

Sarasu Vs. Ravi

Sarasu Vs. Ravi

SooperKanoon Citation : sooperkanoon.com/1189486

Court : Chennai Madurai

Decided On : Jul-28-2016

Judge : B. Gokuldas

Appeal No. : C.R.P.(MD).No. 1142 of 2005 & C.M.P.(MD).No. 8938 of 2005

Appellant : Sarasu

Respondent : Ravi

Judgement :

(Prayer: Civil Revision Petition filed against the fair and decretal order dated 21.07.2005 made in I.A.No.649 of 2004 in O.S.No.852 of 2000 on the file of II Additional Subordinate Judge, Tiruchirappalli.)

1. Civil Revision Petition is filed against the order, dated 21.07.2005, made in I.A.No.649 of 2004 in O.S.No.852 of 2000 on the file of II-Additional Subordinate Court, Tiruchirappalli.
2. The respondent/plaintiff filed a suit in O.S.No.852 of 2000 against the petitioner/defendant for specific performance before the learned Subordinate Judge, Tiruchirappalli.
3. The case of the respondent/plaintiff is that she entered in to an agreement with the petitioner/defendant on 09.03.2000, whereby and whereunder, the petitioner/defendant agreed to sell his property for a sum of Rs.1,25,000/- and the

respondent/plaintiff paid an advance of Rs.95,000/- on the said date and the balance sale consideration should be paid within a period of seven months. On receipt of such balance sale consideration, the petitioner/defendant should execute sale deed in favour of the plaintiff. Though the respondent/plaintiff was ready and willing to pay the balance sale consideration, the petitioner/defendant did not come forward to comply with the terms of the agreement entered into on 09.03.2000. Hence, the respondent/plaintiff filed the above suit.

4. The Trial Court decreed the suit *ex parte* on 09.02.2001. Thereafter, the respondent/plaintiff did not take any step to execute the *ex parte* decree. However, on 18.08.2004, a notice was served on the petitioner/defendant informing her that an *ex parte* decree has been passed against her. Immediately, the petitioner/defendant filed an interlocutory application in I.A.No.649 of 2004 in O.S.No.852 of 2000, under Section 5 of the Limitation Act to condone the delay of 1317 days in filing a petition to set aside the *ex parte* decree. The said petition was dismissed. Aggrieved against the said order, the petitioner/defendant is before this Court, with the present civil revision petition.

5. The learned counsel appearing for the petitioner submitted that in the suit, service of notice was not effected on the petitioner/defendant and the learned Trial Judge has failed to note the same and therefore, it is incorrect to state that the petitioner/defendant has refused to receive summons. Though the plaintiff/respondent had obtained *ex parte* decree in his favour as early as on 09.02.2001, he did not immediately file execution petition to get the sale deed executed, for the reasons best known to him. Apart from that, the learned counsel for the petitioner submitted that only to avoid technical objection, the petitioner has filed the petition to condone the delay of 1317 days. In any event, according to the learned counsel, the trial court should have provided an opportunity to the petitioner to have her cause being decided on merits. In support of his submissions, the learned counsel for the petitioner relied on the judgment reported in 2007(4) CTC 449 (Arun Alexander Lakshman v. A.P.Vedavalli).

6. Contending *contra*, it is the submission of the learned counsel for the Respondent/Plaintiff that the trial court, while dismissing I.A. No. 649 of 2004, has

taken into account all the relevant facts and circumstances of the case and arrived at a conclusion that the petitioner has not explained each and every day's delay in her application. Further, it is contended that there is no infirmity in the conclusion arrived at by the trial court in dismissing I.A. No.649 of 2004 and the same does not require any interference at the hands of this Court, sitting in revisional jurisdiction at this distance of time. The learned counsel for the respondent relied on the judgment reported in (2010) 5 SCC 459 (Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corpn.) in support of his contention.

7. I have considered the rival contentions projected by the respective counsel and perused the materials available on record.

8. Admittedly, the suit in O.S. No. 852 of 2000 has been decreed exparte on 09.02.2001. It is the contention of the petitioner/defendant that she did not receive any notice/summons in the suit and further she came to know about the passing of the exparte decree against her only when the respondent/plaintiff served a notice on her on 18.08.2004 and immediately she filed an interlocutory application in I.A.No.649 of 2004 to condone the delay of 1317 days in filing a petition to set aside the exparte decree, which was dismissed by the trial court.

9. When a Court of Law deals with an application to condone the delay filed under Section 5 of the Limitation Act, such application will have to be generally viewed in a liberal and lenient way to do substantial justice between the parties. By projecting an application to condone the delay as per Section 5 of the Limitation Act, belatedly, no party will file the same with a mala fide intention. If a party files a delay condonation application belatedly, he or she runs a serious risk.

10. However, if an application filed under Section 5 of the Limitation Act is allowed by this Court, to advance the cause of substantial justice, then the maximum that can happen is that a party will be allowed to partake in the main arena of legal proceedings and the main cause can be decided on merits. Per contra, if a meritorious matter is thrown out at the threshold or at early stage the cause of justice will be certainly defeated. In a condonation of delay application filed under Section 5 of the Limitation Act, 1963 the length and breadth of the delay is not a

material/relavant factor.

11. It is to be borne in mind that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so. At this juncture, it is useful to refer the decision of a Division Bench of this Court in Arun Alexander Lakshman v. A.P.Vedavalli (Cited supra), wherein in paragraph 17 it has been held as follows:

17. It is settled law that Section 5 Application is to be construed liberally so as to do substantial justice to the parties. The provision contemplates that the Court has to go into the position of the person concerned and find out if the delay can be said to have been resulted from the cause which the petitioner had adduced and whether the cause stated in the circumstances of the case is sufficient. It is the condition precedent for the exercise of discretion that the Court must satisfy itself as to whether there was sufficient cause for exercising such discretion and condoning the delay. The expression 'sufficient cause' should be considered with pragmatism with a justice oriented approach.

12. Even in the decision relied on by the learned counsel for the respondent/plaintiff in Oriental Aroma Chemical Industries Ltd., v. Gujarat Industrial Development Corpn., (cited supra), the Hon'ble Supreme Court has held in paragraph 14 that the Courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.

13. Even though the reasons assigned by the petitioner are convincing, considering the huge delay and keeping in mind the above said legal position, this Court is of the view that if the delay is compensated by way of costs nothing will be prejudiced to the other side.

14. Accordingly, this revision petition is allowed, setting aside the order of the trial court, dated 21.07.2005, in I.A.No.649 of 2004 in O.S.No.852 of 2000, on condition that the petitioner/defendant pays a sum of Rs.2,500/- (Rupees two thousand five hundred only) as costs to the respondent/plaintiff within a period of one month from the date of receipt of a copy of this order. On such payment, the

trial court is directed to proceed with the application filed to set aside the exparte decree and thereafter with the suit and dispose of the suit as expeditiously as possible. Connected miscellaneous petition is closed.

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