
(2011) 10 MAD CK 0148
In the Madras High Court
Case No : CRP (NPD) No. 3063 of 2010

Muthusamy

APPELLANT

Vs

Ramasamy Gounder, Nallammal, S. Ramasamy and S.
Muthusamy

RESPONDENT

Date of Decision : 28-10-2011

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2011) 10 MAD CK 0148

Hon'ble Judges : R. Sudhakar, J

Bench : Single Bench

Advocate : T. Dhanyakumar, for the Appellant;

Final Decision : Allowed

Judgement

R. Sudhakar, J.—This civil revision petition is filed to set aside the order and decretal order dated 15.3.2010 in I.A. No. 306 of 2009 in A.S. No. 175 of 2000 on the file of the Subordinate Court, Namakkal.

2. The revision petitioner is the second plaintiff in the suit. The suit is filed for declaration and injunction in O.S.No.103 of 1997 before the District Munsif Court, Namakkal and transferred to the District Munsif Court, Rasipuram on 5.2.1994 and renumbered as O.S. No. 181 of 1994. On contest, the suit was decreed on 19.11.1997. Challenging the judgment and decree passed by the trial Court, the respondents/defendants filed A.S. No. 175 of 2000. On 6.10.2003, the first appellant/ first defendant died. Therefore, I.A. No. 463 of 2005 was filed to bring the L.Rs. of the deceased first appellant as appellants in A.S. No. 175 of 2000, which was allowed on 5.4.2006. Thereafter, the appellants filed I.A. No. 181 of 2006 in A.S. No. 175 of 2000 to carry out certain amendments in the appeal grounds. Such application was dismissed for default on 10.8.2007. On the same day, since the appellants did not prosecute the matter, A.S. No. 175 of 2000 was also dismissed for default. The revision petitioner/ plaintiff filed I.A. No. 625 of 2008 before the trial Court to amend the decree. In that application, it has been

clearly mentioned that I.A. No. 181 of 2006 to carryout the amendment in A.S. No. 175 of 2000 and the appeal suit have been dismissed.

3 The application in I.A. 625 OF 2008 was served on the respondents herein/ defendants and a counter was also been filed. The said I.A. No. 625 of 2008 was filed on 26.11.2007 and served on the respondents/defendants. Inspite of knowledge of the dismissal of the A.S. No. 175 of 2000 on 10.8.2007, the respondents herein/defendants filed I.A. No. 306/2009 only on 7.9.2009 to condone the delay of 729 days in filing the application to restore the appeal. The revision petitioner/decree holder opposed the application vehemently. The Court below came to the conclusion that the application filed for condonation of delay of 729 days lack bonafides by pointing out the following infirmities in the application.

(i) The appeal suit was dismissed on 10.8.2007. The revision petitioner/ decree holder served a copy of the I.A. No. 625 of 2008 for amendment of the decree wherein he has clearly stated that the appeal suit and the I.A. No. 181 of 2006 filed for carrying out the amendment was dismissed on 10.8.2007. Inspite of being put on notice about the dismissal of the appeal suit in the application in I.A. No. 625 of 2008 dated 26.11.2007, the respondents herein/defendants while filing the application for condonation of delay has not properly explained the delay and has merely thrown the blame on the Advocate stating that the information relating to dismissal of the appeal suit was given by the counsel only on 4.9.2009. The Court below came to the conclusion that respondents/ defendants having come to know about dismissal of the appeal suit, has not taken prompt and timely steps to restore the appeal immediately and have filed the application after undue and unexplained delay. However, after coming to the conclusion that the delay has not been properly explained and the petition lacked bonafides, the Court below proceeds to grant an opportunity to the respondents herein to contest the appeal by allowing the application by imposing costs of Rs.2,000/-. Challenging the same, the present revision petition has been filed by the plaintiff / decree holder stating that the findings of the Court below in the condone delay application is against the respondents and in favour of the plaintiff. The reason given seeking condonation of delay has not been accepted. Having rejected the explanation given and the bonafides of the petitioner doubted, the Court below ought not to have condoned the delay thereby caused great prejudice to the revision petitioner/ plaintiff. Hence, this revision petition.

4. In this regard, the learned counsel for the petitioner relied upon the decision in Lanka Venkateswarlu (D) by L.Rs. Vs. State of A.P. and Others, . The relevant portion paragraphs 17 and 26 of the decision reads as follows:

(17)... Even though the Courts have power to condone the delay, it cannot be condoned without any justification. Such an approach would result in rendering the provisions contained in the Limitation Act redundant and inoperative.

(26) We are at a loss to fathom any logic or rationale, which could have impelled

the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as "liberal approach", "Justice oriented approach", "substantial justice" cannot be employed to jettison the substantial law of limitation. Especially, in cases where the Court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court ends to show the absence of judicial balance and restraint, which a judge is required to maintain whilst adjudicating any lis between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms. The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. Whilst considering applications for condonation of delay u/s 5 of the Limitation Act, the Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers.

On the above premise, the revision petition is canvassed.

5. In this revision, notice of motion was issued on 7.9.2010 and the respondents have been served on 9.10.2010. Thereafter, the matter was listed on 28.9.2010, 11.10.2011, 19.10.2011, 20.10.2011 and 21.10.2011. The registry was asked to verify whether any vakalath has been filed and it was reported that inspite of service, no vakalath has been filed. Therefore, this Court has no other option except to proceed with the matter on merits.

6. In the present case, the suit has been decreed as early as on 19.11.1997 and the appeal suit filed in A.S. No. 175 of 2000 was dismissed for default on 10.8.2007. The application for condonation of delay of 729 days in filing the application to restore the suit was filed merely on the basis that the respondents came to know about the dismissal of the appeal suit only on 4.9.2009 through the counsel. This statement was not accepted by the Court below because of the various proceedings taken by the revision petitioner/ plaintiff before the trial Court to amend the decree by filing I.A. No. 625 of 2008 and the affidavit filed in support of the application filed on 26.11.2007 clearly mentions about the dismissal of the appeal suit on 10.8.2007. It clearly established that the respondents had knowledge. A counter affidavit has been filed in the I.A. No. 625 of 2007, which goes to show specific knowledge. Further the respondents were duly represented by a counsel. In spite of knowledge as early as on 26.11.2007, there is no proper explanation as to why, the application has been filed on 7.9.2009 with a delay of 729 days except throwing blame on the counsel, which appears to be no good reason.

7. The Apex court in the decision cited supra has emphasised the need to exercise proper discretion supported by reason in matters of this nature so that justice is not denied to the person, who deserves. It should not cause prejudice

to one or other party. In the present case, it is apparent that the respondents inspite of knowing fully well that the appeal has been dismissed, has not bother to restore the appeal in time. A person, who deliberately sleeps over his rights cannot knock at the doors of justice at his sweet will and pleasure. The delay has to be properly explained so that the Court will consider bonafides and sufficient cause.

8. The plea of no knowledge till 4.9.2009 is proved false by the counter filed by the respondents herein in I.A. No. 625 of 2008 before the trial Court. Once the knowledge is established, then it is incumbent on the part of the person praying condonation of delay to explain the delay in a proper way. In this case, the blame has been thrown on the counsel and such a plea cannot be accepted without proper material. The condonation of delay application has to be dealt with seriously. Even before this Court, the respondents have not shown diligence inspite of being noticed. It is therefore clear that the intention of the respondents is to prolong the litigation without any just or reasonable cause. The Court below after rejecting the plea for condonation of delay has not taken into consideration the prejudice and hardship that is being caused to the plaintiff/ decree holder, who is unable to realise the fruits of the decree passed on 19.11.1997 on contest.

9. The decision of the Apex Court extracted above clearly implores the role of the Courts in matters relating to condonation of delay if it is unexplained. The order under challenge condoning the delay only to give the respondents an opportunity to pursue the appeal is wholly unjustified and will not subserve the cause of justice. It will cause further prejudice to the revision petitioner. The discretionary power exercised by the Court below is unreasonable and arbitrary and cannot be justified.

10. In such circumstances, for the reasons stated above and following the decision of the Apex Court, which squarely applies to the facts of the present case, this civil revision petition is allowed and the order of the Court below in I.A. No. 306 of 2009 in A.S. No. 175 of 2000 is set aside. No costs. Consequently, M.P. No. 1 of 2010 is closed.