
(2008) 04 MAD CK 0004

In the Madras High Court

Case No : C.RP. (NPD) No. 248 of 2007 and M.P. No. 1 of 2007

Palanisatny, S.P. Rajeswari and S.P. Savithiri

APPELLANT

Vs

Gowri Tamil Selvan

RESPONDENT

Date of Decision : 01-04-2008

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2008) 04 MAD CK 0004

Hon'ble Judges : A.C. Arumugaperumal Adityan, J

Bench : Single Bench

Advocate : S.V. Srinivasan, for the Appellant; A. Sivaji, Advocate (for R2), for the Respondent

Judgement

A.C. Arumugaperumal Adityan, J.—The order passed in I.A. No. 112 of 2006 in O.S. No. 920 of 2000 on the file of the II Additional

Subordinate Judge, Coimbatore, is under challenge in this revision. The said application I.A. No. 112 of 2006 was filed u/s 5 of the Limitation Act

by the defendants in O.S. No. 920 of 2000 to condone the delay of 1312 days in filing a petition to set aside the exparte decree. The reasoning

stated in the affidavit to the petition to condone the delay is that in the suit the defendants have engaged one Mr. T. Chndra Mohan, advocate, at

the first instance and subsequently on 05.06.2000 they have changed the advocate and one Mr. Sivaramakrishnan had filed change of vakalat, but

he failed to file the written statement, which resulted in an exparte decree being passed on 6.9.20002 against the defendants. It is the case of the

petitioners / defendants that in a similar occasion also the said advocate Mr. Sivaramakrishnan had failed to represent in O.S. No. 375 of 1964,

partition suit, an exparte decree has been passed against the same defendant

only due to the latches on the part of the counsel Mr.

Sivaramakrishnan and that they have preferred a complaint against Mr. Sivaramakrishnan, advocate, under Ex.P.2. But the learned Trial Judge had

dismissed the application on the ground that no sufficient cause for the delay has been stated in the affidavit to the petition, which resulted in filing of

this revision.

2. The learned counsel for the revision petitioner relying on AIR 1981 SC 1460 = (1982) 95 L.W. 9 S.N. (Rafiq and another Vs. Munshilal and

another), Would contend that in a similar circumstance the Honourable Apex Court has held that delay in filing a petition to set aside the exparte

decree on the ground of latches on the part of the advocate is to be condoned. The relevant observation in the said judgment of the Honourable

Apex Court runs as follows:-

The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the

obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned advocate to do the rest of the

things. The party may be a village or may belong to a rural area and may have no knowledge of the Court's procedure. After engaging a lawyer,

the party may remain supremely confident that the lawyer will look after his Interest. At the time of the hearing of the appeal, the personal

appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in this power to effectively

participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with

regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. Mr.

A.K.Sanghi stated that a practice has grown up in the High Court of Allahabad amongst the lawyers that they remain absent when they do not like

a particular Bench. May be we do not know, he is better informed in this matter. Ignorance in this behalf is our bliss. Even if we do not put our seal

of imprimatur on the alleged practice by dismissing this matter which may discourage such a tendency, would it not bring justice delivery system

into disrepute. What is the fault of the party who having done everything in his power and expected of him would suffer because of the default of

his advocate. If we reject this appeal, as Mr. A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not

appear but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction,

deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. May be that the learned advocate absented himself

deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter.

However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow this

appeal, set aside the order of the High court both dismissing the appeal and refusing to recall that order.

Ultimately the Honourable Apex Court allowed the appeal and set aside the exparte order on costs of Rs. 200/-.

Under such circumstance, when there is a valid reasoning stated in the affidavit to the petition filed in I.A. No. 112 of 2006 as to the effect that

after the change of vakalat filed by the counsel for the revision petitioners viz. Mr. Sivaramakrishnan, he had failed to file written statement, which

resulted in an exparte decree passed against them on 6.9.2002 and even thereafter the said advocate has not even intimated the result of the suit to

the defendants. Even in the said affidavit itself the defendant have stated that in a similar circumstance in a partition suit in O.S. No. 375 of 1964

also the same counsel after filing vakalat had not represented the defendants, which resulted in an exparte decree against them, and that they have

preferred a complaint against the said counsel under Ex.P.2. So the facts of the present case exactly fit in in all four corners to the facts of the

above said ratio decidendi. So I am of the view that an opportunity must be given to the revision petitioners to defend the case in O.S. No. 920 of

2000 by way of filing written statement. The learned counsel for the respondent would contend that the plaintiff / decree holder in O.S. No. 920 of

2000 had filed EP to execute the decree and the same is pending before the Execution Court. Under such circumstance, to compensate the

expenditure incurred in the litigation, I am of the view that a sum of Rs. 5,000/- is to be awarded as costs to the other side. In fine, the Revision is

allowed and the order in I.A. No. 112 of 2006 in O.S. No. 920 of 2000 on the file of the II Additional Sub-Judge, Coimbatore, is set aside on

condition the petitioners pay Rs. 5,000/- towards cost to the other side within a period of two weeks from this date, failing which the Revision shall deem to have been dismissed. On compliance of the said condition, the learned trial Judge is directed to restore O.S. No. 920 of 2000 to his file and after receiving the written statement of the defendants, shall proceed with the trial and dispose of the suit in accordance with law within a period of three months thereafter. Connected Miscellaneous Petition is closed.