
(2013) 01 MAD CK 0051
In the Madras High Court
Case No : C.R.P. (NPD) (MD) No. 225 of 2007

R. Chandra

APPELLANT

Vs

Nallammal and Others

RESPONDENT

Date of Decision : 21-01-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 90

Citation : (2013) 1 LW 993

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : T. Srinivasaraghavan, for the Appellant; H. Lakshmi Sankar for T.V. Sivakumar, for the Respondent

Final Decision : Allowed

Judgement

G. Rajasuria, J.—This Civil Revision Petition has been filed to get set aside the fair and decretal order dated 17.11.2006 passed in E.A.

No. 216 of 2005 in O.S. No. 186 of 1982, by the learned District Munsif, Musiri. Heard both sides.

2. The epitome and the long and the short of the germane facts absolutely necessary for the disposal of this Civil Revision Petition would run thus:

The revision petitioner herein filed E.P., which was returned for compliance. Several times, it was represented and returned and there occurred a

delay of 1495 days in representation of the E.P. Wherefore, E.A. No. 216 of 2005 was filed for getting the delay condoned in representing the

E.P. However, after hearing both sides, the said application was dismissed.

3. Being aggrieved by and dissatisfied with the same, this Civil Revision Petition has been focussed on various grounds.

4. The learned Counsel for the revision petitioner would implore and entreat by

drawing the attention of this Court to the relevant records that the Advocate for the decree holder left India and went to the United States of America, whereupon it became very difficult for the party concerned to get the case bundle from the Office of the said Advocate and entrust the same to one other Advocate for filing the E.P.; over and above that, the present revision petitioner - Chandra herself is not eo nomine decree holder and she only stepped into the shoes of the decree holder as his legal representative; the lower Court was wrong in understanding the law to the effect that each and every day's delay ought to have been explained by the revision petitioner concerned for getting the delay condoned and that might be the earlier law and now, the law got changed to the effect that the petitioner who seeks to get the delay condoned, should furnish only adequate reasons; here, the reasons as found set out in the grounds of revision as well as in the affidavit accompanying the petition were much more sufficient for condoning the delay and the petitioner who happens to be a widow could not represent the E.P. in time. Accordingly, he prays for condoning the delay.

5. Per contra, the learned Counsel for the respondents/judgment debtors, in a bid to torpedo and pulverise the arguments on the side of the revision petitioner, would submit that the affidavit accompanying the E.A. No. 216 of 2005 is niggard and bereft of reasons much less valid reasons; such huge delay cannot be condoned for the sake of asking for it; in the affidavit concerned, there is no reference that her Advocate left for the United States of America, etc. and she would only state that she started staying in Chennai; such bald and vague reasons cannot even by phantasmagorical thoughts be taken as sufficient for condoning such huge delay; over and above that, in the E.P., there were two prayers, viz., one for the purpose of executing the decree passed on 31.03.1983 in O.S. No. 186 of 1982 by the learned District Munsif, Musiri and another for recovering the amounts assessed later as per the decree dated 30.10.1993 in I.A. No. 1174 of 1990; the lower Court also raised such queries in the return, but the revision petitioner did not take steps to rectify the same; the presentation of the E.P., is barred by limitation as it was presented beyond twelve years.

6. The point for consideration is as to whether there is any illegality in the order

passed by the lower Court?

The Point:

7. At the outset itself, I would like to highlight the fact that it is no more the law that each and every day's delay should be explained for getting the delay condoned. However, it does not mean that by citing vague reasons, huge delays could be got condoned. In this connection, I would like to refer to the following decisions of the Honourable Apex Court:

(i) Balwant Singh (Dead) Vs. Jagdish Singh and Others, Certain excerpts from it, would run thus:

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction or that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.

29. In Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd., this Court took the view: (AIR pp. 363-65, paras 7 & 12)

7. In construing Section 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light heartedly disturbed.

The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the court to condone

delay and admit the appeal. This discretion has been deliberately conferred on the court in order that judicial power and discretion in that behalf

should be exercised to advance substantial justice. As has been observed by the Madras High Court in 4 I.D (N.S.) 899

12. It is, however, necessary to emphasise that even after sufficient cause has been shown a party is not entitled to the condonation of delay in

question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the

court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that

ground alone. If sufficient cause is shown then the court has to enquire whether in its discretion it should condone the delay. This aspect of the

matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for

consideration;

35. The expression ""sufficient cause"" implies the presence of legal and adequate reasons. The word ""sufficient"" means adequate enough, as much

as may be necessary to answer the purpose intended. It embraces no more than that which provides a plentitude which, when done, suffices to

accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious

men. The sufficient cause should be such as it would persuade the court, in exercise of its judicial discretion, to treat the delay as an excusable one.

These provisions give the courts enough power and discretion to apply a law in a meaningful manner, while assuring that the purpose of enacting

such a law does not stand frustrated.

36. We find it unnecessary to discuss the instances which would fall under either of these classes of cases. The party should show that besides

acting bona fide, it had taken all possible steps within its power and control and had approached the court without any unnecessary delay, The test

is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention. (Advanced

Law Lexicon, P. Ramanatha Aiyar, 3rd Edn., 2005)

(ii) Improvement Trust, Ludhiana Vs. Ujagar Singh and Others, Certain excerpts from it, would run thus:

4. The property was put to an auction-sale on 12-8-1992. Respondent 5 herein M/s. Jagan Singh and Company (hereinafter shall be referred to

as ""the Company"") offered Rs. 22,65,000, and thus was declared as the highest bidder. Sale was knocked down in its favour, and later confirmed

in its favour.

5. The appellant then woke up from its slumber and filed objections under Order 21 Rule 90 CPC raising various grounds. The executing court

then framed issues, reproduced by the learned Single Judge in the impugned order. The case was thereafter fixed for recording of the evidence of

the judgment-debtor on 19-3-1993, 17-4-1993, 8-5-1993 and 29-5-1993. However, on the aforesaid dates none appeared on behalf of the

appellant. Consequently, the evidence of the appellant judgment-debtor was closed. As a necessary consequence thereof the appellant's

objections came to be dismissed in default due to non-appearance.

15. Be that as it may, we are of the opinion that the delay in filing the first appeal before the District Judge, Ludhiana, for setting aside the sale has

not been so huge warranting its dismissal on such hypertechnical ground. In fact, according to us, the appellant had taken all possible steps to

prosecute the matter within time. Had there been an intimation sent to the appellant by Mr. P.K., Jain, its erstwhile advocate, and if even thereafter

the appellant had acted callously then we could have understood the negligent attitude of the appellant but that was not the case here. No sooner

the appellant came to know about the dismissal of its objection filed before the executing court, under Order 21 Rule 90 CPC it made enquiries

and filed the appeal.

16. While considering the application for condonation of delay no straitjacket formula is prescribed to come to the conclusion if sufficient and good

grounds have been made out or not. Each case has to be weighed from its facts and the circumstances in which the party acts and behaves. From

the conduct, behavior and attitude of the appellant it cannot be said that it had been absolutely callous and negligent in prosecuting the matter.

20. Apart from the above, the appellant would not have gained in any manner whatsoever, by not filing the appeal within the period of limitation. It

is also worth noticing that delay was also not that huge, which could not have been condoned, without putting the respondents to harm or

prejudice. It is the duty of the court to see to it that justice should be done between the parties.

21. For the aforesaid reasons the impugned orders passed by the appellate court, and the order passed by the High Court, are hereby set aside

and quashed. As a consequence, the matter stands remitted to the executing court for deciding the appellant's application filed under Order 21

Rule 90 CPC at an early date on merits. Since there are only two contesting parties to the litigation that is to say the appellant and Respondent 5,

both would appear before the executing court on 20-7-2010. Being an old case an endeavor would be made by the executing court to take up the

case as far as possible, on day-to-day basis and no party would seek an undue adjournment in the matter. We make it clear that we have

expressed no opinion on the merits of the matter and any observation made herein would not be construed as an expression of opinion on merits.

8. A mere running of the eye over the aforesaid decisions would connote and denote that huge delay as a matter of course should not be condoned

and there should be valid reasons.

9. I would also like to recall the following legal maxims;

(i) ""Vigilantibus, non dormientibus, Jura subveniunt."" [The laws aid the vigilant, not those who sleep.]

(ii) ""Interest Republicae Ut Sit Finis Litium.""[It is in the interest of the state that each person make good use of his own property.]

10. The lower Court could have very well delved deep into the current law, but that was not done so. Over and above that, before numbering the

E.P., the lower Court is enjoined as per law to see as to whether such E.P., is filed within the limitation period as contemplated under the

Limitation Act, 1963. Article 136 of the Limitation Act, 1963, should be borne in mind. Normally, there are various points to be taken note of by

the lower Court. It has to see whether within twelve years, the E.P., is filed for getting the decree executed. Simply because an appeal is stated to

have been filed, that it does not mean that the period taken for prosecuting the

appeal has to be excluded for computing the limitation period for filing execution petition unless there was stay pending appeal. Over and above that, in this E.P., two prayers are found clubbed together and that aspect also has to be considered.

11. The learned Counsel for the respondents/judgment debtors would submit that the decree holder is not expected to sleep over his rights and thereafter, try to get such huge delay condoned and thereby, mulct the judgment debtors with liability to pay interest for the period of delay also caused by the decree holder. No doubt, whenever huge delay occurs at the instance of the decree holder, the Courts while condoning such delay, would be quick in stipulating a condition in the order that during such period of delay, the judgment debtor should not be mulcted with liability to pay interest and that is the law point which the lower Court should consider in the event of condoning the delay, if otherwise such delay is condonable.

12. As such, I would like to set aside the order passed by the lower Court and remit the matter back to the lower Court to consider the aforesaid application in E.A. No. 216 of 2005 afresh and pass a reasoned order as per law, after hearing both sides, within a period of three months from the date of receipt of a copy of this order. The point is answered accordingly. On balance, this Civil Revision Petition is allowed to the extent indicated above. No costs.