



C.R.P.(MD)No.2992 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.11.2023

Pronounced on : 16.02.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2992 of 2023

and

C.M.P.(MD)No.15435 of 2023

Chelladurai

... Petitioner/
Respondent/
Plaintiff

Vs.

1. Lingam

2. Backiyam

3. Ponnusamy

... Respondents/
Petitioners/
Defendants

Prayer : This Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the decree and order dated 10.02.2020 in I.A.No.292 of 2016 in O.S.No.417 of 2013 on the file of the learned District Munsif cum Judicial Magistrate No.1, Srivilliputhur, Virudhunagar District.



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For Petitioner : Mr.Muthu Ganesa Pandian

For R2 : Mr.M.Jothi Basu

For R1 & R3 : No appearance

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.292 of 2016 in O.S.No.417 of 2013 dated 10.02.2020 on the file of the District Munsif cum Judicial Magistrate No.1, Srivilliputhur, allowing the application filed under Section 5 of Limitation Act.

2. The revision petitioner as plaintiff has filed the above suit claiming permanent injunction restraining the respondents/defendants and their men from in any manner interfering with the revision petitioner/ plaintiff's peaceful possession and enjoyment of the suit property. The respondents/defendants, after the receipt of suit summons, have entered into appearance. Since the respondents/defendants have not filed their written statement, they were called absent and set *ex parte* and subsequently *ex parte* decree came to be passed on 15.04.2014. The respondents/defendants have then filed the present application in I.A.No.



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292 of 2016 under Section 5 of Limitation Act to condone the delay of 586 days in filing the application for setting aside the *ex parte* decree dated 15.04.2014 along with an application for setting aside the *ex parte* decree under Order 9 Rule 13 C.P.C. The revision petitioner/plaintiff has filed a counter statement raising serious objections. The learned District Munsif, after enquiry, has passed the impugned order dated 10.02.2020 allowing the application and thereby condoning the delay of 586 days in filing the application for setting aside the *ex parte* decree. Aggrieved by the impugned order, the plaintiff has preferred the present revision.

3. The case of the respondents/defendants, in the affidavit filed in support of the application under Section 5 of Limitation Act, is that the revision petitioner/plaintiff, by alleging false and untenable allegations, has filed the suit against the respondents/defendants including the deceased third respondent/third defendant for permanent injunction, that their counsel has entered into appearance on 27.01.2014, that their counsel informed them that the case was posted for filing of written statement, that though they have contacted their counsel several times, he has not given proper reply but directed them to bring the documents for preparing



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written statement, that their counsel had directed them to come to his office on 18.06.2014 and accordingly, they went to their counsel office and produced the documents and at that time, they were informed that since written statement was not filed, *ex parte* decree came to be passed on 15.04.2014, that the respondents/defendants were illiterates and were not aware of the Court proceedings, that the second respondent/second defendant, after the receipt of notice in a petition for police aid, has appeared before the Court directly and thereafter, they have not appeared, that they came to know about the *ex parte* decree only after the receipt of notice in the execution petition in E.P.No.85 of 2014, that the revision petitioner/plaintiff has no right or title in the suit property, that the delay occurred in filing the application for setting aside the *ex parte* decree is neither willful nor wanton and that therefore, the delay of 586 days has to be excused.

4. The defence of the revision petitioner/plaintiff is that even as per the respondents/defendants' affidavit, they came to know about the *ex parte* decree on 18.06.2014 itself, that they have not taken any steps for setting aside the *ex parte* decree immediately, that the respondents/



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defendants have restrained the revision petitioner/plaintiff from constructing the compound wall, that though the second respondent/second defendant has entered into appearance before the executing Court directly on 08.12.2014, they have not taken any steps for filing the application for setting aside the *ex parte* decree, that the respondents/defendants have not canvassed any acceptable reason or cause for condoning the delay and the reasons assigned cannot be accepted and that therefore, the application is liable to be dismissed.

5. As already pointed out, the respondents/defendants, after the receipt of suit summons, have entered into appearance through their counsel and sought adjournment for filing written statement and that since they have not chosen to file written statement, they were set *ex parte* and subsequently *ex parte* judgment and decree came to be passed on 15.04.2014. It is pertinent to note that the respondents/defendants, in their affidavit filed in support of the application under Section 5 of Limitation Act, have specifically admitted that as per the directions of their counsel, they have visited their counsel office and at that time, their counsel had informed them that since written statement was not filed, *ex parte* decree



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came to be passed on 15.04.2014. Considering the above, as rightly contended by the learned counsel appearing for the second respondent, the respondents/defendants were having knowledge about the passing of the *ex parte* decree dated 15.04.2014 on 18.06.2014 after two months from the date of decree, but admittedly, the respondents/defendants have not filed any application for setting aside the *ex parte* decree immediately after coming to know about the decree.

6. Moreover, in the affidavit, they have also alleged that notice in the petition filed for police help has been received by them and in pursuance of the same, the second respondent/second defendant has appeared before the concerned Court directly. As rightly pointed out by the learned counsel appearing for the revision petitioner, the respondents/defendants have not elaborated anything and they have not even mentioned as to when the notice in the petition for police aid was received by them and as to when, the second respondent/second defendant has appeared before the concerned Court. The respondents/defendants have also alleged in the same affidavit that they came to know about the *ex parte* decree dated 15.04.2014 only after the receipt of notice in the



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execution petition in E.P.No.85 of 2014 and they have not averred any other particulars as to when the execution petition notice was served on them.

7. The only reason canvassed by the respondents/defendants is that they were illiterates and they were not aware of the Court proceedings. Taking note of the latin maxim “*ignorantia juris non-excusat* ” (ignorance of the law is no excuse), the reason canvassed by the respondents/defendants cannot legally be sustained. At this juncture, it is necessary to refer the following passages in the decision reported in **2020 SCC OnLine Mad 2355 (T.Natarajan Vs. Srivari Housing and Construction Ltd. and others)**, relied on by the learned counsel appearing for the revision petitioner,

“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 approach in condonation of huge delay is unacceptable. In



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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 which must be candid and convincing and must be



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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. No doubt, it is settled law that the word “sufficient cause” should receive liberal construction to do substantial justice and that length of delay is no matter, but acceptability of the explanation is the only criterion. But at the same time, delay condonation petition should not be dealt with in a routine manner and mechanical approach in condonation of huge delay is unacceptable. In the case on hand, the learned District Munsif, in the earlier paragraphs of the impugned order, has rightly observed that the reasons assigned by the respondents/defendants are not acceptable and that they have not canvassed any sufficient cause for condoning the delay, but subsequently by observing that the *ex parte* judgment will not benefit both the parties and that opportunity has to be given to the respondent/



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defendants to take part in the trial, so as to enable the Court to decide all the disputes between the parties, condoned the delay, in the interest of justice. Such a finding or observation is very much against the legal position settled by the Hon'ble Supreme Court in a cantena of decisions. Considering the above, this Court has no hesitation to hold that the impugned order is not in accordance with law and as such, the same is liable to be set aside.

9. In the result, this Civil Revision Petition is allowed and the impugned order passed in I.A.No.292 of 2016 in O.S.No.417 of 2013 dated 10.02.2020 is hereby set aside and the application in I.A.No.292 of 2016 stands dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

16.02.2024

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



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To

1. The District Munsif cum Judicial Magistrate No.1,
Srivilliputhur, Virudhunagar District.
- 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
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and
C.M.P.(MD)No.15435 of 2023**

Dated :16.02.2024