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Dasan vs Wilson

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Court : Kerala

Decided On : Dec-18-2019

Judge : Honourable Mr. Justice Amit Rawal

Appeal No. : CRP/73/2015

Appellant : DASAN

Respondent : Wilson

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE AMIT RAWAL WEDNESDAY, THE 18TH DAY OF DECEMBER 2019 / 27TH AGRAHAYANA, 1941 CRP.No.73 OF 2015 (E) AGAINST THE ORDER DATED 05.11.2014 IN I.A. NO.739 OF 2014 IN A.S. NO.56 OF 2014 OF THE COURT OF THE DISTRICT JUDGE, THIRUVANANTHAPURAM. REVISION PETITIONER/RESPONDENT: DASAN AGED 62 YEARS, S/O.YOHANNAN, V.V.T.HOUSE, MEMALA, VITHURA VILLAGE, THIRUVANANTHAPURAM. BY ADVS. SRI.RAM MOHAN.G. SRI.AJIT G.ANJARLEKAR SRI.GOVIND PADMANAABHAN SRI.MANU V. SRI.G.P.SHINOD RESPONDENT/PETITIONER:

WILSON S/O.MANILAMANI, THADATHARIKATHU VEEDU, PLATHOTTAM, THOLICODE VILLAGE, NEDUMANGAD TALUK, THIRUVANANTHAPURAM-695141. BY ADV. DAISY A.PHILIPOSE THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 18.12.2019, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CRP.No.73 OF 2015 (E) 2

ORDER

The present revision petition is preferred against the order of the District Judge, Thiruvananthapuram, dated 05.11.2014, in I.A. No.739 of 2014 in A.S. No.56 of 2014.

2. The facts which culminated in the filing of revision

petition was that the petitioner/plaintiff instituted O.S. No.102 of 2010 of the Sub Court, Nedumangad, a suit for specific performance of an agreement for sale, entered into by the defendant for the sale of the scheduled property. In the aforementioned suit, despite have been served, the respondent/defendant were proceeded as ex-parte as per the

judgment dated 30.09.2010. The defendant, on acquisition of

knowledge of the decree only on 12.04.2011, instituted I.A. No.546 of 2011 under Order IX Rule 13 for setting aside the ex-parte decree along with I.A. No.545 of 2011, seeking condonation of delay of 223 days. Both the applications were dismissed by a common order dated 21.11.2013. Against the aforementioned CRP.No.73 OF 2015 (E) 3 order, an appeal was filed before this Court as FAO No.107/2013. During the pendency, it was found that the said order is appealable before the District Judge and accordingly, he filed C.M.A. No.58 of 2013, which was dismissed by this Court on 02.12.2013 and preferred an appeal before the trial court. In filing that appeal, there occurred a delay of 1263 days on account of suffering from arthritis and partial paralysis from 2010 August to April 2011. The aforementioned plea of the defendant was rejected by the petitioner/plaintiff by raising all possible objections qua maintainability and on merits, it was contended

that it is a willful default as pendency of suit was in knowledge and of the ex-parte proceedings, but intentionally, did not chose to file appeal or an application. There was no such reasonable explanation in seeking condonation of delay as the suit was entrusted to a counsel who sought time for filing written statement and thereafter was proceeded as ex-parte, in the absence of any defence suit was decreed.

3. Identical grounds were raised in C.M.Appln. No.58 of CRP.No.73 OF 2015 (E) 4

2013. Since the parties were at variance the learned Judge, on the application for condonation of delay framed the following issue:- Whether the petitioner/defendant has made out sufficient cause for condoning the delay of 1263 days?

4. Defendant, in support of the aforementioned claim,

did not examine any witnesses. The learned counsel, on behalf of the petitioner submitted that the act and conduct of the defendant leaves no manner of doubt that his approach had been not bona fide but sluggish or intentional in not choosing to contest the petition despite having sought time for filing the written statement. Such type of litigants should not be given a waiver for condonation of delay of 223 days as the entire process of misleading put into motion had been brought at rest and that too, while declining the application with a monetary cost of Rs.3,000/-. The second spell of delay happened during the period 01.04.2011 till January, 2014 and third after dismissal of OP No.128 of 2014 by this Court. In this respect, a delay of 1263 days occurred. The law with regard to the condonation of delay, is no longer, res integra in view of the decision in Esha Bhattacharjee CRP.No.73 OF 2015 (E) 5 v. Managing Committee of Raghunathpur Nafar Academy & and Others whereby the following principles have been culled out. 15. From the aforesaid authorities the principles that can broadly be culled out are:

(i) There should be a liberal, pragmatic, justice-oriented, non-

pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms "sufficient cause" should be understood in their

proper spirit philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should

not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsule the

conception of reasonableness and it cannot be allowed a totally unfettered free play. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second alls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its

inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of CRP.No.73 OF 2015 (E) 6 justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scruitinized and

the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more

guidelines taking note of the present day scenario. They are:

(a) An application for condonation of delay should be

drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

5. The explanation given for the delay and noticed

by the court below, in my view, cannot be said to be intentional or willful but owing to the reasons mentioned therein. The present application is pending before this Court since 2015 with an interim stay. The only thing which can be pointed is whether the imposition of costs of Rs.3,000/-, while condoning the delay of 1263 days is on a lesser side. The CRP.No.73 OF 2015 (E) 7 impugned order setting aside the ex-parte decree and condoning the delay cannot be faulted with, however, with a modification of costs of Rs.3,000/- as Rs.10,000/-. In the result, there shall be an increase of Rs.7,000/- in the costs. On payment of additional costs of Rs.7,000/-, the First Appellate Court shall decide the appeal as expeditiously as possible, at any rate, within a period of four months from the date

of receipt of a certified copy of this judgment. It is made clear that the payment of the costs would be a condition precedent for hearing of the appeal. Sd/- AMIT RAWAL, JUDGE Skk//191219/240120

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