days from the date of service of summons and pass an ex parte decree on the 28th day. The Court also found that the ex parte judgment was not in compliance with Order 41 Rule 31 and suffered from total non-application of mind and under such overall circumstances, this Court set aside the ex parte decree. I am unable to apply the ratio laid down in the said case to the facts of the present case, since here the suit summons were duly served and only for non-filing of written statement, the defendant was set ex parte and thereafter, the decree came to be passed.



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17.As held by this Court in *Union of India and Lakshmi's* case and by Hon'ble Supreme Court in *H.Dohil Construction's* case, the Trial Court has to exercise discretion in a judicious manner and such discretion cannot be exercised mechanically. I have already discussed the lack of satisfactory reasons assigned by the respondent temple in their affidavit seeking condonation of delay. The reasons are far from satisfactory and cannot constitute either sufficient or just cause. Unfortunately, the Trial Court, without advertent to the mandate of Section 5, has summarily proceeded to allow the application on the solitary ground that an opportunity should be afforded to the respondent/defendant, without even considering the prejudice that would be caused to the other party. Following the ratio laid down by the Hon'ble Supreme Court in *H.Dohil Construction's* case, I have no hesitation in setting aside the order passed by the Trial Court.

18.For all the above reasons, the Civil Revision Petition is allowed. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

04.10.2024

Index:Yes/No
Speaking order/Non-speaking order
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P.B.BALAJI, J.

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To

- 1.The Principal Subordinate Court, Tiruppur.
2. The Section Officer,
VR Section,
Madras High Court,
Chennai.

**Pre-Delivery Order in
CRP. PD. No.3971 of 2022
and CMP. No.20664 of 2022**

04.10.2024