

Subramaniam Vs. K.Veerakumar

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Court : Chennai

Decided On : Apr-29-2014

Judge : The Honourable Thiru Justice T.S.Sivagnanam

Appellant : Subramaniam

Respondent : K.Veerakumar

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :29.04.2014
CORAM THE HONOURABLE THIRU JUSTICE T.S.SIVAGNANAM
C.R.P.(NPD)No.1132 of 2010 and M.P.No.1 of 2010 1.Subramaniam 2.P.Murugan
... Petitioners v. K.Veerakumar ...Respondent Civil Revision Petition filed under
Section 115 of the Code of Civil Procedure, against the fair and final order dated
09.02.2010, made in I.A.No.1175 of 2009 in O.S.No.13 of 2008, on the file of the I
Additional District Munsif Court, Bhavani. For Petitioner : Mr.T.Muruga Manickam
For Respondents : Mr.D.Selvaraju

ORDER

This Civil Revision Petition filed under Article 227 of the Constitution of India, is directed against the fair and final order dated 09.02.2010, in I.A.No.1175 of 2009 in O.S.No.13 of 2008, on the file of First Additional District Munsif Court, Bhavani. By the said order, the trial Court dismissed the application filed by the petitioner under Section 5 of the Limitation Act seeking condonation of delay of 190 days in

filing the application under Order 9, Rule 13 CPC to set aside the exparte decree in O.S.No.13 of 2008.

2. The respondent/plaintiff filed the suit for partition for diversion of the suit schedule property into five equal shares by meets and bounds and allot one share to the respondent/plaintiff and for a decree of permanent injunction to restrain the petitioners/defendants from in any manner encumbering or altering the suit property till the disposal of the final decree proceedings. There were four defendants in the suit and the petitioners herein are the defendants 3 and 4.

3. It is to be noted that the defendants 1 & 2 contested the matter and the trial Court decreed the suit by a reasoned judgment dated 27.04.2009. Therefore, it is not a case, where the decree came to be passed merely on account of the defendants 3 & 4 having been set exparte.

4. In the affidavit filed in support of the application to condone the delay, which was filed by the fourth defendant on his behalf and on behalf of the third defendant and it was stated that he was suffering from Jaundice for seven months and after his health improved, he contacted his counsel on 02.12.2009 and only then he came to know about the exparte decree and approached the Court for setting aside the same and in that process, the delay of 190 days has occurred.

5. The respondent/plaintiff filed a detailed counter affidavit by placing certain facts to show that the averments made in the affidavit seeking condonation of delay is false that the second petitioner herein had been contesting other proceedings before other Forum/Court, filed affidavits, given oral evidence and such other matters.

6. In the counter affidavit, the dates on which the second petitioner had appeared in the other proceedings, which are before the District Munsif Court, Bhavani, Sub-Court Bhavani have been referred to. Though the copies of such deposition/affidavit were not marked before the trial Court by the respondent, they have been filed in the form of a typed set of papers before this Court. Nevertheless the trial Court has recorded the various dates on which the second petitioner herein appeared in the other proceedings and effectively and actively contested

those proceedings. Therefore, this Court is not precluded from referring to the same for examining the conduct of the petitioner to see the bonafides.

7. Mr.T.Muruga Manickam, learned counsel appearing for the petitioners submitted that the suit is one for partition and the valid rights of the petitioners are involved and the Court below ought to have considered this aspect and allowed the application and condoned the delay. Further, it was contended that the written statement has been filed along with the petition seeking condonation of delay in setting aside the exparte decree and the parties acted on the advise of the counsel and only at the stage of enquiry in the final decree, the fact that the petitioners had not participated in the suit became evident. The learned counsel further submitted that the delay may be condoned by imposing cost.

8. Mr.D.Selvaraju, learned counsel appearing for the respondent vehemently opposed the submission made by the learned counsel for the petitioner and submitted that the plea raised by the petitioners is absolutely false and the very conduct of the petitioners would clearly establish that they purposely abstained from participating in the proceedings, when they had the time and effort to participate in the other suits by giving oral evidence as well as filing affidavits. Further, it is submitted that the trial Court noticed that the petitioners received notice in the final decree application and had contested the same by engaging a counsel. Therefore, it is submitted that the Court below rightly dismissed the application. In support of his contention, the learned counsel placed reliance on the decisions of this Court in the cases of Reliance Industries Ltd., vs.M.Rajkumari reported in 2002 (1) CTC157 Myla Belli and Ors vs. B.Rajagopal reported in 2005 (3) MLJ86 M.V.Sachidanandam vs. Prakash Kumar & Ors., reported in 2007 (5) MLJ629 Ranganatha Iyengar vs. Thangarasu reported in 2009 (3) MLJ364 and Shanmugam vs. Chokkalingam reported in 2009 (5) CTC48 9. Heard the learned counsels appearing on either side and perused the materials placed on record.

10. The short question which falls for consideration in this revision is as to whether the Court below was justified in rejecting the application filed by the petitioners praying for condonation of delay of 190 days in filing the petition to set aside the exparte decree.

11. As noticed above, the petitioners herein are the defendants 3 & 4, who failed to appear before the Court and were set exparte. The defendants 1 & 2 contested the suit and the trial Court framed three issues for consideration and has rendered a judgment on merits, by judgment dated 27.04.2009.

12. The Hon'ble Supreme Court in the case of State of Rajasthan vs. Bal Krishan Mathur reported in (2014) 1 SCC592 held that in a situation where there has been no gross negligence or deliberate inaction or lack of bonafides, a broad and liberal view should be taken, so as to advance substantial justice instead of terminating the proceedings on technical ground of limitation, unless the explanation furnished for delay is wholly unacceptable or if no explanation whatsoever is offered or the delay is inordinate and third party right has become embedded during the internum, the Court should leave in favour of condonation. Therefore, it has to be seen as to whether the petitioners were grossly negligent or deliberately inactive or their plea lacked bonafide.

13. It is a settled legal principle that law of limitation is founded on public policy not meant to destroy rights of parties, but to see that the parties do not resort to dilatory tactics. Likewise, it has been held that liberal approach in considering an application under Section 5 of the Limitation Act should not override the substantial law of limitation and no premium can be given for lethargic attitude or utter negligence.

14. Bearing these settled legal principles in mind, if the case on hand is examined, the only answer that could be given is that the plea of the petitioners lacks bonafide. Such conclusion is supported by following reasons.

15. As pointed out by the respondent in the counter filed in I.A.No.1175 of 2009, the petitioner participated in the proceedings before the Revenue Court at Bhavani by appearing before the said Court in T.R.No.20 of 2007 on 29.06.2009, 06.07.2009, 10.08.2009, 28.08.2009, 07.09.2009 and 14.09.2009. That apart, the second petitioners had participated in the proceedings in O.S.No.284 of 2007, on the file of the District Munsif Court, Bhavani on several dates between the period 04.06.2009 and 11.09.2009. Apart from that in another suit in O.S.No.308 of 2007, the second petitioner has appeared and given oral evidence in the said suit during

the period from 16.06.2009 to 31.08.2009. That apart affidavits have been filed in other suits and oral evidence have also been given on 01.09.2009, 07.09.2009, 09.09.2009 and 14.09.2009. Further, in the final decree proceedings in the present suit also, the petitioners have entered appearance through counsel and filed counter. Therefore, the plea raised by the petitioners in the affidavit stating that on account of ill-health, they could not contact their counsel and only on 02.12.2009, they were able to contact their counsel lacks bonafide. That apart their conduct clearly shows gross negligence and their actions were deliberate in not defending the matter. In such circumstances, the trial Court was fully justified in rejecting the petition. Further, the petitioners were unable to establish before the Court about the sickness by producing any record or evidence.

16. Thus the petitioners having been guilty of gross negligence and laches, this Court has no hesitation to hold that the petitioners have not shown sufficient cause for condonation of delay. Accordingly, the Civil Revision Petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.
29.04.2014 Index : Yes/No Internet : Yes/No pbn To The I Additional District Munsif Court, Bhavani. T.S.SIVAGNANAM,J.

pbn Pre-Delivery Order in C.R.P.(NPD)No.1132 of 2010 and M.P.No.1 of 2010
29.04.2014

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