



C.R.P.(MD)No.1575 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.02.2024

Pronounced on : 22.03.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.1575 of 2019

and

C.M.P.(MD)No.8341 of 2019

K.Chinnayan

... Petitioner/
Petitioner/
1st Defendant

Vs.

M.Sankar Rajapandian

... Respondent/
Respondent/
Plaintiff

Prayer : This Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to call for the records pertaining to the fair and decreetal order in I.A.No.48 of 2018 in O.S.No.725 of 2017 dated 21.01.2019 passed by the learned Sub Court, Thirumangalam and set aside the same by allowing the civil revision petition.

For Petitioner : Mr.A.Shahul Hameed

For Respondent : M/s.C.Arockia Selvi



C.R.P.(MD)No.1575 of 2019

WEB COPY

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.48 of 2018 in O.S.No.725 of 2017 dated 21.01.2019 on the file of the Subordinate Court, Thirumangalam, dismissing the application filed under Section 5 of Limitation Act.

2. The revision petitioner is the first defendant. The respondent as plaintiff has filed a suit in O.S.No.734 of 2015 on the file of the II Additional Subordinate Court, Madurai, against the revision petitioner and four other defendants claiming partition and allotment of half share in the suit properties and for permanent injunction restraining the revision petitioner/first defendant and his men from creating any encumbrance in respect of the suit properties till partition is effected by metes and bounds. The above suit was subsequently transferred to the Subordinate Court, Thirumangalam and the same was taken on file in O.S.No.725 of 2017. Since the defendants remained *ex parte*, an *ex parte* judgment and decree came to be passed on 17.07.2017. The revision petitioner/first defendant has filed the present application in I.A.No.48 of 2018 under Section 5 of Limitation Act to condone the delay of 218 days in filing an application



C.R.P.(MD)No.1575 of 2019

for setting aside the *ex parte* decree dated 17.07.2017. The respondent/plaintiff has filed a counter statement raising serious objections. The learned Subordinate Judge, after enquiry, has passed the impugned order dated 21.01.2019 dismissing the said application. Aggrieved by the order of dismissal, the present revision came to be filed.

3. The case of the revision petitioner/first defendant is that he has been taking treatment at Chennai for his high blood pressure and sugar for the past two years in his son Ganesan's house, who is working in a private company and as such, he could not contact his counsel in time, that when revenue officials made a visit to his field on 31.01.2018 and proclaimed that they were going to measure the property on the basis of the *ex parte* decree and judgment passed by the Subordinate Court, Thirumangalam, he came to know that he was already set *ex parte* in the trial Court, that he has applied for copies on 01.02.2018 and obtained the same on 07.02.2018, that the revision petitioner/first defendant has a good case to agitate, that there occurred a delay of 218 days from 17.07.2017 to 20.02.2018 to file the application for setting aside *ex parte* decree, that the other side will not have any objections in allowing the application and that



C.R.P.(MD)No.1575 of 2019

the revision petitioner/first defendant will incur irreparable loss and hardship, if the delay is not condoned.

4. The respondent/plaintiff has filed the counter statement raising serious objections stating that the trial Court, after service of summons on the defendants so many times, set them *ex parte* and thereafter passed the *ex parte* preliminary decree, that the present application has been filed with an evil intention to cause hardship to the respondent/plaintiff, that the reason assigned that the revision petitioner/first defendant was not well and was taking treatment for two years in Chennai are all false and untenable and that therefore, the application is liable to be dismissed.

5. It is evident from the records that the defendants 1 to 3 including the revision petitioner were set *ex parte* on 10.02.2016 and the defendants 4 and 5 were set *ex parte* on 30.03.2016 and 19.04.2017 respectively and that the trial Court, after recording the plaintiff's side evidence and on hearing the arguments of plaintiff's side, has passed the *ex parte* preliminary decree dated 17.07.2017.



C.R.P.(MD)No.1575 of 2019

WEB COPY

6. As already pointed out, the only reason canvassed by the revision petitioner/first defendant is that he was taking treatment for two years for his high blood pressure and sugar in his son's house and that he came to know about the *ex parte* decree only when revenue officials have attempted to measure the suit field.

7. As rightly observed by the learned trial Judge, it is not the case of the revision petitioner/first defendant that suit summons was not at all served on him and he was not aware of the suit proceedings. The learned trial Judge, on perusing the records, has specifically observed that suit summons sent through Court was served on him and summons sent through post was returned as refused. Though the revision petitioner/first defendant has alleged that he was not well and was taking treatment except alleging that he was having high blood pressure and sugar, has not elaborated anything further. Admittedly, the revision petitioner/first defendant has not produced any iota of evidence to prove his alleged ill health and the treatment at Chennai and that too, for two years. As rightly contended by the learned counsel appearing for the respondent, the revision petitioner/first defendant has not offered any reason or



C.R.P.(MD)No.1575 of 2019

WEB COPY

explanation as to why, he has not entered into appearance nor engaged any counsel after the receipt of suit summons. Moreover, as rightly contended by the learned counsel appearing for the respondent, nowadays, considering the advance medical facilities available, high blood pressure and sugar cannot be considered as serious diseases or health issues requiring two years long treatment and that the above reason has been canvassed, only for the filing of the above application.

8. The learned counsel appearing for the respondent would further submit that though the respondent/plaintiff has claimed half share in the suit properties, the learned trial Judge, after considering the plaintiff's side evidence by holding that the plaintiff is entitled to get 1/4 share in Item Nos.1 and 3 of the suit properties and that the plaintiff is not entitled to claim any share in Item No.4 of the suit properties, has passed the preliminary decree declaring that the plaintiff is entitled 1/4 share in Item Nos.1 and 3 of the suit properties and dismissed the suit in respect of the Item No.4 of the suit properties and that therefore, the revision petitioner/ first defendant cannot make any complaint against the preliminary decree.



C.R.P.(MD)No.1575 of 2019

WEB COPY

9. 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 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.

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C.R.P.(MD)No.1575 of 2019

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 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*



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C.R.P.(MD)No.1575 of 2019

such matters where the law of Limitation is substantial.”

10. It is also settled law 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 petitioner/first defendant has 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.

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

22.03.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
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C.R.P.(MD)No.1575 of 2019

K.MURALI SHANKAR,J.

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To

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

Pre-Delivery Order made in
C.R.P.(MD)No.1575 of 2019
and
C.M.P.(MD)No.8341 of 2019

Dated :22.03.2024