



C.R.P.(NPD)(MD) No.793 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.03.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

C.R.P.(NPD)(MD) No.793 of 2020

and

C.M.P.(MD) No.5354 of 2020

Malaiveeranan Ambalam

... Petitioner/Petitioner/
Defendant

Vs.

P.Pandi

... Respondent/
Respondent/Plaintiff

Prayer: Petition filed under Section 115 of the Civil Procedure Code to set aside the order and decretal order dated 23.09.2020 in I.A.No.763 of 2018 in O.S.No.123 of 2015 on the file of the District Munsif Court, Thirumangalam.

For Petitioner : Mr.T.Pon Ramkumar

For Respondent : Ms.A.Sakthi Bavatharani
for Mr.T.R.Jeyapalam



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ORDER

This civil revision petition is directed against an order dated 23.09.2020 in I.A.No.763 of 2018 in O.S.No.123 of 2015 passed by the learned District Munsif, Thirumangalam.

2. The said interlocutory application was filed by the defendant/petitioner herein seeking condonation of the delay of 575 days in filing an application to set aside the *ex-parte* decree dated 28.11.2016.

3. The suit in O.S.No.123 of 2015 was filed by the respondent/plaintiff seeking declaration of title, recovery of possession and consequential injunction in respect of the suit schedule property. Though the petitioner herein engaged a counsel in the said suit, for want of filing written statement, the petitioner herein was set *ex-parte* in the said suit and the suit was disposed of *ex-parte* by examining the plaintiff as P.W.1 and by marking Ex.A.1 to Ex.A.7, by a judgment dated 28.11.2016.



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4. According to the learned counsel for the petitioner and as averred in the affidavit filed in support of the application in question that the learned counsel engaged by the petitioner has not informed anything about the proceedings of the suit to him and it is only on receipt of the notice in the execution petition filed by the respondent herein, on 19.07.2018, the petitioner came to know about the *ex-parte* decree and immediately on 24.07.2018, the petitioner filed an application to set aside the *ex-parte* decree and the present application in I.A.No.763 of 2018 seeking condonation of delay along with the written statement. However, the said application was dismissed by the learned trial Court on the ground that the day to day delay is not explained by the petitioner.

5. It is settled law that length of delay is not a matter for consideration, but the cause shown for such delay is sufficient or not needs to be considered. If sufficient cause is shown, whatever be the length of delay, the same may require to be condoned depending on the facts and circumstances of the case.



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6. In the instant case, the reason given by the petitioner is that he has no knowledge about the suit proceedings, as his counsel has not informed the same. But, it is not only the responsibility of the counsel, but it is equally incumbent upon the petitioner to follow the suit proceedings, as he was already aware of the pendency of the said suit and also engaged a counsel. The *ex-parte* decree was passed on 28.11.2016 and the present application under Order IX Rule 13 of the Civil Procedure Code was filed along with an application seeking condonation of delay of 575 days. The learned trial Court has not doubted the reason furnished by the petitioner in the affidavit filed in support of the condone delay application. In the absence of any doubt and especially in view of the fact that the present application is filed by engaging a new counsel, for want of response from the erstwhile counsel, the learned trial Court dismissed the condone delay application. The suit was filed by the respondent is one for declaration and recovery of possession.

7. As is seen from the material on record, the petitioner herein has already constructed a house in the suit schedule property and is residing there. Further, this Court while entertaining the civil revision petition,



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granted stay of all further proceedings in the execution petition and the execution petition remained stayed till date. The respondent/plaintiff also could not secure the benefit of the *ex-parte* decree because of the stay granted by this Court.

8. As the decree that is obtained by the respondent is an *ex-parte* decree and the petitioner herein has already filed written statement along with the application under Order IX Rule 13 of the Civil Procedure Code, this Court is of the view that doors of justice cannot be shut to the petitioner herein only on the ground of delay of 575 days. If an opportunity is afforded to the petitioner herein to contest the suit on merits, no prejudice would be caused to the respondent/plaintiff. If any prejudice, the same is only because of the delay, which can be compensated in terms of costs. In this context, it would be relevant to make a reference to the decision of the Hon'ble Apex Court in *State of Bihar and others vs. Kameshwar Prasad Singh and another* reported in (2000) 9 SCC 94, wherein the Hon'ble Apex Court held as under:

“11. Power to condone the delay in approaching the



court has been conferred upon the courts to enable them to do substantial justice to parties by disposing of matters on merits. This Court in Collector, Land Acquisition v. Katiji [(1987) 2 SCC 107 : 1989 SCC (Tax) 172 : (1987) 2 SCR 387] held that the expression “sufficient cause” employed by the legislature in the Limitation Act is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice — that being the life-purpose for the existence of the institution of courts. It was further observed that a liberal approach is adopted on principle as it is realised that: (SCC p. 108, para 3)

“1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. ‘Every day's delay must be explained’ does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.



4. *When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*

5. *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*

6. *It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”*

9. In the light of the above, this Court is of the considered view that it is a fit case where the delay ought to have been condoned by the learned trial Court, instead of shutting the doors of justice to the defendant/petitioner herein once for all, especially when the issue is pertaining to a right over an immovable property.



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10. In the circumstances, the order under revision is set aside. Consequently, I.A.No.763 of 2018 is allowed subject to payment of costs of Rs.10,000/- (Rupees Ten Thousand only) payable to the respondent within a period of three weeks from today.

11. This Civil Revision Petition is accordingly allowed in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

12. The learned trial Court is directed to consider and dispose of the application filed under Order IX Rule 13 of the Civil Procedure Code as expeditiously as possible, at any rate, within a period of six weeks from the date of receipt of a copy of this order.

20.03.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes

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To

The District Munsif,
Thirumangalam.



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MUMMINENI SUDHEER KUMAR, J.

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