



C.R.P.(MD)No.278 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 11.03.2024

Delivered on : 12.04.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.278 of 2019

and

C.M.P.(MD)No.1347 of 2019

1.Subramanian

2.Bose

: Petitioners/Petitioners/
Defendants 2 & 5

Vs.

Udayappan

: Respondent/Plaintiff

Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records relating to the impugned fair and decreetal order, dated 12.11.2018 made in I.A.No.93 of 2016 in O.S.No.180 of 2007 on the file of the District Munsif Court, Sivagangai and set aside the same.

For Petitioners : Mr.S.Srinivasa Raghavan

For Respondent : Mr.M.S.Jeyakarthik



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ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.93 of 2016 in O.S.No.180 of 2007, dated 12.11.2018 on the file of the District Munsif Court, Sivagangai, dismissing the petition filed under Section 5 of the Limitation Act.

2. The revision petitioners are the defendants 2 and 5. The respondent as plaintiff has filed the suit in O.S.No.180 of 2007, against the revision petitioners and three others claiming partition and allotment of 1/6 share to the plaintiff.

3. Admittedly, the plaintiff and the defendants 2 and 5 are the sons and daughters of the first defendant. Since the defendants 2 and 5 were set ex-parte and a ex-parte decree came to be passed against them on 19.12.2008, they have filed the above application under Section 5 of the Limitation Act to condone the delay of 2293 days in filing the application for setting aside the ex-parte preliminary decree, dated 19.12.2008.



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4. The respondent/plaintiff has filed the counter statement raising serious objections. During enquiry, the second defendant has examined himself as P.W.1 and adduced no documentary evidence. The respondent/plaintiff has not adduced any evidence. The learned District Munsif, upon perusing the pleadings of both the parties and the evidence adduced and on hearing the arguments of both the sides, has passed the impugned order, dated 12.11.2018, dismissing the petition filed under Section 5 of the Limitation Act. Aggrieved by the order of dismissal, the defendants 2 and 5 have preferred the present revision.

5. The case of the revision petitioners/defendants 2 and 5 in the affidavit filed in support of the delay condonation petition is that their father Kandasamy Thevar alone was looking after the case proceedings; that their father died on 12.09.2009; that ex-parte decree came to be passed on 19.12.2008; that since their father was taking care of the case proceedings, the defendants 2 and 5 were not aware of passing of the ex-parte decree; that when a dispute arose between the plaintiff and the defendants 2 and 5 with respect to the house site on 27.04.2015, they came to know about the passing of preliminary decree through the plaintiff; that



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the defendants 2 and 5 have taken necessary proceedings for setting aside the ex-parte decree; that the defendants 2 and 5 are having good defence; that there occurred a delay of 2293 days in filing the application for setting aside the ex-parte decree; that the delay is neither willful nor wanton and that the defendants 2 and 5 will be put to irreparable loss and hardship, if the delay is not condoned.

6. The defence of the respondent/plaintiff raised in the counter statement is that the allegations raised in the affidavit that their father alone was looking after the case proceedings and that they came to know about the ex-parte decree only subsequently, are all false and are made for the purpose of filing of the above petition; that the suit was decreed even before the death of their father; that the defendants only after knowing the passing of decree, has attacked the plaintiff and forced the plaintiff to approach the police again and again; that the defendants 2 and 5 after fully knowing that the final decree petition has already been filed, has come forward with the present petition; that the above petition has been filed with delay only to prevent the plaintiff from getting the property and that therefore, the petition is liable to be dismissed.



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7. As already pointed out, in the above suit for partition, ex-parte preliminary decree came to be passed on 19.12.2008. It is not in dispute that the first defendant father of the plaintiff and other defendants died on 22.10.2009 nearly after ten months after passing of preliminary decree. The main contention of the revision petitioners is that their father, first defendant alone has been taking care of the case proceedings; that they were not even aware of the passing of the preliminary decree and that when a dispute arose between them and the plaintiff on 27.04.2015, they came to know about the passing of preliminary decree and that too from the plaintiff.

8. As rightly observed by the learned trial Judge, even assuming that their father alone was looking after the case proceedings, the defendants 2 and 5 have not stated anything about the steps taken by them to know about the stage or result of the suit that was pending between them and the plaintiff.



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9. It is not the case of the revision petitioners that they have contacted their counsel on record immediately after the death of their father to know about the stage of the suit. It is also not the case of the revision petitioners that the suit summons were not served on them and that they were not aware of the filing of the suit and pendency of the same. As rightly contended by the learned counsel for the respondent/plaintiff, the delay occurred at 2293 days is very inordinate. Except alleging that the delay occurred is neither willful nor wanton, they have not canvassed any other reason or cause for the inordinate delay.

10. 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



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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 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



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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 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.”

11. 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 cause for the delay of 2293 days, which is inordinate. The contention of the revision petitioners that they are having a good case in the main suit, by no stretch of imagination, can be taken as a ground sufficient enough to



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condone the delay. Considering the entire facts and circumstances, the impugned order dismissing the delay condonation petition cannot be found fault with. Hence, this Court concludes that the revision is devoid of merits and the same is liable to be dismissed.

12. In the result, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

12.04.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
das

To

- 1.The District Munsif, Sivagangai.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
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Dated : 12.04.2024