

Danial Textiles and anr. Vs. State Bank of Travancore

Danial Textiles and anr. Vs. State Bank of Travancore

SooperKanoon Citation : sooperkanoon.com/836074

Court : Chennai

Decided On : Apr-13-2006

Reported in : I(2007)BC223

Judge : K. Raviraja Pandian, J.

Acts : [Limitation Act, 1963](#) - Sections 5; [Constitution of India](#) - Article 227

Appeal No. : C.R.P. (PD) No. 248 of 2005 and CMP. No. 2290 of 2005

Appellant : Danial Textiles and anr.

Respondent : State Bank of Travancore

Advocate for Def. : K. Sreekumaran Nair, Adv.

Advocate for Pet/Ap. : T.S.R. Venkatramana, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

K. Raviraja Pandian, J.

1. The short point involved in this Revision is whether the order of the trial Judge in condoning the delay of 3308 days in re-presenting the application filed for passing of final decree is correct or not.

2. Mr. Venkatramana, learned Counsel for the petitioner very strenuously contended that no reason much less the sufficient cause as contemplated under Section 5 of the Limitation Act has been stated in the affidavit tiled in support of the application to condone the delay. Though the delay is stated to have been caused in re-presenting the petition filed for passing of final decree, the petition ought to have been re-presented within a reasonable period of time after complying with the defects pointed out by the Trial Court. But without doing so, after keeping the petition pending for nearly 10 years, now the application to condone the delay has been filed. Furthermore, the reason stated in the affidavit filed in support of the application is that the petitioner herein approached the Bank to settle the matter and therefore the respondent kept the petition without re-presenting the application which reason has not been established as per the procedure known to law.

3. Mr. Sreekumaran Nair, learned Counsel appearing for the respondent very vehemently contended that in the matter of condoning the delay in representing the application, the other side has no say at all but it is for the Court to satisfy whether the delay is condonable or not. If such a discretion is exercised by the lower Court in a positive manner, this Court while exercising the jurisdiction under Article 227 cannot interfere and in support of his contention he also relied on the Supreme Court decision in N. Balakrishnan v. M. Krishnamurthy IV : 2008(228)ELT162(SC) .

4. I heard the learned Counsel on either side and perused the materials on record.

5. There is no doubt that the number of days is as huge as 3308 days in representation. In normal course, the Courts will not interfere with the exercise and jurisdiction of the trial Judge in condoning the delay as it is the cardinal principle of law that the Us has to be decided on its own merits and no body should have been non-suited for the justice on technicalities. However, in this case, the delay is very huge i.e. nearly a decade and of course the petition is filed for passing of a final decree proceedings, but definitely this sort of delay is rather adverse to the interest of the petitioner as he is the person who has to pay interest towards principal amount for the delayed period. But for civil consequence, the Trial Court would not

have interfered with the order. Further, in this case the reason stated is that the petitioner approached the respondent for compromise agreeing to pay the amount, but ultimately failed to comply with the compromise. That reason has to be established by the respondent by giving reasonable opportunity to the petitioner. Hence, this Court is of the view that definitely the interest accrued during the delayed period would adversely affect the petitioner herein.

6. On hearing the views of this Court, Mr. Sreekumaran Nair, learned Counsel appearing for the respondent submits that for the delayed period the respondent would not charge interest. Now, in view of the assurance given by the learned Counsel for the respondent the adverse effect pointed out against the petitioner has been cured. Hence, I am of the view that recording the statement of the learned Counsel for the respondent, the Civil Revision Petition can be disposed of. Therefore, the Civil Revision Petition is dismissed by observing that in the final decree proceedings, the respondent-Bank is not entitled to include the interest accrued for the delayed period of 3308 days.

7. With this observation, the Civil Revision Petition is dismissed. Consequently, the connected C.M.P. is closed. No costs.