
(2012) 02 MAD CK 0316

In the Madras High Court

Case No : C.R.P. NPD. No. 2242 of 2010 and M.P. No. 1 of 2010

S. Sankarapandian

APPELLANT

Vs

S. Prakash Chand

RESPONDENT

Date of Decision : 13-02-2012

Acts Referred:

Citation : (2012) 02 MAD CK 0316

Hon'ble Judges : V. Periya Karupiah, J

Bench : Single Bench

Advocate : E.J. Iyyappan, for the Appellant; R. Ramanlal, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice V. Periya Karupiah

1. This revision has been directed against the fair and executable order passed by the I Assistant Judge, City Civil Court, Chennai in I.A. No. 14295 of 2006 dated 20.01.2010 in dismissing the petition seeking for condonation of delay of 1072 days in filing the restoration application in I.A. No. 14296 of 2006. The revision petitioner herein was the petitioner and the respondent was the respondent before the lower Court.

2. Heard Mr. E.J. Iyyappan, learned counsel for the revision petitioner and Mr. R. Ramanlal, learned counsel for the respondent.

3. The learned counsel for the petitioner would submit in his argument that the revision petitioner was the petitioner before the lower Court in I.A. No. 14295 of 2006 and was the defendant in the suit in O.S. No. 5961 of 1998 filed by the respondent/plaintiff for permanent injunction in respect of the suit property. He would further submit that the said suit in O.S. No. 5961 of 1998 was decreed exparte by the lower Court on 19.07.2000 since written statement was not filed and exparte evidence was recorded and the suit was decreed. He would further submit that the said application to set aside the exparte decree could not be filed

within time since the office of the petitioner's counsel was shifted and the case bundle of the above suit was missing and the petitioner was aware of the exparte decree passed on 19.07.2000 only after verification and therefore, he filed an application to set aside the exparte decree along with an application to condone the delay of 96 days caused in filing the said petition. The said delay excuse application was assigned a number in I.A. No. 10676 of 2003 and the same was dismissed on 01.08.2003 for the reason not taking notice. In the meanwhile, E.P. has been filed by the respondent in E.P. No. 1341 of 2005 seeking for an order of arrest of the petitioner, but no notice or summon has been received by the petitioner. He would further submit that the petitioner was in possession and enjoyment of Door No. 42, Danarajapuram Extension from 1989 onwards and therefore, the petitioner has no other alternate except to file the petition to seek restoration of the petition (i.e.) I.A. No. 10676 of 2003, along with an application to excuse the delay of 96 days in filing the said application. The delay caused in filing the application to restore the I.A. No. 10676 of 2003 was due to the ailment of petitioner's daughter who underwent a major surgery of kidney transplantation and for which, the petitioner's wife was also operated, as she donated one of her kidneys for saving the life of the child. He would further submit that the petitioner's wife also fell ill and was losing health after the surgery and therefore, the petitioner could not act immediately to file the application to restore the I.A. No. 10676 of 2003, which was dismissed for not giving any notice to other side. He would further submit that the lower Court has not understood the plight of the petitioner but had dismissed the petition on the sole reason that no document was produced before the lower Court. He would further submit that the petitioner has got good case in the suit as well as in the application to restore the application to set aside the exparte decree in I.A. No. 10676 of 2003 in I.A. No. 14296 of 2006 and therefore, the petitioner may be given an opportunity to agitate his right and a fair chance be given, to put forth his case. He would further submit that the petitioner being a defendant and is in possession of the suit property, the plaintiff cannot seek for permanent injunction as he was not in possession of the property. He would also submit that the delay of 1072 days caused in filing the application (i.e., I.A. No. 14296 of 2006), for restoration of I.A. No. 10676 of 2003 was not wilful or wanton. He would therefore, request the Court to interfere and set aside the order passed by the lower Court in dismissing the application to condone the delay of 1072 days and thus, the Civil Revision Petition may be ordered.

4. The learned counsel for the respondent would submit in his argument that the petitioner was very much aware of the exparte decree passed against him and the petitioner/defendant was not in possession of the suit property but he conveniently and unlawfully trespassed in the suit property. He would further submit that the petitioner was not diligent while filing the application to set aside the exparte decree and to pursue the application in I.A. No. 10676 of 2003, an application to condone the delay of 96 days in filing the application to set aside the exparte decree. He would also submit that the said application was not

promptly prosecuted by the petitioner, but let it to be dismissed. He would further submit that the actual delay caused in filing the application to condone the delay in filing the restoration of I.A. No. 10676 of 2003, was 1099 days but the petitioner has wrongly mentioned as 1072 days which itself shows that the petitioner was not sincere in defending the case. He would further submit that the lower Court has correctly come to the conclusion that no document was produced and the reason was not established for the purpose of condoning the long delay of almost 3 years. He would further submit that the petitioner who was well aware of the exparte decree passed should have diligently prosecuted the application to condone the delay in filing the application to set aside the exparte decree, but he had wantonly left it for dismissal in order to prolong the case as long as possible since he trespassed into the suit property. He would further submit that when the petitioner had knowledge about the exparte decree passed against him, the application filed by him to set aside the exparte decree and to condone the delay in filing such an application, should have been pursued carefully by the petitioner. He would submit that the further laches found on the part of the petitioner cannot be condoned in the absence of proof of reasons put forth by the petitioner. He would draw the attention of the Court to the judgment of this Court reported in 2009 (5) CTC 48 (Shanmugam v. Chokkalingam) and yet another judgment of this Court reported in 2010 (2) CLT 509 (Padma and Others v. Standard Literature Company (P) Ltd.,) in support of his argument. He would further submit in his argument that the petitioner was always negligent and lethargic in filing the application to set aside the exparte decree or the application filed to restore the application for condonation of delay in filing the application to set aside the exparte decree (i.e.) I.A. No. 10676 of 2003. Knowing fully well that the exparte decree passed against him would be executed against him, he has come forward with such applications without any proof for the reasons of delay putforth in the petition for condonation of delay only for the purpose of prolonging the case. He would further submit in his argument that the reasons put forth by the petitioner are not acceptable for condonation of such a long delay of 1099 days which has also been wrongly mentioned as 1072 days. He would therefore, request the Court to dismiss the revision.

5. I have given anxious thoughts to the arguments advanced on either side.

6. The impugned order questioned before this Court was passed by the lower Court, dismissing the application filed by the revision petitioner in I.A. No. 14295 of 2006 an application to condone the delay of 1072 days in filing the application to restore the application I.A. No. 10676 of 2003, which was dismissed for not taking notice. The reasons put forth by the petitioner before the lower Court for condoning the delay of 1072 days was that the petitioner's daughter was suffering from kidney ailment and was advised to have a transplantation of another person's kidney and accordingly, a kidney was donated by the petitioner's wife and she was also operated for that purpose and surgery was done on his daughter and even after transplantation, the daughter of the petitioner was not getting well but she died and the wife of the petitioner was

also ailing due to the surgery and therefore, the petitioner was not able to pursue the application filed in I.A. No. 10676 of 2003. The lower Court had considered the reasons put forth by the petitioner and found that there was no document produced by the petitioner in support of his case.

7. If the petitioner's daughter was operated for kidney transplantation and was dead and his wife was also operated for donating the kidney, it could be substantiated by producing atleast one of the documents before the lower Court. The lower Court had categorically come to the said conclusion, no single document has been produced. The petitioner, aggrieved by the said order of dismissal passed by the lower Court, has come forward with the revision before this Court. However, no such document has been produced to support the case of the petitioner or cited to bring it to the notice of this Court. If his daughter was operated for kidney transplantation, there would certainly be some documents, showing the relevant dates of surgery. The two typed sets of papers filed by the petitioners do not contain any such document to support the case of the petitioner. However, it was argued before this Court about the merits of the case regarding possession and other aspects. If really the petitioner had meritorious case, he would have filed the written statement immediately in the year 1998 itself and would conduct the case immediately. The petitioner would not let case proceeded without filing written statement. Therefore, the only point to be considered in this revision would be, whether the order passed by the lower Court in dismissing the application, filed for condonation of delay of 1072 days is liable to be interfered or not.

8. The judgment as cited by the learned counsel for the respondent would go to show that when sufficient cause was not shown before the Court and the delay has not been satisfactorily explained, the discretion of the Court need not be exercised for the purpose of condoning the delay. The judgment of this Court reported in 2010 (2) CLT 509 (Padma and Others v. Standard Literature Company (P) Ltd.,) as cited by the learned counsel for the respondent would run as follows:-

12. In view of the above said settled position, the party on whom the burden of explaining the delay rest, shall show sufficient cause for the delay to the satisfaction of the Court. If any right accrues to other party by lapse of time, the delay could not be condoned so as to defeat such rights. The discretion in the matter of condonation of delay shall be exercised judicially and judiciously. The observations in Pundlik Jalam Patil's case (supra) go to the effect that everybody is presumed to know law. It is the duty of the defeated party to prefer appeal before the Court of appeal in time. The object for fixing time limit for litigation is based on public policy fixing a life span for legal remedy for the purpose of general welfare. After the dismissal of R.C.A. No. 286 of 2007 on 5.9.2008, the delay period from 20.9.2006 upto 25.4.2008 has to be explained. The said dismissal order operates against present claim of this respondent. The reasons for the delay has not been properly pleaded and explained by the respondent/

tenant. No sufficient cause has been shown before the Court. The delay has not been satisfactorily explained. Hence, the order challenged before this Court warrants interference, which has to be set aside and it is accordingly set aside. The petition deserves to be allowed.

In fine, the Civil Revision Petition is allowed. M.P. No. 440 of 2008 in R.C.A. Sr. No. 9052 of 2008 is dismissed. No costs. Connected M.P. is closed.

9. In yet another judgment of this Court reported in 2009 (5) CTC 48 (Shanmugam v. Chokkalingam) would also dealt with sufficient cause and the bonafide of parties who are seeking for condonation of delay. The relevant passage has runs as follows:-

14. Nothing was available in the affidavit towards the reasons for such negligence. Therefore, it could be construed as an inaction coupled with negligence on the part of the petitioner. The attitude of the petitioner in not filing the petition to set aside the exparte decree immediately after the receipt of the notice in the EP would also make that inaction coupled with negligence as wilful and that would also go to show that the petitioner has not placed the truth before the Court. Apart from that, he had not explained the delay in taking steps to set aside the exparte decree from the date of receipt of the notice in the execution proceedings till he files the petition to set aside the exparte decree on 9.6.2007. That would show that the petitioner was not diligent in defending the case. According to the aforesaid judgments of this Court, the inaction even after taking notice from the EP Court would amount to wilful negligence on the part of the petitioner. Even if the Court wants to construe the reason assigned by the petitioner liberally in order to give him an opportunity to contest the suit, the laches on the part of the petitioner in not taking steps to file the petition to set aside the exparte decree immediately on knowing the passing of exparte decree against him would render no assistance from the Court. Even though the delay caused in filing the petition to set aside the exparte decree was 332 days, it was not explained by the petitioner with sufficient cause to condone the delay as contemplated in the judgment of our Honourable Apex Court.

10. As per the aforesaid judgment, when we approach the present case even with liberal construction towards the words "sufficient cause", I could not see that the reason put forth by the petitioner for not filing the application within time as told in the affidavit has not been substantiated either before the lower Court or before this Court. Therefore, I could see that there is no bonafide on the part of the petitioner in seeking condonation of delay of 1072 days. It has been contended that the actual delay in filing the application was 1099 days but the said contention was not clarified nor explained, by the petitioner.

11. In the aforesaid circumstances, I do not find any infirmity in the order passed by the lower Court in dismissing the application for condonation of delay. Therefore, the revision petition fails and accordingly, it deserves dismissal. In fine, this Court does not find any reason to interfere with the order passed by the

lower Court and therefore, the said order passed by the lower Court is confirmed and the revision petition is dismissed. No order as to costs. Consequently, connected M.P. No. 1 of 2010 is closed.