

1.Ravi Vs. 1.Rasuservai

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Court : Chennai

Decided On : Jul-29-2015

Judge : K.K.Sasidharan

Appellant : 1.Ravi

Respondent : 1.Rasuservai

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

29. 07.2015 CORAM THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
C.R.P.(NPD)(MD)No.1037 of 2015 and M.P.(MD) No.1 of 2015 1.Ravi : Petitioner
Vs. 1.Rasuservai 2.Paramakudi Ariya Vaisiya Sabai Through its President Door
No.7/121, Swami Sannathi Thety, Paramakudi Nagar, Ramanathapuram District. :
Respondents Prayer: Civil Revision Petition is filed under Section 115 of the Code
of Civil Procedure, to set aside the order dated 15 April 2015 passed in I.A.No.151
of 2015 in O.S.No.98 of 2012 on the file of the District Munsif Court, Paramakudi.
!For Petitioners : Mr.Chengizkhan ^For Respondents : Mr.D.Senthil for R2 No
appearance for R1 :

ORDER

This civil revision petition is directed against the order dated 15 April 2015 in
I.A.No.151 of 2015 in O.S.No.98 of 2012, whereby and whereunder, the learned
District Munsif, Pramakudi was pleased to dismiss the application filed by the

petitioner and the first respondent to condone the delay of 365 days in filing the application to set aside the exparte decree. 2.The second respondent filed a suit against the petitioner and the first respondent praying for a decree directing them to vacate and handover vacant possession. The petitioner and the first respondent failed to appear before the trial Court and the same resulted in passing the exparte decree. The petitioner and the first respondent after receipt of notice in the related execution petition, filed application before the trial Court to set aside the exparte decree along with an application to condone the delay of 365 days. The learned trial Judge dismissed the said application primarily on the ground that the petitioner and the first respondent has not explained each days delay. Feeling aggrieved by the said order, the unsuccessful petitioner is before this Court. 3.Heard the learned counsel for the petitioner and the learned counsel for the second respondent. 4.When this matter came up for hearing on an earlier occasion before me, the second respondent agreed to provide equivalent extent of land to the petitioner so as to enable him to construct a residential house and reside there. The petitioner after much persuasion agreed to the said proposal. The matter is posted today for reporting settlement. 5.When the revision petition is taken up to day, the learned counsel for the second respondent submitted that the second respondent is not prepared to give land freely and it would be given to the petitioner subject to payment of ground rent. The petitioner is not prepared to accept the said suggestion as he would loss his residential house, where he has been residing for more than 80 years. 6.The petitioner in the affidavit filed in support of the interlocutory application contended that the then Trustee of the Sabai has agreed to settle the matter and that was the reason for not appearing before the trial Court and filing an application to set aside the exparte decree, within the statutory period. 7.While considering the reasons given by the petitioner to condone the delay of 365 days, the learned trial Judge has not considered the basic fact that the decree itself was a default decree. The petitioner has not appeared before the trial Court and as such, he was punished by granting an exparte decree, without considering merits of the matter. The judgment and decree dated 27 January 2014 does not contain any indication that the correctness of the claim was decided by the learned trial Judge. 8.It is trite that extent of delay is not material. The reasons given for such delay alone is material.

The petitioner has pleaded and proved that he was prevented by sufficient cause from appearing before the trial Court and as such, the delay should be condoned.

9. 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 uncontrollable 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."

10. 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 *ex parte* 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 parties, while deciding an application to set aside the *ex parte* decree.

11. 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."

12. The Supreme Court in *State of Nagaland v. Lipok AO* [2005 (3) SCC752, indicated that the merits should be preferred and the case should not be turned down on technicalities of delay in presenting the appeal. The relevant observation reads thus:

"3. Experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. The State which represents collective cause of the community, does not deserve a litigant-non-grata status. The courts, therefore, have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression of sufficient cause.

Merit is preferred to scuttle a decision on merits in turning down the case on technicalities of delay in presenting the appeal."

15. It is axiomatic that decisions are taken by officers/agencies proverbially at a slow pace and encumbered process of pushing the files from table to table and keeping it on the table for considerable time causing delay - intention or otherwise - is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factor which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The court should decide the matters on merits unless the case is hopelessly without merit....."

13. The Supreme Court in *Parimal vs. Veena* [2011(2) Scale 302]., explained the concept of "sufficient cause". The Supreme Court said: "9. "Sufficient Cause" is an expression which has been used in large number of Statutes. The meaning of the word "sufficient" is "adequate" or "enough", in as much as may be necessary to answer the purpose intended. Therefore, word "sufficient" embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that party had not acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been "not acting diligently" or "remaining inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously.

11. While deciding whether there is a sufficient cause or not, the court must bear in mind the object of doing substantial justice to all the parties concerned and that the technicalities of the law should not prevent the court from doing substantial justice and doing away the illegality perpetuated on the basis of the judgment impugned before it."

14. The Supreme Court in S.Ganesharaju vs. Narasamma [2012(4) Scale 152]., observed that matters should be heard on merits rather than shutting the doors at the threshold. The relevant observation reads thus:

"5. The expression "sufficient cause" as appearing in Section 5 of the Indian Limitation Act. 1963, has to be given a liberal construction so as to advance substantial justice.

16. Unless Respondents are able to show malafide in not approaching the court within the period of limitation, generally as a normal rule, delay should be condoned. The trend of the courts while dealing with the matter with regard to condonation of delay has tilted more towards condoning delay and directing the parties to contest the matter on merits, meaning thereby that such technicalities have been given a go-by.

17. Rules of limitation are not meant to destroy or foreclose the right of parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly.

18. We are aware of the fact that refusal to condone delay would result in foreclosing the suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate.

19. In fact, it is always just, fair and appropriate that matters should be heard on merits rather than shutting the doors of justice at the threshold. Since sufficient cause has not been defined, thus, the courts are left to exercise a discretion to come to the conclusion whether circumstances exist establishing sufficient cause. The only guiding principle to be seen is whether a party has acted with reasonable diligence and had not been negligent and callous in the prosecution of the matter."

15.In view of the reasons given by the petitioner in I.A.No.151 of 2015 and taking into account the fact that the decree in question was a default decree, passed merely on account of the absence of the petitioner, I am of the view that the impugned order is liable to be set aside. 16.In the result, the order dated 15 April 2015 is set aside. The application in I.A.No.151 of 2015 is allowed. 17.In the upshot, I allow the civil revision petition. No costs. Consequently, connected M.P.(MD) No.1 of 2015 is closed. To The District Munsif, Paramakudi. .

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