

(2014) 11 MAD CK 0436

Madras High Court (Madurai Bench)

Case No: C.R.P. (MD) No. 26 of 2014 and M.P. (MD) No. 2 of 2014

Syed Ahamed

APPELLANT

Vs

The Joint
Commissioner

RESPONDENT

Date of Decision: Nov. 19, 2014

Hon'ble Judges: M. Duraiswamy, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

M. Duraiswamy, J.

Challenging the fair and final order passed I.A.No. 27 of 2011 in O.S.No. 39 of 2007 on the file of Principal District Court, Ramanathapuram, the defendants 1 and 2 have filed the above civil revision petition.

2. The plaintiff filed the suit in O.S.No. 39 of 2007 for declaration and recovery of possession. The suit was filed on 08.08.2007. Thereafter, the second defendant entered appearance in the suit on 13.02.2008 and on 04.06.2008, the defendants 1 and 3 were called absent and set exparte. Since the second defendant also failed to file his written statement, he was called absent and set exparte on 25.06.2008. Thereafter, on 12.08.2008, the Trial Court passed an exparte decree.

3. Pursuant to the decree passed by the Trial Court, the plaintiff filed an execution petition in E.P.No. 8 of 2010 on 13.03.2009. Before the Execution Court, the second respondent entered appearance on 02.07.2010 and sought time for filing counter. Since notice sent to respondents 1 and 3 were not served, paper publication was effected and on 16.12.2010 the defendants 1 and 3 were called absent and set exparte. On 24.02.2011, in spite of taking several adjournments for filing counter, since the second respondent failed to file counter in the execution petition, he was called absent and set exparte in the execution proceedings and delivery was ordered on that day.

4. Before the Execution Court, on 14.03.2011 the property could not be taken delivery, for want of police protection and help of VAO and Surveyor. Thereafter, on the next day 15.03.2011, the second defendant filed an application in I.A.No. 27 of 2011 on his behalf and also on behalf of the first respondent to condone the delay of 946 days to set aside the exparte decree dated 12.08.2008. When the first defendant remained absent before the Execution Court and when the notice sent to the first defendant could not be served and when property could not delivered for want of police protection on 14.03.2011, immediately the defendants 1 and 2 filed an application in I.A.No. 27 of 2011 to set aside the exparte decree. The conduct of the defendants would clearly establish that their only aim was to drag on the matter.

5. Further, the conduct of the parties would establish that they had knowledge about the exparte decree passed in the suit on 12.08.2008, even at the time entering appearance on 02.07.2010. For the reasons best known to them, they filed an application to set aside the exparte decree along with a petition to condone the delay only on 15.03.2011. As already stated, the suit was filed in the year 2007 and exparte decree was passed in the year 2008 and application to set aside the exparte decree was filed only on 15.03.2011. When the defendants have knowledge about the exparte decree passed in the suit, they should have filed an application to set aside the exparte decree immediately on coming to know about the exparte decree passed in the suit. But, in the case on hand, though the second respondent appeared in the execution petition and took several adjournments from 02.07.2010 to 15.02.2011, the second defendant has not taken any steps to file an application to set aside the exparte decree. It is also strange to note that the application to set aside the exparte decree was filed by the defendants 1 and 2 before the Trial Court on 15.03.2011 when the first defendant remained absent and also the set exparte in the execution petition also.

6. The learned counsel appearing for the revision petitioner submitted that the Court should be liberal in condoning the delay and in support of his contention, the learned counsel for the petitioner relied on the following judgments;

i) [N. Balakrishnan Vs. M. Krishnamurthy,](#) wherein the Apex Court held that the Rules of limitation are not meant to destroy rights of parties and refusing to condone delay is foreclosing a suitor from putting forth his cause.

ii) [Shanmuga Sadachara Servai Vs. Thirugnanam Servai and Another,](#) wherein this Court held that refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated.

7. The learned counsel for the petitioner submitted that a meritorious suit should not be decided exparte and on that score the delay can be condoned and the defendants may be given an opportunity to contest the suit on merits.

8. The defendants have taken sufficient time before the Trial Court for filing the written statement and in spite of obtaining sufficient time for filing written statement, they did not file the written statement. Similarly, before the Execution Court, in spite of obtaining various adjournments for filing counter, they did not file their counter before the Execution Court. In these circumstances, the Courts below had no option except to set them exparte. The attitude of the defendants cannot be condoned by any means. The judgments relied on by the learned counsel for the petitioners do not apply to the facts and circumstances of the present case.

9. In these circumstances, taking into consideration of all aspects, the Trial Court rightly dismissed the application. I do not find any error or irregularity in the order passed by the Trial Court. The civil revision petition is devoid of merits and the same is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.