

Pappaiah Vs. Venkatesh

Pappaiah Vs. Venkatesh

SooperKanoon Citation : sooperkanoon.com/1167853

Court : Chennai

Decided On : Jun-18-2014

Judge : The Hon'Ble Ms.Justice R.Mala

Appellant : Pappaiah

Respondent : Venkatesh

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:18.06.2014
CORAM: THE HONOURABLE MS.JUSTICE R.MALA CRP (PD) No.1304 of 2014
and M.P.No.1 of 2014 Pappaiah (died) 1. Venkataramanappa 2. Venkatesh 3.
Lakkamma 4. Venkatalakshmi 5. Krishnamma 6. Venkatamma 7. Manjula ..
Petitioners Vs. Venkatesh .. Respondent Prayer : Revision Petition is filed under
Article 227 of the Constitution of India, against the fair and final order dated
04.08.2011 made in I.A.No.347 of 2011 in O.S.No.2 of 2011 on the file of the Sub
Court, Hosur. For Petitioners : Mr.R.Vasudevan

ORDER

The revision petitioners herein have come forward with this Civil Revision Petition
challenging the impugned order dated 04.08.2011 passed in I.A.No.347 of 2011 in
O.S.No.2 of 2011 by the Sub Court, Hosur.

2. The respondent herein as plaintiff filed a suit for partition and separate
possession of his share in the suit properties against defendants 1 to 12. The

second defendant/first revision petitioner herein contested the suit on behalf of all the defendants and due to his ailment, he was not able to appear before the Court, hence, ex parte preliminary decree was passed by the trial Court, on 20.07.2009. When the second defendant/first revision petitioner received notice in the final decree application, then only, he came to know that ex parte decree was passed and final decree proceedings have been pending before the Sub Court, Hosur. Thereafter, the defendants 1 to 6, 8 and 11 filed an application for setting aside the ex parte preliminary decree along with the application for condonation of delay of 666 days. The trial Court, after considering the objection raised by the respondent, has dismissed the application. Challenging the same, the present Civil Revision Petition has been preferred.

3. The learned counsel appearing for the revision petitioners submitted that the second defendant/first revision petitioner contested the suit on behalf of the defendants 1 to 6, 8 and 11 and as soon as he received the summons, he filed a written statement and contested the averments made in the plaint. Due to his illness, he did not appear before the Court, hence, he was set ex-parte on 20.07.2009 and after the receipt of summons in the final decree proceedings only, he came to know that ex parte preliminary decree was passed and then the suit has been transferred to the Sub Court, Hosur and re-numbered as O.S.No.2 of 2011. Immediately, the second defendant/first revision petitioner filed an application for condonation of delay of 666 days in filing the petition for setting aside the ex parte decree. Therefore, an opportunity must be given to him to put forth his defence, because, some of the property had been purchased by the defendants. Hence, he prayed for setting aside the order of the trial Court.

4. Resisting the same, the learned counsel appearing for the respondent submitted that the defendants after knowing about the filing of the suit, they entered appearance, but, they wantonly kept quiet all along. Furthermore, the second defendant/first revision petitioner has not given any sufficient cause for condonation of delay. Even though in the final decree proceedings, the second defendant/first revision petitioner received summons on 29.12.2010, he filed the application for setting aside the ex-parte decree with the delay of 666 days, on 17.06.2011, which shows the intention of the petitioner to drag on the proceedings.

The trial Court has considered all the aspects in proper perspective and dismissed the same. Hence, he prayed for dismissal of this petition.

5. I have considered the rival submissions made by both sides and perused the typed set of papers.

6. The respondent herein filed O.S.No.2 of 2011 for partition and separate possession of 1/4th share in the suit properties. The suit has been filed not only against the father of the plaintiff and it has been filed against 12 persons. The first revision petitioner as the second defendant was represented on behalf of D1 to D6, D8 and D11 and filed his counter and contested the suit. Admittedly, preliminary decree was passed on 20.07.2009 and the case has been transferred to the Sub-Court, Hosur.

7. According to the learned counsel for the respondent, the second defendant/first revision petitioner received the summons in the final decree proceedings on 29.12.2010, but, he filed the application for setting aside the ex parte preliminary decree with the delay of 666 days on 17.06.2011, i.e. after five months after the receipt of summons in the final decree proceedings, which shows the mala fide intention of the revision petitioner to drag on the proceedings.

8. In para 3 of the affidavit, the second defendant/first revision petitioner stated that he suffered piratical attack and fits and he has taken treatment for more than three years and the vision of his left eye has been diminishing for the last one year due to piratical attack, so that, he could not attend the Court on 20.07.2009 But, admittedly, neither he got into the box nor he filed the document to substantiate the same stating that on the date of passing of preliminary ex parte decree, he was hospitalized as he suffered some illness.

9. On perusal of cause title, it shows that the third defendant, namely, Venkatesh is also one of the male members in their family. But, no reason has been assigned as to why Venkatesh did not approach his counsel and inform about the case. Furthermore, the second defendant/first revision petitioner has not filed any documents to substantiate the reasons stated in the affidavit.

10. As per the dictum of the Apex Court reported in AIR 1998 SC3222(N.Balakrishnan v. M.Krishnamurthy), it was specifically held that if the length of delay is immaterial, sufficient cause for condonation of delay has to be explained. It is appropriate to extract para-9 to 11, which read as follows: ".9. ... Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior Court would be free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammelled by the conclusion of the lower Court. 10.The reason for such a different stance is thus:The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. 11.Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The objet of providing a legal remedy is to repair the damage caused by reason of legal injury.".

11. Now the Court has to decide as to whether the first revision petitioner has given sufficient cause for condonation of delay.

12. In para 3 of the affidavit, the first revision petitioner has stated that he suffered piratical attack and fits and he took treatment for three years. But, he has not filed any scrap of papers before the Court by way of letting oral evidence documentary evidence to prove the same and he has not examined the Doctor.

13. In the judgment of the Apex Court reported in 2011 (4) SCC363(Lanka Venkateswarlu (Dead), rep. by legal heirs) Vs. State of Andhra Pradesh and

others), in para-19, 23, 28 and 29, it was held as follows: ".19. We have considered the submissions made by the learned counsel. At the outset, it needs to be stated that generally speaking, the courts in this country, including this Court, adopt a liberal approach in considering the application for condonation of delay on the ground of sufficient cause under Section 5 of the Limitation Act. This principle is well settled and has been set out succinctly in Collector, Land Acquisition v. Katiji (1987) 2 SCC107 20. ...

21. ...

22. ...

23. The concepts of liberal approach and reasonableness in exercise of the discretion by the Courts in condoning delay, have been again stated by this Court in Balwant Singh v. Jagdish Singh (2010) 8 SCC685as follows:- (SCC p.696, paras 25-26) ".25. We may state that even if the term 'sufficient cause' has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of 'reasonableness' as it is understood in its general connotation.

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise (sic a lis). 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 of 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".

24. ...

25. ...

26. ...

27. ...

28. 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". can not 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 tends 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. 29. 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 under Section 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.". As per the dictum of the Apex Court, for condonation of delay, the discretion has to be exercised in a systematic manner informed by reason and justice must be done to both parties. Further, the condonation of delay is only a discretion that too judicial discretion and while exercising the judicial discretion, the Court should consider the loss caused to the opposite party.

14. According to the learned counsel appearing on either side, in pursuance of preliminary decree, final decree has been passed and the plaintiff/respondent herein is one of the sharers. In such circumstances, I am of the view that the order passed by the trial Court does not warrant any interference. Hence, the Civil Revision Petition is liable to be dismissed as devoid of merits. Accordingly, this

Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. 18.06.2014 ogy To The Sub Court, Hosur. R.MALA,J.

ogy CRP (PD) No.1304 of 2014 18.06.2014

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com