



C.R.P.(MD)No.2627 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.11.2023

Delivered on : 09.02.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P(MD)No.2627 of 2023

Rajeshwari : Petitioner/Petitioner/Plaintiff

Vs.

Mohanasundaram : Respondent/Respondent/Defendant

Prayer : This Civil Revision Petition filed under Section 115 of C.P.C., to set aside the order, dated 16.08.2023 passed in I.A.No.31 of 2022 in O.S.No.360 of 2010 on the file of the Additional District Munsif Court, Dindigul.

For Petitioner : Mr.N.Vallinayagam

For Respondent : Mr.A.Saravanan

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.31 of 2022 in O.S.No.360 of 2010, dated 16.08.2023 on the file of the Additional District Munsif Court, Dindigul, dismissing the petition



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filed under Section 5 of the Limitation Act to condone the delay of 1842 days in filing the petition to restore the suit, which was dismissed for default on 18.08.2014.

2. The revision petitioner as plaintiff has filed the suit to declare that 8 feet height wall shown as A B E in rough plan is belonging to the plaintiff, for mandatory injunction for removal of two sunshades available in the plaintiff's wall constructed by the defendant and for permanent injunction.

3. The defendant has filed a written statement and was contesting the suit. When the suit was posted for trial as finally on 18.08.2014, since the plaintiff was called absent and as there was no representation, the suit was ordered to be dismissed for default on 18.08.2014.

4. The plaintiff has then filed an application to restore the suit under Order IX Rule 9 C.P.C., along with an application under Section 5 of Limitation Act to condone the delay of 1842 days in filing the application for restoration under Order IX Rule 9 C.P.C. The respondent/defendant has



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filed counter statement raising serious objections. The learned Additional District Munsif, after enquiry, has passed the impugned order, dated 16.08.2023, dismissing the petition. Aggrieved by the impugned order of dismissal, the plaintiff has preferred the present revision.

5. The case of the revision petitioner/plaintiff is that since her husband had paralytic attack in July 2016 and he was unable to speak and move his hands and legs, she could not attend the Court on 18.08.2014; that her husband was given treatment at Bangalore till 16.08.2019; that the plaintiff, after some recovery of her husband, has approached their counsel and at that time, came to know that the suit was dismissed for default on 18.08.2014; that the delay occurred is neither willful nor wanton and that the delay of 1842 days occurred between 18.08.2014 and 04.09.2019 has to be condoned and thereby permitting the plaintiff to prosecute the suit.

6. The defence of the respondent/defendant is that though the suit was dismissed for default on 18.08.2014, the plaintiff has filed the above petition, after the lapse of eight years and without assigning any reason; that the petitioner's affidavit is bereft of any particulars and that therefore, the petition is liable to be dismissed.



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7. As already pointed out, the only reason canvassed by the revision petitioner is that her husband had paralytic attack and hence, he was taking treatment at Bangalore from July 2016 till 16.08.2019 and that therefore, the plaintiff was not in a position to attend the Court on 18.08.2014 and unable to meet her counsel. But as rightly pointed out by the learned counsel for the respondent, the plaintiff has not elaborated anything further. The plaintiff in the affidavit filed in support of the application under Section 5 of the Limitation Act has not given the particulars of the hospital, where the plaintiff's husband was given treatment, nature and period of treatment. The plaintiff has also not stated anything as to when she met her Advocate after returning from Bangalore and when she came to know about the ex-parte decree.

8. As already pointed out, the petitioner has not adduced any evidence. The plaintiff has not even chosen to produce the medical records of her husband to show that he had paralytic attack and was treated at Bangalore.



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9. The learned counsel for the revision petitioner has relied on the following decisions.

(i) ***S.Saravanan (Minor) rep.by mother and next friend A.Latha Vs. The Chief Judge Court of small Causes (Motor Accidents Claims Tribunal), Chennai 104*** reported in ***2000 (3) CTC 11***.

(ii) ***G.Narayanan Vs.G.Mohan and another*** reported in ***(2000) 4 CTC 161***.

10. In the above two decisions, applications came to be filed to condone the delay in representing the papers and not with respect to the condonation of delay in filing the petitions originally. The learned counsel has also relied on the decision of this Court in the case of ***G.Narayanan Vs.G.Mohan and another*** reported in ***(2012)4 MLJ 356***, wherein the petition to condone the delay of 359 days in preferring the appeal under Section 5 of Limitation Act (but under Order 41 Rule 3 A C.P.C.,) challenging the final decree and was allowed in the interest of *Audi alteram partem*.



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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. 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. 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 such an event, the Courts are diluting the law of limitation, which is impermissible. The power of discretion is to be



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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 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



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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. No doubt, as rightly contended by the learned counsel for the respondent, the delay occurred at 1842 days is inordinate. Moreover, the revision petitioner/plaintiff has neither averred nor adduced any evidence to show the sufficient cause for the delay occurred.

13. Considering the facts and circumstances of the case, the impugned order dismissing the petition filed under Section 5 of the Limitation Act cannot be found fault with and this Court is in entire agreement with the findings recorded by the trial Court. Hence, this Court concludes that the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.

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

09.02.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
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To

- 1.The Additional District Munsif, Dindigul.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
C.R.P(MD)No.2627 of 2023

Dated : 09.02.2024