



C.R.P.(MD)No.1853 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.03.2024

Pronounced on : 05.04.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.1853 of 2017

1. Veerappan

2. S.P.Uma

... Petitioners

Vs.

1. Pushpam (Died)

2. The Sub Registrar,
Devakottai.

3. V.Latha

4. V.Chandrasekar

5. R.Leelavathi

... Respondents

(Respondents 3 to 5 are brought on record as LR's of the deceased 1st Respondent vide court order dated 15.06.2023 made in CMP(MD)No.8309 to 8311 of 2022 in CRP(MD)No.1853 of 2017)



C.R.P.(MD)No.1853 of 2017

Prayer : This Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order dated 23.11.2016 passed in I.A.No.14 of 2014 in Unnumbered A.S. ____ of 2014 on the file of Subordinate Judge, Devakottai.

For Petitioners : Mr.M.P.Senthil

For R2 : Mr.J.Ashok
Additional Government Pleader

For R3 to R5 : No appearance

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.14 of 2014 in Unnumbered A.S. ____ of 2014 dated 23.11.2016 on the file of the Subordinate Court, Devakottai, dismissing the application filed under Order 41 Rule 3A of the Code of Civil Procedure.

2. The revision petitioners are the appellants/defendants 1 and 2. The first respondent as plaintiff has filed a suit in O.S.No.227 of 2006 against the revision petitioners/defendants 1 and 2 and the second respondent/third defendant to declare that the suit property belongs to the plaintiff and for consequential permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and



C.R.P.(MD)No.1853 of 2017

WEB COPY

enjoyment of the suit property. The revision petitioners have filed their written statement and contested the suit. After full-trial, the learned Additional District Munsif, Karaikudi, has passed a judgment and decree dated 20.07.2010 granting the reliefs of declaration and permanent injunction as prayed for. The revision petitioners, aggrieved by the judgment and decree, have preferred an appeal along with an application to condone the delay of 40 months in filing the appeal under Order 41 Rule 3A C.P.C. in I.A.No.14 of 2014 on the file of the Subordinate Court, Devakottai. The first respondent has filed a counter statement raising serious objections. The learned appellate Judge, after enquiry, has passed the impugned order dated 23.11.2016 dismissing the delay condonation application. Aggrieved by the order of dismissal, the present revision came to be filed.

3. The case of the revision petitioners, in the affidavit filed in support of the delay condonation application, is that the first revision petitioner has taken his 85 years old mother to outstation hospital for giving treatment for several months when the trial was pending before the District Munsif Court, that the first revision petitioner was also forced to



C.R.P.(MD)No.1853 of 2017

take treatment for his heart ailments, that his mother had died on 30.07.2010, that the first revision petitioner used to take treatment very often with Doctor Mahadevan of Apollo Hospital and also with local Doctor, that the second revision petitioner being a lady had been trusting the first revision petitioner, that when the first revision petitioner met his advocate clerk on 20.10.2013, he came to know that the trial Court has passed the judgment without examining him as well as his side witnesses, that the first revision petitioner has received a notice with regard to the return petition filed by the first respondent before the trial Court and immediately contacted his counsel, that he was informed that the bundle was sent to Sivagangai Court, that he had applied through another counsel for the copies of judgment and decree on 31.10.2013 and received the same on 25.11.2013, that they ought to have preferred the appeal on or before 19.08.2010, but there occurred delay of 40 months, that the delay is neither willful nor wantoned and that therefore, the delay occurred in filing the appeal has to be condoned.

4. The defence of the respondents is that despite taking several opportunities, the revision petitioners have not adduced any evidence



C.R.P.(MD)No.1853 of 2017

before the trial Court and hence, the trial Court has passed the judgment and decree, that the above application has been filed only to drag on the proceedings and thereby preventing the decree holder from realising the fruits of the decree, that the reasons canvassed for the delay are false and invented for the purpose of the above application, that the revision petitioners' application for returning the documents in DRP.No.32 of 2013 was allowed on 11.12.2013 and on that basis received back the documents, that the above application has been filed after lapse of 3 years 5 months and 19 days, that the plaintiff will be put to irreparable loss and hardship if the delay is condoned and that therefore, the above application is liable to be dismissed.

5. It is pertinent to note that the revision petitioners have entered into appearance before the trial Court and filed their written statement and participated in the trial proceedings till the closure of the plaintiff side evidence. The learned trial Judge, in the judgment, has specifically observed that inspite of sufficient opportunity, the defendants have not come forward to adduce neither oral nor documentary evidence on their side and considering the availability of sufficient portion of evidence, he has decided to proceed with the case under Order 17 Rule 2 C.P.C.



C.R.P.(MD)No.1853 of 2017

WEB COPY

6. As already pointed out, the trial Court has passed the judgment and decree on 20.07.2010. It is pertinent to note that since the revision petitioners have taken part in the trial proceedings to some extent, they cannot be allowed to say that they came to know about the passing of judgment and decree only on 20.10.2013 when the first revision petitioner met his advocate clerk. Even assuming for arguments sake that the first revision petitioner came to know about the judgment and decree on 20.10.2013 and got the certified copies of the same on 25.11.2013, they have not offered any reason or explanation for filing the appeal and the above application to condone the delay in filing the appeal in March 2014.

7. The main contention of the revision petitioners is that the first revision petitioner's mother was taking treatment in outstation hospital and he was also taking treatment for his heart ailments and that even after the death of his mother, he was taking treatment in the Apollo Hospital as well as in the local hospital and hence, he was not able to take part in the trial proceedings. Such vague and bald averments are not sufficient enough to condone the delay. As rightly observed by the learned appellate Judge, except showing that the second revision petitioner is a lady, they have not



C.R.P.(MD)No.1853 of 2017

offered any reason or explanation for her to proceed with the case.

Admittedly, the revision petitioners have not produced any iota of evidence or materials to show that the first revision petitioner and his mother were taking treatment during the relevant point of time. More importantly, when the above application was pending for enquiry, they have not chosen to adduce further evidence and to advance their arguments. The learned appellate Judge has specifically observed that the revision petitioners have not come forward to adduce further evidence and argue the matter and that they have not followed the diary even in the trial Court as well as in the present application and the same would go to show that they are not interested to proceed with the trial.

8. 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;



C.R.P.(MD)No.1853 of 2017

WEB COPY

“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.

....

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



C.R.P.(MD)No.1853 of 2017

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 such matters where the law of Limitation is substantial.”

9. 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, except the vague averments, the revision petitioners have not canvassed any other valid or



C.R.P.(MD)No.1853 of 2017

WEB COPY

cause sufficient enough to condone the delay. Moreover, they have not even chosen to produce any evidence even for the vague reasons alleged in their affidavit. In the case on hand, the delay occurred at 1230 days is definitely inordinate. Considering the above, this Court has no hesitation to hold that the revision petitioners have miserably failed to prove the sufficient case for the inordinate delay and as such, the impugned order dismissing the application filed under Order 41 Rule 3A C.P.C. cannot be found fault with. Hence, this Court concludes that the revision is devoid of merit and the same is liable to be dismissed.

10. In the result, this Civil Revision Petition is dismissed. No costs.

05.04.2024

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



C.R.P.(MD)No.1853 of 2017

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To

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



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C.R.P.(MD)No.1853 of 2017

K.MURALI SHANKAR,J.

csn

**Pre-Delivery Order made in
C.R.P.(MD)No.1853 of 2017**

Dated : 05.04.2024