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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 01.08.2024
Pronounced on : 06.12.2024

CORAM:

THE HON-BLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.360 of 2024

M.Ganesan

... Petitioner

Vs.

T.Bhagavathy

... Respondent

PRAYER: The Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the Fair and Decreetal Order, dated 18.10.2022, passed by the learned Subordinate Judge at Poonamallee in C.M.A.No.27 of 2018, confirming the order passed by the District Munsif, Ambttur in I.A.No.925 of 2017 in O.S.No.45 of 2014, dated 19.11.2018.

For Petitioner : Mr.Karthikeyan
For Mr.K.Thirumalai

For Respondent : Mr.S.Ayyadurai, S.C.
For Mr.S.P. Sudalaiyandi

ORDER

Challenging the Fair and Decreetal Order, dated 18.10.2022, passed by the learned Subordinate Judge at Poonamallee in C.M.A.No.27 of 2018, confirming the order passed by the District Munsif, Ambttur in I.A.No.925 of 2017 in O.S.No.45 of 2014, dated 19.11.2018, the present Civil Revision Petition has been filed.



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2. Mr.Karthikeyan, learned counsel appearing for the Revision Petitioner submitted that both the trial Court and the lower appellate Court failed to appreciate the written argument filed in the petition for condoning the delay of 142 days in I.A.No.925 of 2017 in O.S.No.45 of 2014. Further, in the written argument it has been clearly mentioned that the property in question in respect of the petitioner is situated in Survey No.625/7, but the respondent purchased the property bearing Survey No.625/2. The findings of the Courts below that the possession of the respondent is better than the possession of the petitioner, is perverts and is blatantly wrong. Further, the petitioner filed several documents to prove that he is the absolute owner of the property, but the trial Court failed to appreciate the same. The appellant is an aged, diabetic and high pressure patient for the past several years and therefore, the observation of the Courts below that the petitioner has not given full medical history of his ill-health to condone the delay is a baseless and erroneous. The learned counsel drew the attention of this Court to the various Judgments of the Apex Court in ***Mohamed Ali Vs. V.Jaya and Others*** reported in ***2022) 5 MLJ 585 (SC)***; ***O.P.Kathpalia Vss. Lakhmir Singh (Dead and Others*** reported in ***(1984) 4 SCC 66***.

3.The learned counsel for the petitioner, in support of his contentions, relied on the Judgment of the Hon'ble Supreme Court in ***Robin Thapa Vs. Rohit Dora*** reported in ***(2019) 7 SCC 359***, wherein in paragraph No.7, it has been held as follows:-



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“7. Ordinarily, a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits.”

4. Mr.S.Ayyadurai, the learned Senior Counsel appearing for the respondent would submit that the petitioner ought to have given proper explanation for each day's delay and in this case, no reason given by the petitioner to condone the huge delay of 142 days. The first appellate Court, after gone through the entire oral and documentary evidence, has rightly dismissed the claim of the petitioner. Hence, the learned counsel prayed for dismissal of the Revision.

5. The learned counsel for the respondent, in support of his contentions, has relied on the Judgment of this Court in ***M.Duraisamy Vs. Vasantha*** reported in ***(2023 (1) CTC 444)***, wherein in paragraph No.7, it has been held as follows:-

“7.The practice of leniently condoning the long delay by imposing cost is opposed to law. The legal principles at no circumstances be compromised by condoning the unexplained delay by imposing cost. The issues are to be decided on merits and by applying the legal principles established. If the Courts started taking a lenient view for condoning an uncondonable delay by imposing cost, then the legal principles are diluted and it



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would result in miscarriage of justice. Greater prejudice would be caused to the opposite party, who is forced to defend his case beyond a reasonable period of time and after the issues became lapsed. More-so, the parties are tactically adopting such procedures for prolongation of the litigation and thus, the Courts are not expected to compromise the legal principles and condoning the long unexplained delay by imposing cost. The cost cannot compromise the legal principles. The irreparable loss and prejudice caused to the other parties cannot be compensated by some cost. Thus the practice of imposing cost for allowing uncondonable long delay is to be deprecated.”

6. I have heard the learned counsels appearing on either side and perused the materials available on record.

7. On perusal of the records it is seen that there was civil dispute between the petitioner and the respondent, which forced the petitioner to file a Suit in O.S.No.45 of 2014, before the District Munsif Court, Ambttur, for permanent injunction against the respondent. Due to ill-health, the petitioner unable to appear before the Court on 03.03.2017. As a result of which, the trial Court dismissed the suit for default. Hence, the petitioner filed petitions in I.A.Nos.925 and 926 of 2017, before the District Munsif Court, Ambttur, to condone the delay of 142 days in filing the petition and to restore the Suit O.S.No.45 of 2014, which was dismissed for default on 03.03.2017. The trial Court dismissed the petitions. Aggrieved over the same, the petitioner



Poonamallee. The learned Subordinate Judge dismissed the Civil Miscellaneous Appeal, confirming the decree and judgment passed by the District Munsif, Ambattur. Against which, the petitioner is before this Court with the present Civil Revision Petition.

8. Admittedly, the Suit is of the year 2014. It was posted for trial on 15.12.2016, subsequently, it was adjourned to 06.02.2017 and on that day, on filing a Memo by the learned counsel for the petitioner, the Suit was listed for trial in the month of March 2017, by fixing a specific date as 03.03.2017. Even on the specific date, there was no representation either by the petitioner or his counsel and the trial has rightly dismissed the suit for default. Further, the petitioner claims that he is the owner of the property in Survey No.625/7A. But, there is no corresponding entries reflecting the Survey No.625/7A in favour of the petitioner or in favour of any other predecessor of the petitioner. The suit schedule property in Survey No.625/7A, measuring to an extent of 4796 sq.ft, does not correspond to the property in the name of respondent. The respondent purchased the property in Plot No.406/B, comprised in Survey No.625/2. No such land situated in Survey No.625/7 in the said village. In the said circumstances, the petitioner is no way connected with the suit schedule property.

9. Be that as it may. The petition in I.A.No.925 of 2017 has been filed under Section 5 of the Limitation Act, to condone the delay of 142 days in filing the restore petition in O.S. No.45 of 2014. The Petition in I.A.No.926 of 2017 has been filed under Order 9 Rule 9 CPC to restore the suit in O.S.No.45



of 2014. No doubt, the delay cannot be excused as a matter of judicial generosity. The Respondent pursuing the matter for nearly a decade. The matter could not reach finality because of one Application or other filed by the petitioner. The party claiming indulgence must prove that he is reasonably diligent in prosecuting the matter. This test for condoning the delay is satisfied in this case. In the instant case, it is clear that the Petitioner has deliberately adopted delaying tactics at various stages. On the aforesaid circumstances and as rightly contended by the Courts below, I could find no merit in favour of the petitioner. As rightly held by the Courts below, the delay has not been satisfactorily explained by the Petitioner. Hence, I have no reason to interfere with the findings of the both the Courts below.

10. In the result, The Civil Revision Petition stands dismissed. However, there shall be no order as to costs.

06.12.2024

Speaking Order/Non Speaking Order
Index : Yes/No
Internet : Yes

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To

1.The Subordinate Judge
Poonamallee.

2.The District Munsif,
Ambttur



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M.NIRMAL KUMAR, J.

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**Pre-Delivery Orders made in
C.R.P.No.360 of 2024**

06.12.2024