



C.R.P.(MD)No.455 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 08.02.2024

PRONOUNCED ON: 22.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.455 of 2018

and

C.M.P.(MD)No.6224 of 2018

1.Gopal
2.Annadurai
3.Muthu

: Petitioners/Petitioners/
Defendants

Vs.

1.P.Mohan Raj(died)
2.Thirumagal

: Respondents/Respondents/
Plaintiffs

3.Aruna Rani
4.Minor Harini : Respondents
(Minor represented by her mother
and natural guardian 3rd respondent)

(Respondents 3 and 4 are brought on record
as LR's of the deceased 1st respondent vide
Court order dated 13.09.2023 in
C.M.P.(MD)Nos.9072, 9073 and 9076 of 2023)



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PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India, challenging the fair order and decretal order in I.A.No.444 of 2015 in O.S.No.251 of 2011, dated 05.09.2017, on the file of the Sub Court, Pudukkottai.

For Petitioners : Mr.N.Balakrishnan

For Respondents : R.1 died steps taken
(R.3 and R.4 are LR's)
: Mr.R.Mohana Sundaram
for R.2

: Ms.M.Sudharani
Legal Aid Counsel
for R.4

: R.3 – service held sufficient
vide order dated 09.01.2024

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.444 of 2015 in O.S.No.251 of 2011, dated 05.09.2017, on the file of the Subordinate Court, Pudukkottai, dismissing the petition filed under Section 5 of the Limitation Act to condone the delay of 487 days in filing the application for setting aside the exparte decree dated 23.08.2012.



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2. The revision petitioners are the defendants and the respondents 1 and 2 as plaintiffs have filed the above suit claiming partition and allotment of half share in the suit properties. Though the defendants have entered into appearance, they have not chosen to file a written statement and hence, they were called and set exparte on 23.08.2012 and the exparte judgment and decree came to be passed on that day.

3. The case of the revision petitioners / defendants is that the defendants, through panchayathars Ananth, Sankaran and others, had questioned the plaintiffs for filing a false suit, the first plaintiff had promised to withdraw the suit, that the defendants believing the words of the first plaintiff, have not taken any steps to file their written statement, that since they have not appeared before the concerned Court, exparte preliminary decree came to be passed on 23.08.2012, that the plaintiffs by resiling from promise, appeared to have proceeded with the suit fraudulently and procured an exparte decree, that the defendants have come to know about the exparte decree only after the receipt of the notice in the final decree petition in I.A.No.913 of 2013, that the first defendant has then come to Pudukottai and after verification, he came to know on



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20.12.2013 that the exparte decree was passed on 23.08.2012, that they have traced out the bundle with difficulty only on 10.01.2014, that the delay occurred of 487 days is neither wilful nor wanton, but due to the unavoidable circumstances and that the defendants will be put to irreparable loss and hardship, if the delay is not condoned.

4. The respondents/plaintiffs have filed a memo of objections stating that no panchayat was held through Ananth, Sankaran or others during the pendency of the suit, that the first plaintiff did not meet the panchayathars or the defendants, that the first plaintiff did not given any promise to withdraw the suit, that the defendants have invented the imaginary story for filing the above false affidavit, that the contention of the defendants that they have traced out the case bundle with great difficulty is false, that the defendants have wantonly allowed the suit to be decreed as exparte, that they have not given any sufficient reason to condone the delay of 487 days and that since the petition has no merits, the same is liable to be dismissed.

5. Admittedly, the defendants after the receipt of the suit summons, have entered into appearance and despite taking time for filing written



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statement, they have failed to file the same and hence, they were called absent and set exparte on 23.08.2012 and that after recording the evidence of plaintiffs' side and on hearing the plaintiffs' side arguments, an exparte judgment and decree came to be passed. Though the defendants in their affidavit filed in support of the petition filed under Section 5 of the Limitation Act have referred that there occurred a delay of 116 days, in the prayer column and in the petition, they have corrected as 487 days.

6. The main contention of the defendants is that during the pendency of the suit, they have approached the first plaintiff through panchayathars and questioned their conduct of filing of false suit against the defendants and that the first plaintiff had promised to withdraw the suit and on believing the words of the first plaintiff, the defendants have not taken steps either to file the written statement or to proceed with the suit. Except the above vague allegations, the defendants have not elaborated anything further. Admittedly, the defendants have adduced neither oral nor documentary evidence . Though the defendants have alleged that they have questioned the first plaintiff through panchayathars Ananth and Sankaran, they have not chosen to examine the said



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panchayathars. In the absence of any iota of evidence, the story canvassed by the defendants with regard to the panchayat is very hard to believe.

7. The next contention of the defendants is that they have come to know about the exparte decree only on receipt of notice in final decree petition and that the first defendant went to Pudukkottai to verify the stage of the case and after verification, he came to know on 20.12.2013, that an exparte decree had already been passed. As rightly contended by the learned Counsel for the plaintiffs, the defendants have not stated as to when the notice in the final decree petition was served on them. It is their further case that they have traced out the bundle with great difficulty on 10.01.2014, but the defendants had not stated anything as to where they have verified the stage of the case and where the bundle was traced out. It is not the case of the defendants that the suit summons was not served on them and they were not aware of the filing of the suit. As already pointed out, they have entered into appearance through Counsel and took adjournment for filing of the written statement.



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8. The learned Counsel for the revision petitioners has relied on the judgment of this Court in *Ajay Kumar Gulecha Vs. J.Vijayakumar and another* reported in **2015(1) CTC 811**, wherein a learned Judge of this Court has observed that the law of limittion cannot be invoked for destroying the rights of the parties and no prejudice would be caused to the petitioner if the other side is given an opportunity to contest the case on merits.

9. But it is pertinent to note that in the said decision case, the learned trial Judge, after perusing the case records, has specifically given a finding that there was no proper service of summons on the first defendant and the learned Judge of this Court, taking note of the said finding and by observing that since irregularity has been committed in the service of summons, has held that he is not inclined to interfere with the said finding of the trial Court and confirmed the order of the trial Court in condoning the delay. But in the case on hand, as already pointed out, the defendants after receipt of such summons, had entered into appearance and they were fully aware of the pendency of the suit.



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10. The learned Counsel for the petitioners has also relied on the decision of this Court in ***S.Nirmaladevi Vs. T.R.Rangasamy*** reported in ***2017(3) CTC 445***, wherein a learned Judge of this Court has observed that the test for condoning the delay is not the length of delay, but it is substance of the matter.

11. It is settled law that the word “sufficient cause” in Section 5 of Limitation Act 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. 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,



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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 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



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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.”

12. It is also settled law that delay condonation petition should not be dealt in a routine manner and mechanical approach in condonation of huge delay is unacceptable. In the case on hand, the defendants have not canvassed any valid or acceptable reason or cause, sufficient enough to condone the delay of 487 days, which is inordinate. Considering the above, the impugned order dismissing the petition under Section 5 of the Limitation Act cannot be found fault with. Consequently, this Court concludes that the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.



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13. In the result, the Civil Revision Petition is dismissed.

Consequently, the connected Miscellaneous Petition is also dismissed.

There shall be no order as to costs.

22.03.2024

NCC : Yes : No
Index : Yes : No
Internet : Yes : No
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To

1. The Subordinate Court, Pudukkottai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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