



C.R.P.(NPD)(MD) No.341 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 13.03.2024

ORDERS PRONOUNCED ON : 26.03.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

C.R.P.(NPD)(MD) No.341 of 2020

1.Ayyappan

2.A.Ramar

3.Vijaya

... Petitioners/Petitioners/
Appellants/Defendants 3, 4 & 6

Vs.

1.K.Rameshsubramaniyan

2.K.Parthipan

... Respondents/Respondents/
Respondents/Plaintiffs

Prayer: Petition filed under Article 115 of the Civil Procedure Code against the fair and decretal order dated 27.08.2019 passed in I.A.No.90 of 2019 in Unnumbered A.S.No. --- of 2019 on the file of the Principal Sub Court, Madurai against O.S.No.292 of 2003 on the file of the District Munsif Court, Madurai Taluk, Madurai.



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For Petitioner : Mr.C.Mayilvahana Rajendran

For Respondents : Mr.V.Ramakrishnan

ORDER

This civil revision petition is directed against an order dated 27.08.2019 passed in I.A.No.90 of 2019 in an unnumbered A.S.--- of 2012 on the file of the Court of the Principal Subordinate Judge, Madurai.

2. The said application in I.A.No.90 of 2019 was filed seeking condonation of delay of 115 days in filing an application under Order XLI Rule 3-A(1) of the Code of Civil Procedure by the petitioners herein.

3. The respondents herein originally filed O.S.No.292 of 2003 on the file of the Court of the District Munsif, Madurai Taluk, Madurai seeking permanent injunction restraining the defendants from in any way interfering with the plaintiffs' possession over the suit schedule property. The said suit was decreed by a judgment and decree dated 26.07.2018. The petitioners



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herein, who are Defendants No.3, 4 and 6 in the said suit filed an appeal against the judgment and decree dated 26.07.2018 before the lower appellate Court along with an application to condone the delay of 115 days. The said application was dismissed by the learned lower appellate Court by passing the order under revision by recording a finding that the petitioners are negligent in filing copy application for obtaining the certified copy of the judgment and decree in the suit and they also failed to explain sufficient cause for overall delay.

4. Heard Sri Mayilvahana Rajendran, learned counsel for the petitioners and Sri V.Ramakrishnan, learned counsel appearing for the respondents and perused the entire material on record.

5. This civil revision petition is seriously opposed by Sri V.Ramakrishnan, learned counsel appearing for the respondents stating that there are absolutely no reasons furnished for the delay of 115 days and the failure in filing a copy application shows gross negligence on the part of the petitioners and also further contended that the delay cannot be condoned in



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a mechanical manner and the discretion conferred on the Courts is required to be exercised judiciously and casual approach in the matter of condoning the delay is also deprecated by the Hon'ble Apex Court. In support of his contention, he also placed reliance on various decisions in the cases of ***Basawaraj & another vs. Special Land Acquisition Officer*** reported in ***AIR 2014 SC 746***; ***Srinivasalu and another vs. Krishnammal and others*** reported in ***1987 2 MLJ 33***; ***Jayaraman C. vs. Srinivasan and others*** reported in ***2021 (1) TNLJ 49 (Civil)***; ***Union of India vs. Kommu Sumathi and others*** reported in ***2021 (1) TNLJ 346 (Civil)***; and ***M.Duraisamy vs. Vasantha and another*** reported in ***2023 (1) CTC 444***.

6. A perusal of the affidavit filed in support of the condone delay application shows that the suit was decreed on 26.07.2018, but the copy application for obtaining certified copy of the judgment and decree was filed by the counsel for the petitioners only on 13.11.2018, that is, after a lapse of 109 days. The total delay, that is, sought to be condoned is 115 days. Out of that, 109 days was consumed only from the date of the decree till the date of filing a copy application for obtaining certified copy of the



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decree. The remaining days are only 6 days. The petitioners have genuinely gave the said reasons seeking condonation of the delay, i.e., the delay in filing the copy application.

7. It is normal practice, as and when an order or decree is passed by the Court, the counsel concerned would file an application for certified copy of the same either on the same day or at the most, on the next day to avoid unnecessary delay in taking further steps. But unfortunately, in the instant case, though the suit was decreed on 26.07.2018, the copy application was filed by the learned counsel for the petitioners appeared before the trial Court only on 13.11.2018. The parties are not expected to know all the procedures that are involved in the process of the Courts and it is only the respective counsels should take all such care and caution for protecting the interest of the parties. Whatever be the reason, the learned counsel, who appeared for the petitioners/Defendants No.3, 4 and 6 in the original suit, failed to make an application either on the date of the decree or immediately thereafter. The copy application was filed on 13.11.2018 and a copy of the judgment and decree was received on 28.11.2018 and the appeal was filed



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immediately thereafter, on 07.12.2018 that is within a period of 10 days.

This shows that the petitioners/Defendants No.3, 4 and 6 are very eager and anxious to file an appeal against the decree passed in the suit. Not only that, during the pendency of the suit also, the petitioners/Defendants No.3, 4 and 6 have seriously contested the suit by examining two witnesses and by marking Ex.B.1 to Ex.B.9 and Ex.C.1 to Ex.C.10.

8. The learned trial Court, while considering the application seeking condonation of delay of 115 days, found fault with the petitioners in belatedly making an application for certified copy of the decree and also came to the conclusion that day-to-day delay is not explained by the petitioners. When the delay is due to belated making of an application, which in the normal parlance, is the job of the counsel concerned, the petitioners explaining the day-to-day delay in making such delay in making copy application does not arise, nor the Courts can expect the same from the petitioners.



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9.1. The Hon'ble Apex Court in the case of ***Basawaraj*** (*supra*), observed that sufficient cause means, a party should not have acted in a negligent manner or there was a want of bona fides on their part in the facts and circumstances of the case and also further held that the expression “sufficient cause” should be given a liberal interpretation to ensure that substantial justice is done, so long as negligence, inaction or lack of bona fides are not there. It is also further held, whether or not sufficient cause has been furnished or not can be decided on the facts of a particular case and no straitjacket formula is possible. The Hon'ble Apex Court also taken note of the settled legal position that law of limitation may harshly affect a party, but it has to be applied with all its rigour when the statute so prescribes and Court has no power to extend the period of limitation on equitable grounds.

9.2. In ***Srinivasalu*** (*supra*), the learned then Chief Justice of this Court considered a case where ex-parte decrees are passed in a casual manner and they were set aside by allowing the condone delay applications



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in a routine manner and deprecated the said practices. There cannot be any quarrel with the said proposition.

9.3. Then coming to the decision of this Court in **Jayaraman** (*supra*), the said case is a case of delay of 10 years and this Court, having considered the delay as enormous and the only reason assigned was not sufficient, declined to condone the delay.

9.4. Then coming to the decision of this Court in **Kommu Sumathi** (*supra*), this Court has been pleased to hold that mechanical way of condoning the delay and exercising discretionary powers conferred upon the Courts are required to be exercised judiciously, but not in a casual manner.

9.5. In the decision of this Court in **M.Duraisamy** (*supra*), a learned Single Judge of this Court was considering a case of enormous delay and came to the conclusion that enormous delay cannot be condoned in a casual manner.



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10. There is no quarrel on the decisions relied upon by the learned counsel for the respondents. It is settled law that a delay application cannot be allowed in a mechanical and casual manner and it is also settled law that there cannot be any straitjacket formula to consider the applications filed seeking condonation of delay and each case has to be considered on facts and circumstances of such case, which come up for consideration before the Court. Hence, none of the decisions relied upon by the learned counsel for the respondents can be applied straight away to the facts of the case on hand.

11. The case on hand is not a case where there is enormous delay. The delay is only 115 days. Out of 115 days, as already noted above, 109 days is because of non-filing of copy application by the counsel.

12. From the above narrated facts, it is evident that the petitioners/Defendants 3, 4 and 6 are very anxious to pursue the matter. The learned lower appellate Court, instead of applying its mind to the facts of the case in proper perspective, proceeded to consider the matter in a



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mechanical manner by putting the case of the petitioners in a straitjacket formula requiring the petitioners to satisfy every day delay and failed to examine whether the petitioners are able to show sufficient cause or not. If petitioners are able to show sufficient cause for the delay, the question of explaining day-to-day delay does not arise.

13. As already discussed above, the petitioners have been diligently pursuing the matter and they have got the appeal filed within 10 days from the date of receiving the certified copy of the judgment and decree passed in the original suit and the rest of the delay is only in obtaining the certified copy of the judgment and decree in the original suit.

14. For the reasons stated above, the petitioners cannot be made liable for the delay in making copy application. No doubt, the counsel for the petitioners is expected to make copy application well within the time or obtain a copy of the same and take steps for filing appeal within time. But taking into consideration the complicated procedures involved in the process of Court, the petitioners are not expected to know all the intricacies



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involved in the same and take steps for filing a copy application immediately after passing of the judgment and decree.

15. In the light of the above, this Court is not convinced with the reasoning given by the learned lower appellate Court while dismissing the application seeking condonation of delay of 115 days.

16. Accordingly, the order under revision is set aside and consequently, the interlocutory application in I.A.No.90 of 2019 is allowed duly condoning the delay of 115 days in filing the appeal against the judgment and decree in O.S.No.292 of 2003 dated 26.07.2018.

17. The learned lower appellate Court is directed to number the appeal suit and take further steps in accordance with law. No costs.

26.03.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes
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MUMMINENI SUDHEER KUMAR, J.

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To

The Principal Sub Judge,
Madurai.

Pre-delivery Order made in
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26.03.2024