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CRP(MD)No.448 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated:28/03/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CRP (MD) No.448 of 2024

and

CMP (MD) No.2261 of 2024

P.Kirubakaran : Petitioner/Petitioner/
4th Defendant

Vs.

A-1362 Meenakshi Co-operative
Building Society Ltd.,
at Door No.21,
Uadukakavalkooda Street,
Madurai.
Through its Secretary
S.Sivasankaran

: Respondent/Respondent/
Plaintiff

PRAYER:-Civil Revision Petition has been filed under section 115 of the Civil Procedure Code, to aside aside the order, dated 03/08/2016 passed in IA No.362 of 2015 in OS No.154 of 2007 on the file of the District Munsif Court, Madurai Taluk, Madurai and pass such further or other orders.

For Petitioner : Mr.S.Meenakshi Sundaram
Senior Counsel
for Mr.F.Deepak

For Respondent : Mr.B.Muneeswaran



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O R D E R

WEB COPY This civil revision petition has been filed seeking to set aside the order, dated 03/08/2016 passed in IA No.362 of 2015 in OS No.154 of 2007 on the file of the District Munsif Court, Madurai Taluk, Madurai.

2.The facts in brief:-

The suit in OS No.154 of 2007 was filed by the respondent herein as plaintiff seeking the relief of declaration that the plaintiff Society is the absolute owner of the suit property and for permanent injunction and in the alternative relief of possession by removing the defendant from the suit property, hand over the possession and for costs.

3.The petitioner received the summon, engaged an Advocate for legal advise. But the concerned Advocate failed to file vakalath. So, an *ex-parte* decree was passed, on 13/02/2008. At the time of the trial process, he was working in Airforce. Because of his job nature, he was frequently transferred to various places and he did not come to his village regularly and contact his Advocate. So, there is a delay of 2547 days in filing the petition to set aside the *ex-parte* decree. Petition was dismissed by the trial court.



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4. Against which, this civil revision petition is preferred.

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5. Heard both sides.

6. The learned Senior counsel appearing for the petitioner would submit that because of the job nature only, the petitioner was under frequent transfer to various places and the Advocate engaged by him before the trial court, failed to file vakalath and that was not brought to his notice at that time. Because of that, there is huge delay. He would further submit that the Society has filed several cases against various persons seeking the similar reliefs viz., OS Nos. 166, 167 of 2006 and 246, 296, 297 and 520 of 2007. According to him, in view of the pendency of the connected matters, opportunity must be given to the petitioner to join with the other suits, since no prejudice will be caused to the respondent in view of the pendency of similar matters before the trial court.

7. The learned Senior counsel would also reply upon the judgments of the Hon'ble Supreme Court viz., **(i) C.N. Ramappa Gowda Vs. C.C. Chandregowda (Dead) by LRs and another [(2012) 5 SCC 265] and (ii) GMG Engineering**



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Industries Vs. ISSA Green Power Solution & others

[(2015(3)CTC 859)].

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8.Per contra, the contention of the respondent is that no proper reason is assigned by the petitioner. The reason assigned by him is also not reliable. The decree, that was passed in OS No.154 of 2007 still could not be executed because of this petition.

9.Another contention raised on the part of the petitioner is that the judgment of the trial court does not satisfy the requirement of law and the guidelines issued by the Hon'ble Supreme Court in **C.N.Ramappa Gowda Vs. CC.Chandregowda (Dead) by Lrs and another [(2012)5 SCC 265]**. According to him, when the decree and judgment itself does not satisfy the requirement of the law, it can not be treated as valid decree and it cannot be executed. He would further submit that in view of the above said illegality in passing the decree, the petitioner may be given opportunity to contest the matter.

10.The fact remains that the connected matters are pending before the trial court as detailed above. So, no prejudice will be caused to the respondent, if the



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petitioner is permitted to join with the connected matters, so that binding adjudication can be made in respect of all the matters. Apart from that, it is also seen that there was no willful default or lethargic attitude exhibited by the petitioner.

11.It is natural that a person working in Airforce is continuously under transfer to various places because of the job nature. So, the petitioner was not in a position to contact his Advocate immediately. So that aspect must also be taken into account.

12.Consideration for considering this sort of petition is now more or less well settled. In **Esha Battacharjee's** case, the following principles have been laid down.

"15.From the aforesaid authorities the principles that can broadly be culled out are:

(i)There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.



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(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsule the conception of



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reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud,



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misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii)The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii)The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16.To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

(a)An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

(b)An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.



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For reporting compliance, call on 22/04/2024.

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28/03/2024

Index:Yes/No

Internet:Yes/No

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To,

1.The District Munsif,
Madurai.

2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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