

(2008) 02 MAD CK 0191

In the Madras High Court

Case No : C.R.P. (NPD) . No. 2415 of 2007 and M.P. No's. 2 and 3 of 2007

B. Ganesan

APPELLANT

Vs

State Bank of India, Dharapuram Branch, Dharapuram-638
656, Erode District, R. Sathasivam, S. Umadevi and
Muthuramalingam

RESPONDENT

Date of Decision : 04-02-2008

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2008) 02 MAD CK 0191

Hon'ble Judges : S.J. Mukhopadhaya, J;M. Venugopal, J

Bench : Division Bench

Advocate : S. Subbiah, for the Appellant; K. Sankaran, for the Respondent

Final Decision : Allowed

Judgement

M. Venugopal, J.—The revision petitioner/ appellant/ petitioner/ 4th defendant has filed the present civil revision petition as against the orders passed by the Debt Recovery Appellate Tribunal in M.A. No. 217 of 2006 dated 18.04.2007, dismissing the appeal with costs. The civil revision petitioner/appellant as petitioner filed I.A. No. 24 of 2006 in T.A. No. 2126 of 2002 on the file of Debts Recovery Tribunal, Coimbatore, praying to condone the delay of 993 days in filing the application to set aside the exparte order passed against him on 19.03.2003. The Debts Recovery Tribunal, Coimbatore has passed orders in I.A. No. 24 of 2006 on 13.09.2006 dismissing the said application inter alia observing that the revision petitioner has not come with clean hands and that the said application is devoid of any bonafides and that the said application is filed with a view to protract the proceedings.

2. The civil revision petitioner/appellant filed M.A. No. 217 of 2006 before the "Debt Recovery Appellate Tribunal as against the orders passed by the Debts Recovery Tribunal, Coimbatore dated 13.09.2006 in I.A. No. 24 of 2006 in T.A. No. 2126 of 2002.

3. The Debt Recovery Appellate Tribunal, Chennai in M.A. No. 217 of 2006 on 18.04.2007 has passed Orders, dismissing the appeal with costs among other things observing that the revision petitioner/appellant has not concern with clean hands and there is contradiction in regard to the averments made by the revision petitioner in para 5 of I.A. No. 24 of 2006 and that of the averments made by him in para 6 of I.A. No. 23 of 2006.

4. Aggrieved against the orders passed by the Debt Recovery Appellate Tribunal, Chennai in M.A. No. 217 of 2006 dated 18.04.2007, the present revision petition is filed by the petitioner/appellant/4th defendant.

5. According to the learned counsel for the revision petitioner, the Debt Recovery Appellate Tribunal, Chennai has failed to take into consideration of the settled law that condonation of delay must be viewed liberally, when there is no delaying tactics on the part of the petitioner and that the Debt Recovery Appellate Tribunal has not taken into consideration of the fact that the petitioner was not served with the said summons and inasmuch as the first respondent/Bank has advanced a sum of Rs. 15,00,000/- then opportunity must be given to the petitioner to contest the matter on merits and that the number of days delay-is immaterial but only the sufficiency of reasons alone are relevant and these factors were not borne in mind by the Debt Recovery Appellate Tribunal, Chennai thereby resulting in the impugned order being passed against the petitioner.

6. In 2002 (1) CTC 769=2002-3-L.W. 417 Ram Nath Sao @ Ram Nath Sahu and others V. Gobardhan Sao and others, wherein it is held as follows:

Limitation Act, 1963, Section 5- Condonation of delay- Sufficient cause - Meaning of - Approach of courts while considering petition to condone delay -Expression "sufficient cause" in connection with delay in filing application to set aside abatement or other similar provision should receive liberal construction so as to advance justice when no negligence, inaction or want of bona fide is imputable to party - Whether explanation for delay would constitute sufficient cause will depend upon facts of each case - Courts should not proceed with tendency of finding fault with "cause" shown and reject petition in over jubilation of disposal drive -Acceptance of explanation furnished should be rule and refusal exception more so when no negligence, inaction or want of bona fide can be imputed to defaulting party - However courts should not lose sight of fact that by not taking steps within prescribed time valuable right as accrued to other party which should not be lightly defeated by condoning delay in a routine manner - Explanation for delay should not rejected taking" pedantic and hyper-technical view or when stakes" are high or where arguable points, of facts and law are involved -Courts have to strike balance between the effect of order on parties to lis. (para 12)

Words and Phrasesr- "Sufficient Cause" -Meaning of- Expression "sufficient cause" in connection with delay in filing application to set aside abatement or other similar provision should receive liberal construction so as to advance justice

when no negligence, inaction or want of bona fide is imputable to party - Whether explanation for delay would constitute sufficient cause will depend upon facts of each case - Courts should not proceed with tendency of finding fault with cause shown and reject petition in over jubilation of disposal drive - Acceptance of explanation furnished should be rule and refusal exception more so when no negligence, inaction or want of bona fide can be imputed to defaulting party.

7. In *N. Balakrishnan Vs. M. Krishnamurthy*, it is laid down as follows:

Limitation Act, 1963 - S.5- Condonation of delay - Discretion of court - How to exercise - Guidelines stated - Words "sufficient cause" should be construed liberally - Acceptability of explanation for the delay is the sole criterion, length of delay not relevant - In absence of anything showing mala fide or deliberate delay as a dilatory tactic, court should normally condone the delay - However, while doing so court should also keep in mind the consequent litigation expenses to be incurred by the opposite party and should compensate him accordingly - Where a court condones delay in positive exercise of discretion, superior court and more particularly the re-visional court should not normally disturb the same - But where request for condonation of delay is refused, it would be open to the superior court to come to its own finding on the basis of explanation for the delay given by the party - Delay on the part of defendant-appellant of 883 days in approaching the court against dismissal of his application to set aside ex parte decree passed against him - Non-action on the part of his advocate explained as cause for the delay - Appellant also complaining about conduct of the advocate before Consumer Forum and getting Rs. 50,000/- as compensation - Appellant's explanation for the delay accepted and delay condoned by trial court- But in revision High Court setting aside the order of trial court on ground that appellant was negligent and was not careful enough to meet the advocate to verify the stage of the proceedings for a long time - Held, High Court in revision erred in interfering with the exercise of jurisdiction by trial court in condoning the delay when appellant's conduct did not as a whole warrant castigating him as an irresponsible litigant having regard to present busy and preoccupied life.

Limitation Act, 1963 - Object of fixing time-limit - Not meant to destroy rights -It is founded on public policy fixing a life span for the legal remedy for the general welfare.

8. It is apt to refer to the decision *Kailash Vs. Nanhku and Others*, , wherein it is observed as follows:

A provision relating to participation of a party in any proceedings, in an adversarial system, held, should be so construed that ordinarily no party is denied the opportunity of participating in the process of justice dispensation - Civil Procedure Code, 1908 - Ore. 1,7,8,9,17,18,22,23,35 and 41.

9. In yet another decision AIR 1954 SC 411 at 412 between *Dinabandhu Sahu V. Jadumoni Mangaraj and others*, wherein it is held as follows:

Held that even if the matter had to be judged under S. 5 of the Limitation Act, it would have been a proper exercise of the power under that section to have excused the delay. The words "sufficient cause" should receive a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant. The order condoning delay was on the facts a proper one to pass under the proviso to S.85.13 Mad 269, Approved.

10. The revision petitioner/appellant in the affidavit filed in I.A. No. 24 of 2006 in T.A. No. 2126 of 2002 before the Debts Recovery Tribunal, Coimbatore has specifically averred that he has nothing to do with the loan transaction of the first respondent/Bank and that he did not receive summons from the Tribunal and that he came to know only during the last week of October 2005" when his daughter viz., the second defendant /second respondent had informed that his property is brought to sale by the Debts Recovery Tribunal, Coimbatore and that immediately he has taken steps to engage a lawyer to know about the details by taking copies on 10.11.2005 and to file, the application to set aside the exparte order passed against him on 19.03.2003.

11. According to the learned counsel for the revision petitioner/4th defendant, the application to set aside the exparte order ought to have been filed within 30 days from 19.03.2003 i.e., on or before 17.04.2003 but the said application was filed only on 06.01.2006 and therefore, there is a resultant delay of 993 days in filing the application to set aside the exparte decree which is neither willful nor wanton.

12. It is pertinent to point out that in I.A. No. 23 of 2006, the revision petitioner/4th defendant as among other things has mentioned that the first defendant is his son-in-law and the second defendant is his daughter viz., the wife of the first defendant and that he never stood as guarantor as claimed by the first respondent/applicant/Bank towards the credit limit of Rs. 20,00,000/-purported to have been granted to the first respondent and that he did not offer Schedule II property under any circumstance, in favour of the first respondent/Bank by means of Equitable mortgage and that his son-in-law doing business in Dharapuram was not in good terms with him and that he has a doubt that his son-in-law might have committed mischief by using his sale deed illegally and during the last week of October 2005 his daughter viz., the second defendant confessed to him that she took the original sale deed in 1995 from his bureau without his knowledge and gave it the first defendant viz., her husband/as instructed and that she informed him that her husband had committed default and that his house property is to be brought for sale by the first respondent/applicant/Bank through Debts Recovery Tribunal, Coimbatore.

13. The learned counsel for the revision petitioner/4th defendant urges that the purported letter of confirmation dated 17.11.1995 as to the equitable mortgage is a fabricated one by his son-in-law and in this letter the address of the revision petitioner is furnished as "B. Ganesan, S/o. Balu Servai, C/o. R. Sathasivam, 21,

West Hanumantharayan Kovil Street, Madurai" and the same was sent by post from Ram Nagar, Coimbatore and the above letter said to have been sent by the revision petitioner/4th defendant from Madurai cannot be true and must definitely be a forged one and this can be found out by verifying the signature of the revision petitioner found in the copy of the Bank pass book and that some foul play has been played in the purported creation of equitable mortgage made by the first defendant.

14. It is not out of place to make a mention that it is the specific case of the revision petitioner-/4th defendant that there is no piece of paper in the case to show that he is also a guarantor. It is also the plea of the revision petitioner/4th defendant that for the mischief committed by his son-in-law viz., first defendant, he should not be penalised and that he has studied upto 5th standard only and that is going to lathe work for his livelihood and this is the only property he has and if it is permitted to be sold by the first respondent/applicant/Bank then he will be in street with his family.

15. As a matter of fact, the term "sufficient cause" should receive a liberal interpretation in the hands of law courts. A pedantic approach should not be made and on the other hand, a pragmatic approach should be made by the courts of law in the justice delivery system. Admittedly, refusing to condone the delay will certainly result in a good case being thrown out at the early stage and cause of justice being defeated. As against this, when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the litigants. After all a party does not stand to benefit by resorting to delay. Per contra he runs a serious risk. It is to be noted that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred, in our considered opinion. Furthermore, it must be borne in mind that judiciary is respected because it is capable of removing injustice on technical grounds.

16. It is significant to point out that the Debts Recovery Tribunal, Coimbatore while dismissing I.A. No. 24 of 2006 on 13.09.2006 has observed that "the revision petitioner/4th defendant has not come with clean hands and only with malafide intention and because of collusion between father-in-law and son-in-law the application has been filed with a view to protract the proceedings. At this juncture, it is relevant to point out that the Debt Recovery Appellate Tribunal, Chennai in the orders passed in MA. No. 217 of 2006 on 18.04.2007 has inter alia observed that the revision petitioner/appellant/4th defendant has assigned different reasons in para 5 of I.A.No".24 of 2006 and in para 6 of I.A. No. 23 of 2006 and that the delay is deliberated and there is no bonafides on the part of appellant and dismissed the appeal with costs. A reading of the averments made in para 6 of I.A. No. 23 of 2006 do indicate that the revision petitioner/appellant/4th defendant has only explained the way in which he came to know about the fate of his property might have been offered a security for certain loan granted by the Bank as informed by one Ravi Anand from M/s. G.V. Ravi Anand

and Associates along with another person when they came to his house on 23.02.2005 at 12 noon. Moreover, from the perusal of the affidavit in I.A. No. 24 of 2006 in T.A. No. 2126 of 2002 filed by the revision petitioner/appellant/petitioner/4th defendant before the Debts Recovery Tribunal, Coimbatore, it transpires that the revision petitioner came to know during the last week of October when his daughter viz., the second defendant informed him that his property is brought for sale by the Debts Recovery Tribunal etc. Therefore, viewed in proper perspective, we are of the considered view that I.A. No. 24 of 2006 filed by the revision petitioner is only to protect his bonafides interest in the proceedings before the Debts Recovery Tribunal, Coimbatore and as such, there is no malafide or inaction on the part of the revision petitioner in projecting the said application. Furthermore, we opine that no conclusion can be drawn that I.A. No. 24 of 2006 has been filed by the revision petitioner/4th defendant in order to protract the proceedings; and therefore, the contrary view taken by the Debts Recovery Tribunal, Coimbatore in the order dated 13.09.2006 in I.A. No. 24 of 2006 and the view of the Debt Recovery Appellate Tribunal, Chennai in M.A. No. 217 of 2006 dated 18.04.2007 are not correct. In fact, the averment in the Counter, filed by the first respondent/Bank in I.A. No. 24 of 2006 before the Debts Recovery Tribunal, Coimbatore to the effect that the revision petitioner/appellant/4th defendant/petitioner's son-in-law is throughout defending the proceedings from the inception of the application strengthens the allegation of the revision petitioner that his son-in-law has played truant and mischief on him. Looking at from any angle and in view of the factual scenario presented supra, we are of the considered view that the revision petitioner must be given an opportunity to contest the proceedings before the Debts Recovery Tribunal, Coimbatore and in that view, his meritorious cause cannot be thrown out at the early stage and that we are satisfied with the reasons mentioned by the revision petitioner/appellant/ 4th defendant as sufficient cause in I.A. No. 24 of 2006 in T.A. No. 2126 of 2002 on the file of Debts Recovery Tribunal, Coimbatore and in that view, we are constrained to. interfere with the order passed in M.A. No. 217 of 2006 dated 18.04.2007 by, the Debt Recovery Appellate Tribunal, Chennai and the order of the Debts Recovery Tribunal, Coimbatore passed in I.A. No. 24 of 2006 in T.A. No. 2126 of 2002 dated 13.09.2006 in the interest of justice and accordingly, set aside their orders passed in I.A. No. 24 of 2006 in T.A. No. 2126 of 2002 dated 13.09.2006 and the orders passed in M.A. No. 217 of 2006 dated 18.04.2007 and the Civil Revision Petition is allowed. Bearing in mind the facts and circumstances of the case, the parties are directed to bear their own costs. Consequently, connected miscellaneous petitions are closed.