Rukmani Vs Ranganayaki

None

Court: Madras High Court

Date of Decision: April 12, 2002

Citation: (2002) 2 MLJ 205

Hon'ble Judges: S. Jagadeesan, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

S. Jagadeesan, J.
By consent of both the counsel the C.R.P. itself is taken up for final disposal. The petitioner is the second defendant in

O.S. No. 36 of 1990 on the file of the First Additional District Munsif, Coimbatore. The respondent herein filed the said suit for partition and

allotment of half share in the plaint schedule properties. In the said suit an ex parte preliminary decree was passed as early as 29.4.1992. The

petitioner filed LA. No. 2420 of 1996 to condone the delay of 1590 days in filing the petition under Order 9, Rule 13, C.P.C. and for setting aside

the ex parte preliminary decree stating that her husband who was the first defendant in the suit died on 4.11.1992. He was looking after the case

and further her counsel also died. Hence the petitioner was not aware about the ex parte decree and she came to know about the same on

24.8.1996 only when she received the notice in I.A. No. 1901 of 1996 filed by the respondent for passing the final decree. Immediately on coming

to know of the same, the petition has been filed for condoning the delay of 1590 days along with the petition for setting aside the ex parte

preliminary decree. The said application was dismissed by the Court below. The present revision has been filed against the same.

2. It is the contention of the learned Counsel for the petitioner that the petitioner purchased the property under a registered sale deed from one

Kondasamy Naidu on 9.8.1956. The respondent filed the suit on the basis of a Will dated 28.6.1956 executed by the said Kondasamy Naidu.

The respondent did not produce the original Will before Court. The counsel for the petitioner who was looking after the case of the petitioner died

without informing about the ex parte decree in the suit to the husband of the petitioner, the first defendant in the suit. Subsequently the first

defendant, the husband of the petitioner also died within a short period and the petitioner was in dark about the litigation. She came to know about

the ex parte decree only on receipt of the summons in the final decree proceeding. The petition has been filed immediately thereafter to condone

the delay in filing the petition for setting aside the ex parte preliminary decree as well as to set aside the ex parte preliminary decree. The Court

below had dismissed the petition only on the ground that the petitioner did not let in any evidence to establish the cause for the delay, which reason

cannot be sustained.

3. On the contrary, the learned Counsel for the respondent contended that the delay is an inordinate one which has not been properly explained.

The delay of every day has to be properly explained. In the absence of such explanation, it has to be construed that there is no sufficient cause for

such delay and as such the order of the Court below do not suffer from any error of jurisdiction. Apart from that, it is further contended that there

is no material to establish that the counsel did not inform the first defendant, the husband of the petitioner and the petitioner was not aware about

the pendency of the litigation; especially when she being a party to the proceeding. When the Court below had considered the material available on

record and exercised its discretion in a proper manner, it is not open to this Court to set aside the same while exercising the power u/s 115, C.P.C.

4. I carefully considered the above contentions of both the counsel. Admittedly the ex parte decree was passed on 29.4.1992. Immediately

thereafter the counsel appearing for the petitioner died. The husband of the petitioner also died on 4.11.1992. The respondent and Kondasamy

Naidu, the original owner of the property are the children of one Narasimmalu Naidu through his second wife Alamelu Naidu. The first defendant,

the husband of the petitioner is the son of the said Narasimmalu Naidu through his first wife. The brother of the respondent executed the Will in

favour of the respondent on 28.6.1956 and thereafter sold the property to the petitioner herein under the registered sale deed dated 9.8.1956 and

he died on 12.8.1956. The suit for partition was filed by the respondent on 4.1.1990 and the same was decreed ex parte on 29.4.1992. The

petitioner for condoning the delay in filing the petition for setting aside the ex parte decree and the petition for setting aside the ex parte decree

were filed on 8.9.1996, as the petitioner came to know about the ex parte decree only on.29.4.1992 on receipt of summons in I.A. No. 1901 of

1996.

5. The question for consideration is whether the petitioner had explained the delay with sufficient cause?

6. A. A perusal of the order of the Court below reveals that the lower Court has observed that the petitioner did not let in any oral evidence to

establish the fact of the death of their counsel. Further the petitioner has not examined any other witness or produced any document to establish the

sufficient cause for the delay. Further the lower Court has observed that the reasons given by the petitioner are not sufficient cause for condoning

the inordinate delay. On these grounds the Court below held that the delay has not been properly explained.

7. Before entering into the discussion on merits, it is worthwhile to refer the two recent judgments which lays down the principle for consideration

of the petition u/s 5 of the Limitation Act. A Division Bench of this Court in the case of Subramaniam v. Tamil Nadu Housing Board (2000) 3

M.L.J. 181, after considering several judgments of various High Courts as well as the Apex Court has held as follows:

To sum up the legal position, (1) the word ""sufficient cause"" should receive liberal construction to do substantial justice; (2) what is ""sufficient

cause"" is a question of fact in a given circumstances of the case; (3) it is axiomatic that condonation of delay is in the discretion of the Court; (4)

length of delay is no matter, but acceptability of the explanation is the only criterion; (5) once the Court accepts of positive exercise of discretion

and normally the superior Court should not disturb such finding unless the discretion was exercised on wholly untenable ground or perverse; (6)

The rules of limitation are not meant to destroy the rights of the parties but they are meant to see that the parties do not resort to dilatory tactics to

seek their remedy promptly; (7) Unless a party shows that he/she is put to manifest injustice or hardship, the discretion exercised by the lower

Court is not liable to be revised; (8) If the explanation does not smack of mala fides or it is put forth as part of a dilatory strategy, the Court must

show utmost consideration to the suitor; (9) If the delay was occasioned by party deliberately to gain time, then the Court should lean against

acceptance of the explanation and while condoning the delay, the Court should not forget the opposite party altogether.

In N. Balakrishnan Vs. M. Krishnamurthy, , the Supreme Court considered the scope of Section 5 of the Limitation Act, 1963 as well as the

powers of revision u/s 115 of Code of Civil Procedure. In that case, the Apex Court pointed out that want of extra vigilance need not be need as a

ground to depict him as a litigant not aware of his responsibilities, and to visit him with drastic consequences. It is further pointed out that once the

Court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior Court should not disturb such

finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or ar bitrary or perverse. I deem it

necessary to quote paragraphs 12 to 14 from the said judgment in extenso, which read thus:

12. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek

their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life

span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of

time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the Courts. So a life span must be fixed for

each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus

founded on public policy. It is enshrined in the maxim interest reipublicae upsit finis litium (it is for the general welfare that a period be put to

litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but

seek their remedy promptly. The idea is that every remedy must be kept alive for a legislatively fixed period of time.

13. A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that

delay in approaching the Court is always deliberate. This Court has held that the words ""sufficient cause"" u/s 5 of the Limitation Act should receive

a liberal construction so as to advance substantial justice vide: Shakuntala Devi Jain Vs. Kuntal Kumari and Others, and The State of West Bengal

Vs. The Administrator, Howrah Municipality and Others, .

14. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to

turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is put forth as part of a dilatory strategy

the Court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party

deliberately to gain time then the Court should lean against acceptance of the explanation. While condoning delay the Court should not forget the

opposite party altogether. It must be borne in mind that he is a looser and he too would have incurred quiet a large litigation expenses. It would be

a salutary guideline than when Courts condone the delay due to latches on the part of the applicant the Court shall compensate the opposite party

of his loss.

8. From the above principles laid down by the Division Bench of this Court as well as the Apex Court, it is clear the length of delay is no matter

but acceptability of the explanation is the only criterion and the Rules of limitation are not meant to destroy the rights of the parties but they are

meant to see that the parties do not resort to dilatory tactics to seek their remedy promptly. Further if the explanation offered by the party does not

smack of mala fide or it is put forth as part of the dilatory strategy, the Court must show utmost consideration to the suitor and the party must show

that he/she is put to manifest injustice or hardship if the delay is not condoned. Hence it is for the Court to consider whether the petitioner had

deliberately to gain time allowed the suit to be decreed ex parts and come forward with the petition to condone the delay and to set aside the ex

parte preliminary decree.

9. The further aspect to be considered by this Court is whether by condoning the delay, and setting aside the ex parte decree, the respondent will

be put any hardship by exercise of the discretion vested with the Court. As stated already, the preliminary decree was passed ex parte on

29.4.1992. There is no dispute that shortly thereafter the counsel for the petitioner also died. The husband of the petitioner who was incharge of

the case also died in November, 1992. Though the petitioner may be a part to the proceeding, when her husband was alive and he was looking

after the case there is no need for the petitioner to let in any oral evidence or to examine independent witness as stated by the Court below to

establish her cause that she was not aware about the ex parte decree Naturally the husband might be in charge of the case. Hence, the statement of

the petitioner that she came to know about the ex parte decree only on 24.8.1996 when she received the summons in the final decree proceeding

cannot be doubted very much. The respondent who filed the suit on the basis of the Will did not produce the original Will but only a certified copy

has been produced. Whether on the basis of the certified copy of the Will the respondent can establish her claim is also a question which goes to

the root of the matter.

10. The further question as to whether the respondent is put to any injustice or hardship is concerned, though the respondent obtained an ex parte

preliminary decree as early as 29.4.1992, she filed in 1996 the LA. No. 1901 of 1996 for passing of the final decree. This itself is clear that the

respondent took nearly four years to come forward with the application of final decree.

11. Apart from this, the Will which is the basis of the claim of the respondents is dated 28.6.1956. When that be so, the respondent had filed the

suit on 4.1.1990 after nearly 34 years subsequent to the death of the testator which is on 12.8.1956.

12. If all these facts are taken together by virtue of the setting aside of the ex parte preliminary decree, the respondent will not be put to any

injustice or prejudice. When she herself took four years to file the application for passing the final decree and when the petitioner filed the petition

for condoning the delay and to set aside the ex parte preliminary decree within three weeks on receipt of the summons in the final decree

proceedings, it cannot be said that the respondent will be put to any hardship, as there is no finality arrived at in the litigation. But on the other

hand, definitely if the ex parte decree is not set aside the petitioner will be put to injustice and hardship as she has to loose half of the valuable

immovable property. If these aspects are considered on the principles laid down by the Division Bench of this Court as well as the Apex Court in

the judgments referred supra, this Court is of the view that the order of the Court below cannot be sustained.

13. Accordingly the civil revision petition is allowed. But, however, the petitioner cannot be left out without imposing any condition. Considering

the fact that the counsel for the petitioner as well as her husband died only subsequent to the ex parte decree, but of course within a short period

and since the right of the petitioner over the valuable property is involved, the petitioner is directed to pay a sum of Rs. 5,000 by way of cost to the

respondent directly on or before 19.4.2002 and file the receipt as well as memo by 22.4.2002 before the Court below. On such filing of the

memo, the Court below is directed to restore the suit O.S. No. 36 of 1990 on file and dispose of the same within three months from the date of

receipt of the copy of this order. Consequently stay C.M.P. No. 1743 of 2002 is closed.