N. Kathirvel Vs N. Kalimuthu Gounder and Maruthacham

Court: Madras High Court

Date of Decision: Aug. 11, 2009

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 3 Rule 1
Contract Act, 1872 â€" Section 3
Limitation Act, 1963 â€" Section 5

Hon'ble Judges: M. Venugopal, J

Bench: Single Bench

Advocate: V.V. Sathya, for M.V. Venkateseshan, for the Appellant; Anandha Gomathi, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M. Venugopal, J.
The revision petitioner/petitioner/first defendant has filed this civil revision petition as against the order dated 14.02.2008

in I. A. No. 231 of 2007 in O.S. No. 488 of 1999 passed by the Learned Principal Subordinate Judge, Coimbatore in dismissing the application

filed u/s 5 of the Limitation Act, praying to condone the delay of 268 days in filing the application to set aside the exparte decree dated

03.01.2006.

2. The trial Court while passing orders in I.A. No. 231 of 2007 has among other things observed that "on 03.01.2006 after full trial a decree has

been passed, based on an appreciation of oral and documentary evidence adduced on both sides and it transpires from records that on

20.09.2005 the revision petitioners/first defendants, Advocate has reported no instructions and hence revision petitioner/first defendant has been

called absent and set exparte decree etc., and also that no explanation has been offered for each and every day"s delay and inasmuch a decree has

been passed after full contest and trial of the case an application filed is not maintainable and ultimately dismissed the same without costs"".

3. According to the learned Counsel for the revision petitioner/petitioner/first defendant the order of the trial Court in dismissing the Section 5

application of the Limitation Act, is contrary to law and the same is without jurisdiction and as a matter of fact an exparte decree has been passed

totally without the knowledge of the petitioner only on the basis of memo dated 20.09.2005 filed by the then counsel on record and hence the

delay that has occurred is neither on account of the petitioner''s negligence or deliberate intention on his part and this important aspect has not been

appreciated by the trial Court and the revision petitioner has come to know of the exparte decree only when he has received notice in Execution

Petition No. 374 of 2006 and soon filed an application and even in the written statement filed by the revision petitioner/first defendant he has stated

that he has settled the suit property in favour of his wife on 15.03.1999 and that the suit has been filed in April 1999 and because of these reasons

the plaintiff themselves have impleaded the wife of the revision petitioner and her purchasers as party to the suit and these aspects have not been

adverted to by the trial Court in a pragmatic manner which has caused serious prejudice to the petitioner and therefore prays for allowing the civil

revision petition to promote substantial cause of justice.

4. Per contra, the learned Counsel for the respondent/decree holder submits that the revision petitioner has not explained each and every day''s

delay and the petitioner''s learned Counsel reported no instructions before the trial Court on 20.09.2005 and therefore he has been set exparte and

a judgment has been passed by the trial Court after full contest by means of examining the witnesses and marking the exhibits on respective sides

and that the trial Court has come to the right conclusion in not accepting the reasons ascribed for the delay and the same need not be interfered

with by this Court.

5. This Court has heard the respective contentions of the learned Counsel appearing for the parties and noticed the same.

6. The learned Counsel for the revision petitioner cites the decision of Hon''ble Supreme Court in Tahil Ram Issardas Sadarangani and others Vs.

Ramchand Issardas Sadarangani and another,

at page 257 wherein it is held as follows:

It is not disputed in the present case that on March 15, 1974 when Mr. Adhia, advocate withdrew from the case, the petitioners were not present

in court. There is nothing on the record to show as to whether the petitioners had the notice of the hearing of the case on that day. We are of the

view, when Mr. Adhia withdrew from the case, the interests of justice required, that a fresh notice for actual date of hearing should have been sent

to the parties. In any case in the facts and circumstances of this case we feel that the party in person was not at fault and as such should not be

made to suffer.

7. He also seeks in aid of the decision of Hon''ble Supreme Court in Mahesh Yadav and Anr. v. Rajeshwar Singh and Ors. 2009 (1) CTC 638

where in it is held that;

when an exparte decree has been passed against some defendant and it is necessary to set aside entire decree, Court has power to do so, and

order setting aside exparte decree being judicial order should be supported by reasons and when the exparte decree is passed, defendants have

more than one remedy and defendants may file a suit contending that decree was obtained fraudulently or may file application under Order 9, Rule

13 of C.P.C for setting aside exparte decree or may prefer an appeal from exparte decree and he may also file a review application.

8. Continuing further, he relies on the decision of this Court in Venkatalakshmi @ Rathnamma v. Bayamma and 12 Ors. 2003-2-L.W. 25 at page

26 and 27 wherein it is laid down as follows:

At the outset, it has to be decided whether an application, under Order IX Rule 13 C.P.C., as it came to be filed by the petitioner, could be taken

as a proper step or proceeding in law? A cursory glance made into the said provision of law wherein the language is complete and clear and

unambiguous to the effect that ''in any case in which a decree is passed exparte against a defendant, he may apply to the Court by which the

decree was passed for an order to set aside'' and therefore, there is absolutely no impediment caused on the part of the petitioner to have resorted

to the said provisions of law for filing an application to set aside the exparte decree as passed by the trial Court. Since it is clear from the language

employed in the Section, it could be presumed that even if other defendants are in the suit and if the said suit has been decided against them in a

contested manner on merits, if no participation is there on the part of any one or other defendants, such a defendant who has been set exparte in

the suit, is at liberty to file an application under order IX Rule 13 C.P.C. and hence, this question regarding the maintainability of the application

filed by the petitioner before the trial Court under Order IX Rule 13 C.P.C. is decided as maintainable in law.

The petitioner''s case is that two years after she had attained majority in the year 1982, the suit had been decided exparte against her as though she

was a minor and the same is a nullity and therefore she would plead to set aside the exparte decree and permit her to participate in the further

proceedings of the suit, particularly in view of the fact that she is entitled to a definite 1/3rd share in all the properties of the deceased Chinna Muni

Reddy. It is the duty and responsibility of the plaintiff to see that she gets a proper decree against proper parties in the proper manner, lest, she

may not be able to enjoy the fruits of the decree in a peaceful way. At this juncture, since it is the plaintiff, who is the interested party in getting the

decree, she cannot simply throw the burden on the defendants for having not come forward to declare the majority as though it is the minor

defendant who has filed the suit seeking some reliefs, especially in a case of this nature wherein the minor pleads no knowledge of the very suit filed

by her mother or even the decree passed against her, unless the plaintiff is in a position to prove to the effect that inspite of knowledge of the

decree passed in the pending suit and that she had deliberately failed and neglected to implead her to the proceedings of the suit, the Court has to

presume that the petitioner who was minor had no knowledge of the suit proceedings or the passing of the decree.

In these circumstances, it is always desirable to afford an opportunity for the petitioner to have participation in the suit proceedings, particularly in

view of the fact that most part of the trial procedure has been exhausted when the petitioner was set exparte and permitting the suit to be

proceeded from there, so as to pass a decree on merits and in accordance with law which would be binding on all the parties and therefore, the

decision taken on the part of the trial Court and the first appellate Court as well in a slip-shod manner, is not proper and erroneous in law.

9. He draws the attention of this Court to the decision of Hon''ble Supreme Court Bank of India v. Mehta Brothers and Ors. 2009-1-L.W. 439 at

page 441 and 442 wherein it is observed as under;

Let us now examine whether the proviso to Order 9 Rule 13 of the Code gives ample power to the court to set aside the decree passed in favour

of the contesting defendants at the time of setting aside the exparte decree against other defendants. Therefore, let us now deal with the proviso to

Order 9 Rule 13 of the Code. It provides that in cases where the decree is of such a nature that the same cannot be set aside only as against the

defendant applying for setting it aside, the decree could also be set aside as against any or all of the other defendants. Therefore, in our view, this

proviso confers power on the court to set aside the entire decree if the court is of the view that the decree passed was of such a nature that the

same could not be set aside only as against the defendant applying for setting aside the decree, the decree could also be set aside as against any or

all of the other defendants. Therefore, this proviso clearly confers powers on the Court to set aside the entire decree where the said decree was of

such a nature that it is expedient in the interest of justice to set aside the decree as against any or all of the other defendants also.

If we read the entire provision under Order 9 Rule 13 of the Code, it would be clear that the said provision provides that the decree must be

exparte against one defendant or exparte against all the defendants. The proviso also does not provide that the decree can be set aside against the

defendants, other than the applying defendant, only if it is exparte against them also. The only requirement for the applicability of this order is that

the decree should be exparte against the defendant applying to have it set aside. Thus, the language of the order does not suggest that for the order

to apply the decree must be entirely exparte. Secondly, if the proviso was to apply only if the decree was exparte against the other defendants

also, that would have rendered the proviso practically infructuous, as in such a situation, the other defendants would have an independent right to

have the decree set aside against them. In our view, the idea behind the proviso is that if the decree is being set aside as against some defendants,

and the decree as against the other defendants is connected, interlinked of dependent on that part of the decree which is being set aside, the decree

may have to be set aside as against the other defendants also.

In the instant case at our disposal, the Division Bench of the High Court had set aside that part of the order of the learned single judge by which the

learned single judge had set aside the order of dismissal of the suit as against the respondent Nos. 1 to 5 on the application under Order 9 Rule 13

only by the respondent No. 6 for setting aside its exparte decree, on the ground that the decree passed was divisible. Therefore, the question

remains to be considered as to whether the decree passed in the suit filed by the appellant Bank is indivisible or not. To answer this query it would

be necessary for us to look into the issues framed in the suit and the reliefs claimed in so far as it is relevant, but before doing that we may note that

the suit was filed by the appellant Bank seeking a decree against respondent No. 6 and in the alternative, as against respondents Nos. 1 to 5 if the

respondent No. 6 was found not to be liable.

According to the Division Bench of the High Court, the said decree was actually two distinct decrees, i.e., one against the respondent No. 6 and

one in favour of the respondent Nos. 1 to 5, and on that finding the Division Bench had set aside the finding of the learned single judge on the

question whether the decree was divisible or not and accordingly, had set aside the order of the learned single judge to that extent and against

which the present appeal has now been preferred by the appellant Bank. In our view, the Division Bench was not justified in setting aside the

above part of the order of the learned Single Judge on the ground that the decrees were two distinct decrees: one against respondent No. 6 and

one in favour of the respondent Nos. 1 to 5.

As noted herein earlier, we have already discussed that in the judgment, it was held that respondent No. 6 against whom the exparte decree was

passed, was only liable to pay the decretal amount to the appellant Bank. The suit was dismissed as against respondent Nos. 1 to 5 only on the

ground that the claim of the appellant Bank was satisfied against respondent No. 6 and in view of such relief already obtained by the appellant

Bank against respondent No. 6, Issue Nos. 2,7 & 8 were held in favour of respondent Nos. 1 to 5 and as a result of that, the suit was dismissed

on contest as against respondent Nos. 1 to 5. Accordingly, we are of the firm opinion that the exparte decree was indivisible and rightly set aside

not only against respondent No. 6 but also against respondent Nos. 1 to 5.

Learned single judge having set aside the decree in toto and restored the suit in its entirety, it was not necessary for the appellant Bank to file any

appeal against the dismissal of the suit as against respondent Nos. 1 to 5.

We set aside the judgment of the Division Bench of the Delhi High Court so far as it had set aside the order of the learned Single Judge restoring

the suit in its entirety and therefore, the judgment of the learned single judge is restored to its original file.

Appeal allowed and the impugned judgment of the Division Bench set aside to the extent indicated above, and the judgment of the learned Single

Judge is restored.

10. However, the learned Counsel for the respondent/decree holder cites the decision of Hon''ble Supreme Court in Sunil Poddar and Ors. v.

Union Bank of India reported in (2008) 1 MLJ 1193 (SC) at page 1194 wherein it is held that;

Unless the applicant satisfies the Court that he had no notice of date of hearing of the suit and he had no sufficient time to appear and answer the

claim of the plaintiff, decree will not be set aside for mere irregularity in service of summons.

11. Also on the side of the respondent/decree holder reliance is placed on the decision of this Court in P. Perumal v. Kumaresan and Anr. wherein

it is held that;

it is true that the question of condonation of delay should be liberally considered and the facts disclose that the party against whom, exparte decree

was passed was aware of the proceedings and therefore, sufficient cause was not made out.

12. It is useful to refer to the affidavit averment made in I.A. No. 231 of 2007 by the revision petitioner/first defendant to the effect that an

Advocate appointed by him to conduct his case has informed him that he will furnish information to him and his wife at the time of trial of the case

and that after receipt of such information he has been required to participate in the trial of the case and therefore he has not met his Advocate in

connection with the case and only a month before when voluntarily he has enquired his Advocate as to the stage of the pending case, and he has

been informed that the case has been decided against him exparte and after receipt of case records from the said counsel he has appointed another

counsel and through him has seen the records and that he has come to know that his counsel filed a memo that he is not appearing for him and on

03.01.2006 an exparte decree has been passed and therefore, a delay of 268 days has occurred in the process to set aside the exparte decree.

13. In the counter filed by the first respondent (adopted by second respondent) it is among other things mentioned that the revision petitioner/first

defendant has filed a written statement as early as in the year 1999 and has not turned up to the Court till the date of decree in the year 2006 and

after a period of 7 years an application has been filed by him to set aside the contested decree passed on merits and the suit has been contested by

other defendants in the case and as such the application is not maintainable in law and on facts of the case and moreover, the remedy available to

the revision petitioner is to file an appeal before Appellate Court as against the judgment and decree of the trial Court passed in the suit etc.

14. It is also represented on behalf of the respondents that the revision petition/first defendant has entered appearance in the main case through his

counsel and filed vakalat on 15.06.1999 and during the pendancy of the suit he filed the written statement and 2nd and 4th defendants have been

impleaded as subsequent transferees and the suit has been posted in the list. Defendant Nos. 1 and 2 have not turned up and they have been set

exparte and the other defendants have proceeded with the case by examining witnesses and also witnesses on the side of plaintiff''s/defendants 3 to

5 have been examined. In short, after contest, on merits the trial Court has passed the judgment in the main suit.

15. At this stage this Court pertinently points out that on 09.09.2005 when the suit has been posted for trial as last chance before the trial Court,

proof affidavit of P.W. 1 has been filed and the matter has been posted to 14.09.2005 for cross-examination of P.W.1, and on 14.09.2005 Ex.

A1 to A6 have been marked and for cross-examination of P.W.1 the matter has been adjourned to 20.09.2005 and on 20.09.2005 when P.W.1

has to be cross-examined at that time counsel for the first defendant (revision petitioner) has reported no instructions and therefore, the first

defendant has been called absent and set exparte and the matter has been posted for cross-examination of P.W.1 by defendant No. 2 on

22.09.2005 and further on 22.09.2005 there has been no representation on the side of the second defendant and she has been called absent and

set exparte and further P.W.1 has been cross-examined by defendant 3 to 5 and Ex. A5 and A6 have been marked and for further examination

plaintiff side witnesses the matter has been adjourned to 28.09.2005. On 28.09.2005 proof affidavit of P.W.2 has been filed and the matter has

been adjourned for cross-examination on 03.10.2005. From 03.10.2005 the matter has been posted to 05.10.2005 for the purpose of cross-

examination of P.W.2 and on 05.10.2005 P.W.2 has been cross-examined and again for examination of other plaintiff side witnesses the matter

has been adjourned to 10.10.2005 and on 10.10.2005 the matter has been adjourned to 14.10.2005 for examination of plaintiff side witness as

last chance and on 14.10.2005 the plaintiff''s side evidence has been closed and the matter has been posted for defendant side evidence by

18.10.2005 and on 18.10.2005, proof affidavit of D.W.1 has been filed and the matter has been posted to 19.10.2005 for cross-examination of

D.W.1, and on 19.102005 the matter has been adjourned to 20.10.2005 for cross-examination of D.W.1 as last chance and on 20.10.2005 the

matter has been adjourned to 21.10.2005 and on 21.10.2005 D.W.1 has been cross-examined in full and for further examination of defendants''

witnesses the matter has been posted to 27.10.2005 and on 27.10.2005 the proof affidavit of D.W.2 has been filed and Ex. B1 to B5 have been

marked with a direction to cross-examine D.W.2 by 09.11.2005 and on 09.11.2005 D.W.2 have been cross-examined in full and for further

examination of defendants'' witness the matter has been adjourned to 14.11.2005 and moreover, on 14.11.2005 the defendant side evidence have

been closed and the matter has been posted for arguments to 21.11.2005 and again the matter has been adjourned from 21.11.20005 to

22.11.2005 and on 22.11.2005 the matter has been posted for argument as last chance and on 24.11.2005 both sides have been heard and also a

written argument on the side of the defendant has been filed and the matter has been directed to be called on 30.11.2005 for judgment and on

30.11.2005 the steno has been engaged in inspection work and the judgment has been made ready and the matter has been directed to be called

on 09.12.2005 and on 09.12.2005 the matter has been suo motto reopened for clarification and the matter has been directed to be called on

19.12.2005 and again on 19.12.2005 the matter has been directed to be called on 29.12.2005 in clarification etc., and finally on 03.01.2006

judgment has been pronounced in the main suit. It transpires from record that a memo on the side of revision petitioner/first defendant has been

filed before the trial Court on 20.09.2005 through counsel stating inter-alia that ""defendant No. 1 is not having any interest to conduct the case

hence the counsel is reporting no instructions and therefore it is most humbly prayed that this Hon''ble Court may kindly be pleased to record the

memo and render justice"". Accordingly, the trial Court in the notes paper in O.S. No. 488 of 1999 on 20.09.2005 has endorsed that ""the counsel

of defendant No. 1 reported no instructions. Defendant No. 1 called absent and set exparte cross by defendant No. 2 on 22.09.2005.

16. It is to be borne in mind that a Civil Court can decide whether a decree is under Order 17, Rule 2 or under Order 17, Rule 3 of CPC in the

considered opinion of this Court. Indeed the Order 17, Rule 2 of CPC applies were any party has failed to appear at the hearing. While Order 17,

Rule 3 of CPC applies when the party though present, has committed any one or more of the enumerated default as per decision in B.

Janakiramaiah Chetty Vs. A.K. Parthasarthi and Others,

, at page 645.

17. It is relevant to make a mention that in the decision In Re: Ramineni Suryanarayana,

at page 130 it is observed as follows:

By virtue of Order 3, Rule 1 the presence of party''s counsel amounts to presence of party for purposes of Order 17, Rule 3. In a suit for recovery

of money the defendant pleaded partial discharge and in spite of several adjournments did not adduce any evidence and on the day to which the

suit was posted for trial the defendant was absent and no evidence was produced on his behalf though his counsel was present. Though the

counsel''s request for adjournment was refused he did not withdraw from the case or report ""no instructions"". The Court recorded the plaintiff''s

evidence in the presence of the defendant''s counsel and the next day pronounced judgment and passed a decree in his presence. It was held that

the presence of the defendant''s counsel on the day of hearing and on the day of judgment constituted persence of the defendant and the judgment

and decree passed in the suit could not be treated as ex parte. Merely because the counsel did not lead any evidence to substantiate the

defendant''s plea of partial discharge it could not be said that the defendant was set ex parte. Therefore the application under Order 9, Rule 13 to

set aside the decree was not maintainable. M. Agaiah Vs. Mohd. Abdul Kereem, and Thummala Suryamma Vs. The Andhra Pradesh State

Electricity Board and Others, and Marothu Suryarao Vs. Paluri Pediyya and Others, (2) (FB), C.R. Corera and Bros. Vs. The Chief Secretary,

Govt. of Pondicherry,

, Expl.

18. The respondents/plaintiff''s have initially filed an original suit O.S. No. 488 of 1999 on the file of trial Court against the revision petitioner

arraying him as defendant, praying for the relief of issuance of direction in Ordering the defendant to execute the sale deed in respect of the suit

property in favour of the respondents/plaintiffs by receiving the balance sale consideration, free of all encumbrances as per sale agreement dated

20.04.1998 etc. Subsequently, as per Order made in I.A. No. 674 of 2004 dated 16.04.2004, 2 to 5 defendants have been added as parties to

the suit.

19. It is a case of the respondents/plaintiffs that during the pendency of the suit, that they have come to know that the first defendant has

fraudulently with an intention to defraud has executed the alleged settlement deed on 15.03.1999, registered as document No. 413 of 1999 in

favour of his wife viz., the second defendant and the plaintiffs have come to know about this fact after filing of the suit and that the second

defendant has sold a part of the said property to the defendant Nos. 3 to 5 under alleged sale deed registered as document No. 2048 of 2000,

which are sham and nominal and the settlement deed and the sale deed are not genuine once and the defendant Nos. 3 to 5 are not bonafide

purchasers.

20. In the written statement filed by the defendant Nos. 3 and 5 (and adopted by 4th defendant) it is averred that they have purchased the suit

properties under document No. 2048 of 2000 and 1813 of 2000 for valid consideration from the second defendant and thus, the second

defendant has a valid marketable title over the said property as per document No. 413 of 1999 and its parent document etc., and therefore the

claim of the plaintiffs against these defendants are untenable, both in law and on facts. The second defendant in a written statement has inter-alia

stated that her husband/first defendant has given his property by way of settlement dated 15.03.1999 to her and as per the document No. 413 of

1999 she is an absolute owner of the property etc., and that she has been unnecessarily impleaded in the suit and defendant Nos. 3 to 5 are

bonafide purchasers from the second defendant and they are also unnecessarily added by the plaintiffs and the so called sale agreement date

20.04.1998 mentioned in the plaint is void and has nothing to do with her.

21. In the written statement filed by the revision petitioner/first defendant on 22.12.2000 it is among other things stated that he stoutly denies that

he offered to sel the property to the plaintiffs for alleged sale consideration of Rs. 3 lakhs and that they have to prove that on 20.04.1998 that he

has entered into an agreement with them for selling the property and received the alleged sale consideration of Rs. 2 lakhs from them etc., and

further, that already on 15.03.1999 he has executed a settlement deed in favour of his wife and handed over the possession to his wife and his wife

is enjoying the property as an absolute owner ever since the date of settlement deed and that the suit itself is not maintainable against him.

22. Moreover, in the additional written statement, the revision petitioner/first defendant has among other things mentioned that the alleged

agreement dated 20.04.1998 is hit by Section 3 of Indian Contract Act and therefore the suit is to be dismissed in limini in toto.

23. Even though in the main suit O.S. No. 488 of 1999 on the file of trial Court when the matter has been posted for cross-examination of P.W.1

the counsel for defendant No. 1 has reported no instructions and the defendant No. 1 has been called absent and set exparte etc. till the passing of

judgment in the main suit on 03.01.2006 and thereafter till the filing of I.A. No. 231 of 2007 on 27.09.2006 u/s 5 of the Limitation Act praying to

condone the delay of 268 days in filing an application to set aside the exparte decree dated 03.01.2006 passed by the trial Court, the revision

petitioner has exhibited inaction and has adopted a callous attitude. In short he has shown a laissez-faire/lackadaisical attitude and he has not been

quite diligent enough to prosecute the proceedings of the suit when the counsel he has engaged earlier has reported no instructions admittedly to the

trial Court on 20.09.2005 and also filing a memo to the effect ''that defendant No. 1 is not having any interest to conduct the case etc''.

24. It is a settled law that Section 5 application as per Limitation Act is to be construed liberally so as to do substantial justice to the parties. The

existance of ''sufficient cause'' is an essential condition for allowing the application for condonation of delay. It is the duty of the Court to go into the

position of the party and to see that there exists a sufficient cause for exercising discretion in regard to the condonation of the delay. No wonder

the length of delay is immaterial. A honest approach of the defaulted party contracts the discretion of the Court to pass a proper order. However,

it is apt for this Court to recall the observations of Hon''ble Supreme Court in the decision in Mahabit Singh v. Subhash and Ors. (2008) 1 MLJ

1214 (SC) which runs thus:

Admittedly, an exparte decree was passed. Defendant for getting it set aside was required to establish that either no summons was served on him

or he had sufficient cause for remaining absent on the date fixed for hearing the suit exparte.

Article 123 of the Limitation Act, 1963 provides for 30 days time for filing such an application.

Even assuming for the sake of argument that no proper step was taken by the appellant herein for service of summons upon the respondent and/or

the service of summons was irregular, evidently, it was for the defendant-respondent to establish as to when he came to know about the passing of

the exparte decree. Even in his cross-examination, the first respondent has categorically admitted that he had approached the appellant herein for

not giving effect thereto one and half year prior to filing of the application, and, thus, he must be deemed to have knowledge about passing of the

said exparte decree. The period of limitation would, thus, be reckoned from that day. As the application under Order 9 Rule 13 of the CPC was

filed one and a half year after the first respondent came to know about passing of the exparte decree in the suit, the said application evidently was

barred by limitation.

25. Added further, in A.P. Ramasamy v. Dhanalakshmi 2004-1-L.W. 406 wherein it is laid down as follows:

A perusal of the particulars for the entire period, would make it clear that the conduct of the petitioner was consistently indifferent. In fact, though

he has shifted his residence in May 2000, he has not cared to give the change of address to his lawyer and he has approached the Advocate only

after two years, namely in 2002. He though it fit to file the application to condone the delay only after receiving notice in the application filed by the

respondent/plaintiff for passing final decree. Thus, it is clear that the reasons for the delay have to be held as unreasonable and the same would not

show that he is bonafide.

26. In Salil Dutta Vs. T.M. and M.C. Private Ltd.,

it is held that party absenting on counsels advice when suit has been posted for final hearing after 7 years from the institution is not a sufficient cause

for restoration.

27. In view of the fact that the revision petitioner/first defendant has not taken any concrete steps to set aside the decree till the file of I.A. No. 231

of 2007 dated 27.09.2006 (notwithstanding the fact that his counsel has reported no instructions as per memo dated 20.09.2005 filed before the

trial Court) and since the revision petitioner has been called absent and set exparte on 20.09.2005 etc., this Court is of the considered view that

the reasons assigned by the revision petitioner/first defendant in para 2 of his affidavit in I.A. No. 231 of 2007 to the effect that ""his counsel who

has been appointed to conduct the case has informed that he will furnish information to him and his wife at the time of the trial of the case and

further, after receipt of the said information they can join in the proceedings of the trial etc.,"" are not a sufficient cause and in fact the said reasons

assigned are certainly contrary to the contents of memo filed by his counsel before the trial Court on 20.09.2005 "that the revision petitioner/first

defendant is not having any interest to conduct the case" and hence as the counsel is reporting no instructions etc., are not an acceptable good or

sufficient cause and in reality Section 5 application under Limitation Act cannot be allowed in a cavalier fashion when the said application lacks

bonafides, and as such the order of the trial Court in dismissing the I.A. No. 231 of 2007 dated 14.02.2008 is a valid and proper one in the eye of

law and the same is not to be interfered with and consequently, the civil revision petition fails.

28. In fine, the civil revision petition is dismissed leaving the parties to bear their own costs. The order passed by the trial Court in I.A. No. 231 of

2007 is confirmed for the reasons mentioned by this Court in this revision. Considering the facts and circumstances of the case the parties are

directed to bear their own costs. Consequently, related M.P. No. 1 of 2008 is also closed.