



CRP(MD).No.2373 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.02.2024

Delivered on : 26.04.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P(MD).No.2373 of 2019
and
C.M.P.(MD)No.12528 of 2019

Rajamani : Petitioner/Petitioner

Vs.

Rajan : Respondent/Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the fair and decretal order of the Subordinate Judge, Thuraiyur, dated 02.08.2019 made in I.A.No.534 of 2019 in O.S.No.52 of 2018.

For Petitioner : Mr.K.S.Vamsidhar

For Respondents : Mr.N.Anandakumar

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.534 of 2019 in O.S.No.52 of 2018, dated 02.08.2019 on the file of the Subordinate Court, Thuraiyur, allowing the petition filed under Order IX Rule 9 of the Code of Civil Procedure.



CRP(MD).No.2373 of 2019

WEB COPY

2. The revision petitioner is the defendant and the respondent as plaintiff has filed the suit in O.S.No.52 of 2018, against the revision petitioner/defendant claiming specific performance of the agreement, dated 06.05.2016.

3. The revision petitioner/defendant has filed the written statement and was contesting the suit. Since the plaintiff has not turned up for cross examination, the suit was dismissed for default on 11.04.2019. The plaintiff has filed the above application in I.A.No.534 of 2019 under Order IX Rule 9 of the Code of Civil Procedure to restore the suit, which was dismissed for default on 11.04.2019. The defendant has filed the counter statement raising objections. The learned trial Judge, after enquiry, has passed the impugned conditional order, dated 02.08.2019, allowing the petition on payment of costs. Aggrieved by the impugned order, the defendant has preferred the present revision.

4. The case of the respondent/plaintiff in the petition filed under Order IX Rule 9 of C.P.C., is that he was suffering from jaundice and was taking country treatment and hence, he could not appear before the trial



CRP(MD).No.2373 of 2019

Court on 11.04.2019; that his absence is neither willful nor wanton; that the petitioner will be put to irreparable loss and hardship, if the suit is not restored and that therefore, it has become just and necessary to restore the suit so as to enable the plaintiff to prosecute the suit further.

5. The defence of the revision petitioner/tenant is that the plaintiff was examined in chief on 08.02.2019; that subsequently, the case was posted to 25.02.2019, 06.03.2019, 15.03.2019, 22.03.2019, 03.04.2019 and then finally on 11.04.2019 for cross examination of plaintiff and that since the plaintiff has not turned up on that day also, the suit was dismissed for default; that the above petition has not been filed within the time and that by itself is sufficient enough to dismiss the petition.

6. The learned trial Judge, by observing that both the parties are to be given sufficient reasonable opportunity to conduct the case, has passed the conditional order, directing the plaintiff to pay a cost of Rs.500/- to the defendant on or before 07.08.2019 failing which, the petition was ordered to be dismissed.



CRP(MD).No.2373 of 2019

7. The learned counsel for the petitioner would mainly contend that the suit was dismissed for default on 11.04.2019; that the above petition under Order IX Rule 9 of C.P.C., to restore the suit was filed on 11.06.2019 and that therefore, the above petition is hopelessly barred by limitation and that the trial Court, without considering the same has passed the impugned order allowing the petition.

8. No doubt, as rightly pointed out by the learned counsel for the revision petitioner/defendant, the above application under Order IX Rule 9 C.P.C., came to be filed on 11.06.2019 to restore the suit, which was dismissed for default on 11.04.2019. It is not in dispute that after summer vacation, Courts in Tamil Nadu reopened on 03.06.2019. Article 122 of Indian Limitation Act prescribes 30 days of period of limitation to restore a suit, which was dismissed for default and time from which period begins to run is the date of dismissal. Since the period of limitation commences from 12.04.2019 and in view of the intervening summer vacation, the plaintiff should have filed the petition on the reopening day i.e, on 03.06.2019, but the above application has been filed with delay of 8 days. Admittedly, the plaintiff has not filed any application under Section 5 of the Limitation Act to condone the said delay. At this juncture, it is necessary to refer the



CRP(MD).No.2373 of 2019

judgment of Hon'ble Supreme Court in the case of **Sesh Nath Singh and**

another Vs. Baidyabati Idyabati Sheoraphuli Co-operative Bank Limited

and another reported in **L.L.2021 SC 177 (Civil Appeal No.9198 of 2019), dated 22.03.2021.**

“ 61. *The condition precedent for condonation of the delay in filing an application or appeal, is the existence of sufficient cause. Whether the explanation furnished for the delay would constitute ‘sufficient cause’ or not would depend upon facts of each case. There cannot be any straight jacket formula for accepting or rejecting the explanation furnished by the applicant/appellant for the delay in taking steps. Acceptance of explanation furnished should be the rule and refusal an exception, when no negligence or inaction or want of bona fides can be imputed to the defaulting party.*

62. *It is true that a valuable right may accrue to the other party by the law of limitation, which should not lightly be defeated by condoning delay in a routine manner. At the same time, when stakes are high, the explanation should not be rejected by taking a pedantic and hyper technical view of the matter, causing thereby irreparable loss and injury to the party against whom the lis terminates. The courts are required to strike a balance between the legitimate rights and interests of the respective parties.*

63. *Section 5 of the Limitation Act, 1963 does not speak of any application. The Section enables the Court to admit an*



WEB COPY



CRP(MD).No.2373 of 2019

application or appeal if the applicant or the appellant, as the case may be, satisfies the Court that he had sufficient cause for not making the application and/or preferring the appeal, within the time prescribed. Although, it is the general practice to make a formal application under Section 5 of the Limitation Act, 1963, in order to enable the Court or Tribunal to weigh the sufficiency of the cause for the inability of the appellant/applicant to approach the Court/Tribunal within the time prescribed by limitation, there is no bar to exercise by the Court/Tribunal of its discretion to condone delay, in the absence of a formal application.

64. A plain reading of Section 5 of the Limitation Act makes it amply clear that, it is not mandatory to file an application in writing before relief can be granted under the said section. Had such an application been mandatory, Section 5 of the Limitation Act would have expressly provided so. Section 5 would then have read that the Court might condone delay beyond the time prescribed by limitation for filing an application or appeal, if on consideration of the application of the appellant or the applicant, as the case may be, for condonation of delay, the Court is satisfied that the appellant/applicant had sufficient cause for not preferring the appeal or making the application within such period. Alternatively, a proviso or an Explanation would have been added to Section 5, requiring the appellant or the applicant, as the case may be, to make an application for condonation of delay. However, the Court can always insist that an application



CRP(MD).No.2373 of 2019

or an affidavit showing cause for the delay be filed. No applicant or appellant can claim condonation of delay under Section 5 of the Limitation Act as of right, without making an application.”

9. Considering the facts and circumstances of the case on hand and also the fact that the trial was already commenced and taking note of the quantum of delay occurred and also the discretion exercised by the trial Court in allowing the petition to give an another opportunity to the plaintiff to prosecute the suit, applying the dictum laid down by the Hon'ble Supreme Court above referred, this Court is of the clear view that it is a fit case to exercise discretion to condone the delay, even in the absence of formal application. Hence, this Court concludes that the impugned conditional order cannot be found fault with, but at the same time, the cost imposed is very much on lesser side and this Court is of the view that the respondent/plaintiff must be mulcted with additional cost of Rs.5,000/-

10. In the result, the Civil Revision Petition is dismissed. The respondent/plaintiff is directed to pay additional cost of Rs.5,000/- on or before 14.06.2024 to the petitioner/defendant. Since the suit is pending



CRP(MD).No.2373 of 2019

from 2018, the trial Court is directed to proceed with the trial and dispose of the suit within a period of three months from the date of receipt of copy of this order. Consequently, connected Miscellaneous Petition is closed.

No costs.

26.04.2024

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

To

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



WEB COPY



CRP(MD).No.2373 of 2019

K.MURALI SHANKAR, J.

DAS

Pre-delivery order made in
C.R.P(MD).No.2373 of 2019
and
C.M.P.(MD)No.12528 of 2019

26.04.2024