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Court : Chennai

Decided On : Jan-18-2017

Judge : The Honourable Ms. Justice R. Mala

Appeal No. : C.R.P (NPD). No. 17 of 2017

Appellant : Molly Mathai

Respondent : P. Basantha Kumar and Others

Judgement :

(Prayer: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, against the fair and decreetal order dated 21.04.2016 made in C.M.P.No.65 of 2015 in A.S.No.41 of 2010 on the file of the XVI Additional City Civil Court, Chennai.)

1. Civil Revision Petition is filed against the fair and decreetal order dated 21.04.2016 made in C.M.P.No.65 of 2015 in A.S.No.41 of 2010 on the file of the XVI Additional City Civil Court, Chennai.

2. The petitioner and the respondents 7 to 10 as the plaintiffs filed a suit in O.S.No.1648 of 1996 for specific performance. The defendants filed the written statement and contested the suit. That suit was dismissed on 20.01.2009. Aggrieved over the same, the plaintiffs preferred an appeal in A.S.No.41 of 2010. During pendency of the appeal, the second respondent died on 21.10.2011. The legal heir application was filed belatedly and that application was allowed.

Thereafter, the said appeal was adjourned periodically for carrying out the amendment, filing amended plaint copy and filing appeal memorandum. The appeal was dismissed for default on 07.02.2013. Therefore, the plaintiffs have filed C.M.P.No.65 of 2015 under Section 5 of the Limitation Act, to condone the delay of 474 days in filing the restoration petition in A.S.No.41 of 2010. The said petition was dismissed on 21.04.2016. Challenging the same, the present revision is preferred.

3. Learned counsel for the petitioner would submit that the petitioner's husband was handling the case and having regular contact with the counsel. He was bed ridden and died on 04.03.2013. Hence, the plaintiffs were not able to contact their counsel and file the petition in time. To substantiate his arguments, he has relied upon the decision of the Bombay High Court reported in AIR 1993 Bombay 175 (Bachhraj Factories Pvt. Ltd. v. Paramsukhdas and others), in para-5, it is held that the duty of carrying out the amendment to the plaint would obviously be that of the plaintiff, if the applicant was to amend the plaint by bringing the legal representatives of the deceased defendant No.3 on record. Clearly, the party whose pleading it is, would be charged with the duty of amending that pleading, and in view of para 96(3) of Chapter VII of the Civil Manual, the duty cannot be regarded as one which is expected to be performed by the ministerial staff of the Court, and the non-applicant No.1's submission on this point, cannot be accepted. It is further submitted that the Bombay High Court has imposed costs for not taking amendment after lapse of 17 years and that the delay petition is allowed on payment of costs. Therefore, he prays for allowing the revision.

4. Heard the learned counsel for the petitioner and perused the typed set of papers.

5. The petitioner and the respondents 7 to 10 as the plaintiffs filed the suit for specific performance. After contesting, the suit was dismissed, against which, the plaintiffs have preferred A.S.No.41 of 2010. During pendency of the appeal, the second respondent died on 21.10.2011. Legal heir application was filed and it was allowed. The appeal has been adjourned periodically from 20.04.2012 to 30.11.2012 for filing amendment petition. The amendment petition was allowed on

30.11.2012. Thereafter, it was pending nearly 7 months to take steps for consequential amendment, carrying out amendment and filing amended plaint copy. Further, the appeal was pending to carry out amendment till it was dismissed for default on 07.02.2013.

6. Now this Court has to consider the decision relied upon by the learned counsel for the petitioner reported in AIR 1993 Bombay 175 (Bachhraj Factories Pvt. Ltd. v. Paramsukhdas and others). In para-5, it is held as follows:

5. The duty of carrying out the amendment to the plaint would obviously be that of the plaintiff, if the applicant was to amend the plaint by bringing the legal representatives of the deceased defendant No.3 on record. Clearly, the party whose pleading it is, would be charged with the duty of amending that pleading, and in view of para 96(3) of Chapter VII of the Civil Manual, the duty cannot be regarded as one which is expected to be performed by the ministerial staff of the Court, and the non-applicant No.1's submission on this point, cannot be accepted.

But the above decision is not applicable to the facts of the present case. Because the appeal was dismissed for default on 07.02.2013. But the petitioner has not taken any steps to restore the same within thirty days and she has not assigned any sufficient reason for the delay.

7. In para-9 of the order passed by the trial Court, it was specifically mentioned that it is unbelievable that the husband of the petitioner has authorised one Lala Mathai to handle the case and he has filed a petition during October 2012 on behalf of the petitioner. The trial Court further objected that it is unimaginable, a person aged about 96 years was handling the case, when younger members are available in the family.

8. As per the dictum of the Apex Court reported in AIR 1998 SC 3222 (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 criterian. 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 untrammeled 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 object of providing a legal remedy is to repair the damage caused by reason of legal injury. .. .. "

9. In the judgment of the Apex Court reported in 2011 (4) SCC 363 (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 SCC 107.

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 SCC 685 as 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."

It is well settled dictum of the Apex Court that 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.

10. Considering the aforestated circumstances of the case, I am of the view that the suit is of the year 1996 and the appeal is of the year 2010. The appeal was dismissed for default on 07.02.2013. The present petition for restore the appeal was filed in the year 2015. It clearly shows the lethargic attitude of the petitioner in prosecuting the case. Therefore, applying the dictum laid down in Balakrishnan and Lanka Venkateshwarlu cases, I am of the view that the delay of 474 days has not been properly explained by the petitioner and hence, I am not inclined to

condone the delay. So I do not find any illegality or irregularity in the fair and decreetal order passed by the trial Court and therefore, it is hereby confirmed. Consequently, the Civil Revision Petition stands dismissed.

11. In the result, this Civil Revision Petition shall stand dismissed by confirming the fair and decreetal order passed by the trial Court in C.M.P.No.65 of 2015 in A.S.No.41 of 2010. No costs.

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