

(2010) 06 MAD CK 0274

Madras High Court

Case No: C.R.P. (NPD) . No. 966 of 2009

Pushpammal

APPELLANT

Vs

Jayavelu Gounder
(Died), Krishna
Gounder (Died) and
Others

RESPONDENT

Date of Decision: June 30, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 13
- Limitation Act, 1963 - Section 5

Citation: (2011) 1 RCR(Civil) 746 : (2011) 1 RCR(Civil) 746

Hon'ble Judges: G. Rajasuria, J

Bench: Single Bench

Advocate: R. Margabandhu, for the Appellant; D. Mahalingam, for R1 to R9, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

G. Rajasuria, J.

Animadverting upon the order dated 4.2.2009 passed by the District Munsif, Gudiyattam, in I.A. No. 907 of 2008 in O.S. No. 644 of 1992, condoning the delay of 708 days u/s 5 of the Limitation Act in filing the application to get the ex-parte decree set aside as per O.9 Rule 13 of C.P.C., this civil revision petition is focussed at the instance of the Plaintiff.

2. A summation and summarisation of the relevant facts absolutely necessary and germane for the disposal of this revision petition would run thus:

(i) The revision Petitioner/Plaintiff filed the suit O.S. No644 of 1992 seeking the following reliefs:

(a) to declare the Plaintiff's title to the schedule mentioned property.

(b) to direct the Defendant to deliver peaceful possession of the schedule mentioned property to the Plaintiffs and in their default through the process of this Court;

(c) Order an enquiry for mesne profits under Order 20 Rule 12 of C.P.C." (extracted as such)

(ii) Whereupon written statement was filed by the deceased original Defendants 1 and 2; however they remained absent and hence the suit was decreed ex-parte on 14.11.1996 for the first time. Subsequently, E.P. was filed and at that time I.A. No. 907 of 2008 was filed by the Defendants u/s 5 of the Limitation Act to get the delay condoned in filing the application to get the said ex-parte decree set aside. The said application was allowed and thereafter the ex-parte decree was also set aside. Ultimately, the suit was brought back on file with effect from 6.8.2003.

(iii) In respect of the query raised by this Court as to why there was a long delay in bringing back the suit on file i.e. only on 6.8.2003, the learned Counsel for the Defendants would explain and expound that pending that I.A. D1 died and hence time was taken to implead the L Rs of D1.

(iv) Subsequently, after the restoration of the suit, D2 died and his L Rs were also impleaded. While so, it is clear from the order of the lower Court itself that D5 to D11 and D13 were set ex-parte even on 17.3.2005 and D12 was set ex-parte on 29.9.2006 and thereafter only for the second time the ex-parte decree was passed on 6.11.2006. Subsequently, once again E.P. was filed by the Plaintiff and on 29.9.2008 notice was sent to the judgment debtors.

(v) After receipt of the notice, the application No. 907 of 2008 was filed u/s 5 of the Limitation Act to get the delay of 708 days condoned in filing the application to get the ex-parte decree set aside.

(vi) After contest, the lower Court even though narrated the adverse circumstances as against the Defendants, in the last sentence of the order, simply stated that the petition would be allowed on payment of cost of Rs. 1250/-.

(vii) The learned Counsel for the Defendants would submit that the cost was deposited in Court and the I.A. filed under Order 9 Rule 13 of Code of CPC was numbered and now it is pending.

3. Being aggrieved by and dissatisfied with the said order dated 4.2.2009 of the lower Court in condoning the delay the Plaintiff filed this revision on various grounds, the quintessence of the same would run thus:

(i) The lower Court even though detailed and delineated all the adverse circumstances as against the Defendants simply at the end of the order stated thus:

Any way in the interest of justice this petition will be allowed on payment of cost of Rs. 1250/- on or before 15.2.2009 call on 16.2.2009."

(ii) The lower Court ought not have condoned such enormous delay and that too, in the peculiar circumstances of this case forgetting the past events.

4. The learned Counsel for the revision Petitioner reiterating the grounds of revision would develop his argument to the effect that the suit was filed in the year 1992 and twice ex-parte decrees were passed and there was enormous delay and even after pointing out the laches and delay on the part of the Defendants, the lower Court, without assigning any reason whatsoever simply in one sentence at the end condoned the delay. Accordingly, the learned Counsel prays for setting aside the order of the lower Court.

5. By way of torpedoing and pulverising the arguments as put forth on the side of the revision Petitioner/Plaintiff, the learned Counsel for the Respondents/Defendants would set forth and put forth his arguments, the pith and marrow of them would run thus:

(i) The lower Court taking into consideration the fact that the subject matter involved in the suit is an immovable property and that an opportunity should be given to the Defendants, condoned the delay on cost and that the cost also was deposited in Court. In such a case in revision this Court need not interfere with the discretion exercised by the lower Court. The opportunity given to the Defendants was just and proper and no interference is required.

(ii) D8 was the sole person who was looking after the case and his wife died on 23.4.2006 and consequent upon her death he become virtually unconscious and immobilised and he was under intensive medical treatment.

(iii) D13 also being a lady was not in a position to participate in the proceedings as she was staying elsewhere.

As such the learned Counsel would submit that no interference with the order of the lower Court is required.

6. The points for consideration are as under:

(i) Whether the lower Court was justified in condoning the delay of 708 days in filing the application to get the ex-parte decree set aside?

(ii) Whether the non citing of reasons in the order of the Court for condoning the delay is fatal to the order? And whether there is any illegality or infirmity in the impugned order passed by the lower Court?

Points (i) and (ii):

7. Both these points are taken together for discussion as they are interconnected and entwined, interlinked and interwoven with each other.

8. Considering the pro et contra I would like to refer to the following decisions of the Honourable Apex Court:

(i) 2010(2) Supreme 115 (Oriental Aroma Chemical Industries Ltd., v. Gujarat Industrial Development Corporation and another 2010(2) Supreme 115, an excerpt from it would run thus:

8..... The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and other similar statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate - [Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others](#), , [N. Balakrishnan Vs. M. Krishnamurthy](#), and [Vedabai @ Vijayanatabai Baburao Pateil Vs. Shantaram Baburao Patil and Others](#),

(ii) AIR 2002 SC 1201 (Ram Nath Sao alias Ram Nath Sahu and aothers v. Gobardhan Sao and others AIR 2002 SC 1201, certain excerpts from it would run thus:

"13. 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 not 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 the delay, the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses." (emphasis added)

9. A mere perusal and poring over of the above excerpts including the entire judgments would clearly exemplify and demonstrate that if the period of delay is meagre, lenient view has to be taken as otherwise the reasons found set out in the affidavit accompanying the petition for getting the delay condoned, should be

strictly scrutinised.

10. This Court is fully aware of the legal position that if the lower Court exercised its discretion to condone the delay, normally the revisional Court will not interfere with it, unless the order is perverse or illegal. Hence, in these circumstances, it has to be seen as to whether the order of the lower Court in condoning the delay suffers from such illegality or perversity.

11. As has been correctly pointed out by the learned Counsel for the revision Petitioner, the lower Court in its entire order elaborately detailed the laches on the part of the Defendants and after narrating all the circumstances and that too after passing strong remarks as against the Defendants that they were "lethargic and negligent" in prosecuting their case, simply in the last sentence of the order, without assigning any reason condoned the delay.

12. In my considered view, in the wake of the Honourable Apex Court's decisions, referred to supra, the approach of the lower Court was perverse and illegal as the lower Court simply ignoring the laches and negligence on the part of the Defendants in participating in the proceedings, condoned such enormous delay. But in this case, without assigning any reason the delay was condoned.

13. The lower Court in its order clearly pointed out that even on 17.3.2005, D5 to D11 and D13 were set ex-parte and here the contention of the Defendants is that D8 was defending the case on his behalf and on behalf of others also. In such a case, the death of D8's wife on 23.4.2006 would have had nothing to do with his non-appearance on 17.3.2005 and subsequently also. Wherefore it is pellucidly and palpably clear that the reason furnished for getting the delay condoned is not only valid but turned out to be far from truth.

14. Normally in trial Court's soon after setting the Defendants ex-parte, no ex-parte decree is not passed immediately. Between the time gap, so to say, after the passing of the ex-parte orders and before the ex-parte decrees are passed, applications are filed so as to get the ex-parte order set aside. But in this case it is not as though consequent upon the death of D8's wife on 23.4.2006, D8 remained ex-parte. Even eleven months anterior to his wife's death, D8 remained, so to say on 17.3.2005 ex-parte and he did not take any steps on his behalf and on behalf of others to get the ex-parte order set aside. Adding fuel to the fire, the ex-parte decree was passed on 16.10.2006 and only thereafter the E.P. was filed long thereafter in the year 2008 to enforce the ex-parte decree, however only on receipt of the E.P. notice, D8 filed the said application, so as to get the delay of 708 days condoned in getting the second ex-parte decree set aside. As such, the trial Court, after clearly having all these circumstances in its mind correctly remarked that the Defendants were "lethargic and negligent". However, without assigning any reason quite antithetical to the dictum of the Honourable Apex Court, the lower Court condoned the delay without assigning any reason much less valid reason.

15. At this juncture, I recollect and call up and recollect the following maxims:

(i) *Vigilantibus et non dormientibus jura subveniunt* - The laws aid those who are vigilant, not those who sleep upon their rights.

(ii) *Interest reipublicae ut sit finis litium* -

It concerns the state that there be an end of lawsuits.

It is for the general welfare that a period be put to litigation.

16. The circumstances be speak that the Defendants deliberately lethargic and intentionally dragging on the matter and therefore they are not entitled to get the delay condoned.

17. In the interest of justice, I even asked the learned Counsel for the revision Petitioner to produce the ex-parte decrees passed so as to find out as to whether proper proceedings were followed in passing the ex-parte judgments.

18. The certified copy of the ex-parte decree dated 14.11.1996 would evince and display that it is a reasoned order and in that the learned Judge concerned furnished reasons for arriving at his conclusion to decree the suit ex-parte and in the second ex-parte decree the judgment was not so elaborate, as it was passed for the second time, obviously on par with the earlier one, even then the deposition of P.W.1 and the documents were referred to and the suit was decreed. Wherefore in the ex-parte Judgments passed I could see no infirmity. In such a case the lower Court was not expected to condone the delay, in the peculiar circumstances involved in this case and that too, without assigning any reason. Accordingly, the order dated 4.2.2009 passed in I.A. No. 907 of 2008 is set aside and consequently the I.A. No. 907 of 2008 is dismissed. The cost if any already deposited by the Defendants in Court can be withdrawn by them.