



C.R.P.(MD)No.2649 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.12.2023

Pronounced on : 26.02.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2649 of 2023

and

C.M.P.(MD)No.13812 of 2023

1. R.Ulagammal

2. R.Ramupillai

... Petitioners/
Petitioners 1, 2/
Defendants 1,2

Vs.

The Chief Manager
State Bank of India
Aranthangi Branch
Aranthangi & Post
Pudukkottai District.

... Respondent/
Respondent/
Plaintiff

Chinthamani (Died)

Prayer : This Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the fair and decretal order dated 02.01.2023



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made in I.A.No.526 of 2022 in O.S.No.208 of 2017 on the file of Sub Court, Aranthani and allow the above civil revision petition.

For Petitioners : Mr.Prasanna

For Respondent : Mr.G.Radhakrishnan

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.526 of 2022 in O.S.No.208 of 2017 dated 02.01.2023 on the file of the Subordinate Court, Aranthangi, dismissing the application filed under Section 5 of Limitation Act.

2. The respondent-Bank as plaintiff has filed a suit in O.S.No.208 of 2017 for recovery of Rs.4,22,140/- due on a mortgage. Since the revision petitioners/defendants 1 and 2 have not chosen to file written statement, they were set *ex parte* on 11.07.2018 and an *ex parte* preliminary decree came to be passed on 04.08.2018. The revision petitioners/defendants have filed an application under Section 5 of Limitation Act in I.A.No.526 of 2022 to condone the delay of 1078 days in filing an application under Order 9 Rule 13 C.P.C. for setting aside the *ex parte* decree dated 04.08.2018. The respondent/plaintiff has filed a counter statement raising



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objections. During enquiry, the respondent/plaintiff as well as the revision petitioners/defendants have adduced neither oral nor documentary evidence. The learned Subordinate Judge, Aranthangi, after enquiry, has passed the impugned order dated 02.01.2023 dismissing the application. Aggrieved by the order of dismissal, the defendants have preferred the present revision.

3. The case of the revision petitioners/defendants is that the first revision petitioner/first defendant has been following up the case on behalf of other defendants also, that the case was posted for written statement on 11.07.2018, that the first revision petitioner/first defendant suffered from fever along with diarrhea on 03.07.2018 and hence, her health condition was not well, that subsequently she was affected by jaundice, that since she was taking herbal medicine for jaundice, she got side effects, that due to her health issues, she was not in a position to meet her advocate and follow up the case and also due to the lockdown imposed for Covid, that when she finally met her advocate on 05.08.2021, she came to know that they were set *ex parte* on 11.07.2018 and preliminary decree was passed on 04.08.2018, that the delay occurred is neither willful nor wanton and



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that the revision petitioners/defendants would be put to irreparable loss and hardship, if the delay is not condoned.

4. The respondent/plaintiff has filed the counter statement raising objections stating that the reasons assigned that the first revision petitioner/first defendant was affected by fever, diarrhea and jaundice are all false, that the revision petitioners/defendants have purposely allowed the suit to be decreed as *ex parte*, that there is no bona fide in filing the above application and that therefore, the application is liable to be dismissed.

5. It is evident from the records that the revision petitioners/defendants, after the receipt of suit summons, have entered into appearance through their counsel and have taken time for filing written statement, that since they have failed to file written statement on 11.07.2018, they were called absent and as there was no representation for them, they were set *ex parte*, that thereafter the Court has passed the preliminary decree on 04.08.2018, that the respondent/plaintiff as decree holder has then filed an application in I.A.No.146 of 2020 for passing of



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final decree, that the revision petitioners/defendants, after the receipt of notice in the final decree petition, have entered into appearance and filed their counter statement on 19.04.2021 and that thereafter the present application to condone the delay of 1078 days in filing the application under Order 9 Rule 13 C.P.C. came to be filed.

6. It is not in dispute that the present application under Section 5 of Limitation Act came to be filed on 11.08.2021. It is pertinent to note that though the revision petitioners/defendants have entered into appearance in the final decree petition and filed their counter statement on 19.04.2021, they have not chosen to file an application under Section 5 of Limitation Act and an application under Order 9 Rule 13 C.P.C. immediately, but the said applications came to be filed on 11.08.2021. As rightly pointed out by the learned counsel appearing for the respondent, the revision petitioners/defendants have not offered any reason or explanation in this regard. As rightly contended by the learned counsel appearing for the respondent, though the revision petitioners/defendants have alleged that the first revision petitioner/first defendant suffered from fever, diarrhea and jaundice and she had side effects due to the country treatment taken for



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jaundice, they have not elaborated anything further. As already pointed out, the revision petitioners/defendants have not produced any evidence to substantiate their case. Admittedly, the revision petitioners/defendants have not produced any medical records or other materials to show that the first revision petitioner/first defendant was suffering from health issues and was taking treatment therefor.

7. It is settled law that the word “sufficient cause” in Section 5 of Limitation Act should receive liberal construction to do substantial justice and the length of delay is no matter, but acceptability of the explanation is the only criterion. At this juncture, it is necessary to refer the decision of this Court in the case of ***T.Natarajan Vs. Srivari Housing and Construction Ltd. and others*** reported in ***2020 SCC OnLine Mad 2355*** and the relevant passages are extracted hereunder;

“4.The law of limitation is substantive law. Condonation of delay is an exception. The Courts are bound to exercise discretionary power judiciously and by recording reasons. The Courts are bound to follow the law of limitation in all circumstances and only on exceptional circumstances, wherever the reasons are found genuine, then only the Courts can condone the delay and not otherwise. Mechanical



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approach in condonation of huge delay is unacceptable. In such an event, the Courts are diluting the law of limitation, which is impermissible. The power of discretion is to be exercised by recording reasons and it is not as if the Courts can condone the huge delay without any genuine reasons.

....

7.

16. The concepts such as “liberal approach”, “justice oriented approach”, “substantial justice” cannot be employed in jettison the substantial law of limitation. The law of limitation is substantial and therefore the principles laid down is to be scrupulously followed while condoning the delay under the law of limitation. The limitation has got a specific purpose and object and more specifically to avoid prejudice to the respective parties. In the event of prolongation or protraction of the litigation, undoubtedly and for an unspecified period when the specific law of limitation has got a specific purpose and object, then the power of discretion is to be exercised cautiously. Power of discretion cannot be exercised in the absence of any valid reason. In other words, powers can be exercised for the purpose of passing orders only by recording reasons



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which must be candid and convincing and must be passed on certain sound legal principles. Therefore, recording of reasons for exercising discretionary powers is one of the elementary principles of law. In the event of exercising discretionary powers without recording reasons, undoubtedly the same would cause not only prejudice and will set a bad principle and therefore, the Courts must be cautious while exercising power of discretion more specifically in such matters where the law of Limitation is substantial.”

8. It is pertinent to note that delay condonation petition should not be dealt with in a routine manner and mechanical approach in condonation of huge delay cannot be accepted. In the case on hand, as already pointed out, the revision petitioners/defendants have not assigned any valid or acceptable reason or explanation for the delay, which is inordinate. Considering the above, the impugned order dismissing the application filed under Section 5 of Limitation Act cannot be found fault with. Hence, this Court concludes that the revision is devoid of merit and the same is liable to be dismissed.



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9. In the result, this Civil Revision Petition is dismissed.

Consequently, connected Miscellaneous Petition is closed. No costs.

26.02.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The Subordinate Court,
Aranthangi.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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**Pre-Delivery Order made in
C.R.P.(MD)No.2649 of 2023
and
C.M.P.(MD)No.13812 of 2023**

Dated : 26.02.2024