

Sami Nadar (Died) Vs. Johnson Moses

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Court : Chennai

Decided On : Jul-31-2015

Judge : K.K.Sasidharan

Appellant : Sami Nadar (Died)

Respondent : Johnson Moses

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

31. 07.2015 CORAM THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
C.R.P.(NPD)(MD)No.1303 of 2015 Sami Nadar (Died) Thenkaraimuthu : Petitioner
Vs. Johnson Moses : Respondent Prayer Civil Revision Petition is filed under
Section 115 of Code of Civil Procedure to call for the records of the fair and
decreetal order passed in I.A.No.113 of 2014 in O.S.No.261 of 2008 on the file of
Principal District Munsif -cum- Judicial Magistrate Court, Nanguneri, dated
05.03.2015 and set aside the same. !For Petitioner : Mr.Ananth C.Rajesh ^For
Respondent : Mr.H.Arumugam :

ORDER

The petitioner and his father filed a suit in O.S.No.261 of 2008. The suit was dismissed for non-prosecution. The petitioner filed an application to restore the suit after condoning the delay of 1045 days. The application was dismissed by the learned Trial Judge. Feeling aggrieved, the petitioner is before this Court.

2. Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of respondent.

3. The petitioner and his father filed the suit in O.S.No.261 of 2008 praying for a decree of recovery of possession, arrears of rent and damages for use and occupation. The suit was dismissed for non-prosecution.

4. The petitioner's father died in May, 2010. The petitioner was away at Bombay. He was not aware of the subsequent stages of the proceedings in O.S.No.261 of 2008. The petitioner was not in a position to visit his village on account of a communal clash. After reaching normalcy, the petitioner visited the village during Deepavali. He was informed by his counsel, that the suit was dismissed for default on 02 December, 2010. The petitioner, thereafter, filed the application in I.A.No.113 of 2014 to condone the delay.

5. The application was opposed by the respondent. The respondent contended that after taking lease, the School Committee have constructed a building to house the School. The respondent has further contended that the School Committee has already filed a suit for specific performance.

6. The learned Trial Judge dismissed the application by holding that the petitioner ought to have been vigilant. The learned Trial Judge was of the view that the petitioner has not given sufficient reasons to condone the delay.

7. While dismissing the application in I.A.No.113 of 2014, the learned Trial Judge omitted to consider the basic fact that the School Committee has already filed a suit against the petitioner for specific performance in O.S.No.116 of 2009. The written statement filed by the respondent as defendant in O.S.No.261 of 2008 contain the details of the parallel proceedings initiated before the Vacation Court at Tirunelveli. Since the suit for specific performance was pending, the learned Trial Judge should have condoned the delay and posted the suit filed by the petitioner along with the suit in O.S.No.116 of 2009.

8. The learned Trial Judge appears to be under the impression that the petitioner has to explain each day's delay.

9. The Supreme Court in *M.K.Prasad v. P.Arumugam* [2001(6) SCC176, while considering the question regarding delay in applying for setting aside the *exparte* decree, observed that the Court ought to keep in mind the judgment impugned in the matter, the extent of property involved and the stake of the parties, while deciding an application to set aside the *exparte* decree.

10. The Supreme Court in *Ram Nath Sao v. Gobardhan Sao* [2002(3) SCC195, explained the expression "sufficient cause" within the meaning of Section 5 of the Limitation Act, 1963. The Supreme Court very clearly observed that explanation for the delay should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case. The Supreme Court said:

"2. Thus it becomes plain that the expression "sufficient cause" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependant upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal an exception more so when no negligence or inaction or want of bone fide can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine like manner. However, by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the list terminates either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way."

11. In GMG Eng. Industries vs. ISSA Green Power Solution [2015(6) Scale 551]., the Supreme Court observed that the term "sufficient cause" must receive liberal construction. "8. It is well settled that the expression 'sufficient cause' is to receive liberal construction so as to advance substantial justice. When there is no negligence, inaction or want of bonafide is imputable to the Appellants, the delay has to be condoned. The discretion is to be exercised like any other judicial discretion with vigilance and circumspection. The discretion is not to be exercised in any arbitrary, vague or fanciful manner. The true test is to see whether the applicant has acted with due diligence."

12. The Supreme Court in N.Balakrishnan v. M.Krishnamurthy [1998(7) SCC123, observed that the superior Court would be free to consider the cause shown for the delay afresh and to come to its own finding. "9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncontainable 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 regional 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."

13. The petitioner has given a clear indication that on account of communal problem, he was prevented from visiting the village. The petitioner has also demonstrated that he has got a point to agitate before the Trial Court. Since the connected suit in O.S.No.116 of 2009 is pending before the Court at Tirunelveli, I am of the view that the petitioner should be given opportunity to prosecute the suit.

14. In the result, the order dated 05 March, 2015 is set aside. The application in I.A.No.113 of 2014 is allowed.

15. The learned Trial Judge is directed to restore the suit and post the same along with the suit filed by the School Committee in O.S.No.116 of 2009 for the purpose of simultaneous trial and disposal.

16. In the result, the Civil Revision Petition is allowed. No costs. To The Principal District Munsif -cum- Judicial Magistrate Court, Nanguneri. .

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