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**Selvaraj Vs. Ekambaram**

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**SooperKanoon Citation** : sooperkanoon.com/927374

**Court** : Chennai

**Decided On :** Jun-28-2012

**Judge** : G.Rajasuria, J.

**Acts** : Code of Civil Procedure,(CPC) 1908 - Order 9 Rule 9, 13

**Appeal No.** : C.R.P.(NPD).Nos.2971 And 2972 of 2008 and M.P.No.1 of 2008(in both the revisions) M.P.No.2 of 2008 in CRP.2972 of 2008

**Appellant** : Selvaraj

**Respondent** : Ekambaram

**Advocate for Def.** : Mr.K.N.Pandian, Adv.

**Advocate for Pet/Ap.** : Mr.R.Shivakumar, Adv.

**Judgement** :

Civil revision petitions preferred against the orders dated 13.6.2008 passed by the District Munsif, Sholinghur, in I.A.No.307 of 2007 and I.A.No.6 of 2008 in O.S.No.69 of 2001 and O.S.No.34 of 2002, respectively.

COMMON ORDER

1. Animadverting upon the orders dated 13.6.2008 passed by the District Munsif, Sholinghur, in I.A.No.307 of 2007 and I.A.No.6 of 2008 in O.S.No.69 of 2001 and O.S.No.34 of 2002, respectively, these revision petitions have been filed.

2. A summation and summarisation of the germane facts in a few broad strokes can be encapsulated thus:

Ekambaram-the respondent in both the revisions filed the suit O.S.No.69 of 2001 for declaration of his title over an immovable property and for injunction as against Selvaraj-the revision petitioner herein in both the revisions. Subsequently, O.S.No.34 of 2002 was filed by the said Selvaraj in the same Court as against Ekambaram for declaration of his title and for recovery of possession.

(ii) It so happened that when O.S.No.69 of 2001 came up for trial, it was dismissed for default. However, the said O.S.No.34 of 2002 filed by Selvaraj was decreed ex-parte even as early as on 19.2.2003 due to non-appearance of the said Ekambaram as defendant in the suit.

(iii) I.A.No.307 of 2007 was filed in O.S.No.69 of 2001 to get the delay of 263 days condoned in filing the application under Order 9 Rule 9 to get the suit O.S.No.69 of 2001 restored.

(iv) Similarly, I.A.No.6 of 2008 in O.S.No.34 of 2002 was filed to get the delay of 1189 days condoned in filing the application under Order 9 Rule 13 of CPC to get the ex-parte decree set aside.

(v) The lower Court separately heard those applications and condoned the delay subject to payment of cost of Rs.250/- and Rs.1000/-, respectively.

(vi) According to the learned counsel for the revision petitioner herein/plaintiff, the costs were deposited in the Court, inasmuch as, the advocate in the lower Court did not receive the same.

3. Being aggrieved by and dissatisfied with the orders condoning the delay, Selvaraj-the plaintiff filed these two revisions on various grounds.

4. The learned counsel for the revision petitioner herein/plaintiff would pilot his arguements, which could pithily and precisely be set out thus:

(i) The delay involved in these matters are so huge that a lenient view cannot be taken.

(ii) The respondent herein-Ekambaram tries to put the blame on his advocate as though his advocate failed to enter appearance in O.S.No.34 of 2002 and that the same advocate failed to inform him of the hearing date etc.

(iii) The advocate himself was not examined and if at all Ekambaram had any grievance as against his advocate, he ought to have filed complaint before the Bar council, but he has not chosen to do so.

(iv) The reasons found set out in the affidavits are so vague as vagueness could be, as those reasons could never be equated to valid reasons contemplated for condoning the delay.

Accordingly, the learned counsel for the revision petitioner in both the revisions would pray for setting aside the orders passed in both the I.As and for allowing the revisions.

5. In a bid to torpedo and pulverise the aruements on the side of the revision petitioner/plaintiff, the learned counsel for the respondent would pyramid his aruements, which could succinctly and pithily be set out thus:

(i) The lower Court though fit to condone the delay taking into consideration the peculiar facts and circumstances involved in this matter. Normally when the lower Court itself condones the delay, the High Court would not interfere. In this case, the conditions imposed by the lower Court also were complied with.

(ii) The suit filed by the respondent herein/Ekambaram was one for declaration and for injunction and in respect of the same property, the revision petitioner herein-Selvaraj filed the suit for declaration and for recovery of possession. As such, both the suits should have been clubbed together and dealt with. But it was not done so.

(iii) There could have been no deliberate intention on the part of the revision petitioner herein, who is admittedly in possession of the suit property to refrain from appearing in the Court to allow the respondent herein to get such ex-parte decrees.

(iv) All these problems arose because of the fact that the revision petitioner's erstwhile advocate failed to co-operate with him, which fact he came to know only after engaging another advocate.

6. Heard both sides.

7. The point for consideration is as to whether there is any perversity or illegality in the orders of the lower Court in condoning the delays of 263 days and 1189 days respectively?

8. Trite the proposition of law, is that once the lower Court decides to condone the delay for the purpose of giving opportunity to the affected party to participate in the litigation, the High Court normally would not interfere, unless there is perversity or illegality in the order.

9. It is ex facie and prima facie clear that O.S.No.69 of 2001 was filed earlier by the respondent Ekambaram himself for the purpose of declaration and injunction in respect of the immovable property, which is now admittedly in his possession. Subsequently, the revision petitioner-Selvaraj filed the suit O.S.No.34/2002 for declaration and for recovery of possession.

10. It is virtually paradoxical to know that the subsequent suit in the same Court was decreed, already on 19.2.2003; Whereas, the connected earlier suit was dismissed for default on 31.8.2006 and one and the same advocate appeared for Ekambaram. As such, ex facie and prima facie I could see that there must have been communication gap between the said advocate and the respondent herein/Ekambaram and as of now I cannot fix up the fault on either the advocate or the party concerned.

11. The learned counsel for the respondent/Ekambaram would submit that his client is an illiterate person and he believed his erstwhile advocate, who did not help him in prosecuting the litigation on his behalf.

12. Whereas, the learned counsel for the revision petitioner would cite the following decision of this Court:

2008(5) CTC 651 UNION BANK OF INDIA, OPPANAKARA STREET, COIMBATORE V. K.R.JEWELLERS AND OTHERS, certain excerpts from it would run thus:

"13. When there was no satisfactory explanation by the respondents for the inordinate delay of 1287 days, it was very unfair for the Debt Recovery Appellate Tribunal to condone the delay. Mere allegation of negligence levelled against the counsel cannot be a sufficient reason to condone the delay. Instead, the respondents have also equal responsibility as that of the respondents were following up the matter with the counsel. It is the own case of the respondents that they filed the appeal on 8.3.2002 and the appeal papers were returned on 12.3.2002 to rectify the defects, but their advocate had not represented the papers. Further, the respondents had not brought to the notice of the Debt Recovery Tribunal about the death of their mother and no steps also were taken to bring on record the legal representatives of the deceased. Therefore, the Debt Recovery Appellate Tribunal was at error in condoning the delay. Thereafter, by condoning the delay, Appellate Tribunal had gone to the extent of settling the dues with the amount of Rs.27,82,735/- which was already paid by the respondents and not agreed to by the petitioner bank. Here again, we see no justification in the order of the appellate Tribunal. When the said amount of Rs.27,82,735/- was not at all compromised, the Debt Recovery Appellate Tribunal cannot compel and direct the petitioner-Bank to file a full satisfaction memo before the DRT and hand over the documents of title to the respondents."

13. No doubt, the decision of the Division Bench of this Court is relating to the condonation of delay of 1287 days in respect of the matter initiated by the Nationalised Bank, namely, the Union Bank of India as against its debtor and in that connection, and that too, in respect of Debts Recovery Appellate Tribunal's matter, this Court rendered the judgement to the effect that absolutely there was no reason for condoning the delay.

14. In the one other decision of this Court reported in 2008(3) CTC 697 S.PANCHATCHARAM V. S.SAMBANDHA MUDHALIAR AND ANOTHER, cited by the learned counsel for the petitioner, the suit was only for bare injunction and the

plaintiff therein allowed much water to flow under the bridge and belatedly he woke up and wanted to approach the Court with the delay of 1657 days and in such circumstances, the Court though fit that no opportunity need be given.

15. But here, the peculiar features are that the said Ekambaram-the respondent herein filed the suit earlier and the suit was dismissed for default at the trial stage only on 31.8.2006, whereas the subsequently instituted suit was decreed ex-party by the same Court on 19.2.2003. One and the same advocate was engaged by the respondent/Ekambaram. There is no knowing of the fact.

16. As a Rule, both the suits should have been clubbed together and a joint trial should have been conducted and this fact should have been brought to the knowledge of the lower Court. But somehow or other, certain things went helter-skelter and resulted in such happenings before one and the same Court. The lower Court, after considering the facts thought fit to condone the delay. In such a case, I do not think that this is a fit case for interfering with the same.

17. However, the costs of Rs.250/- and Rs.1000/- imposed in the respective applications, in my opinion are too meagre and the costs have to be enhanced. The cost of Rs.1000/- imposed in I.A.No.6 of 2008 is enhanced to Rs.5000/-(rupees five thousand) and the cost of Rs.250/- imposed in I.A.No.307 of 2007 is enhanced to Rs.2000/-(rupees two thousand) payable by the respondent herein - Ekambaram to the revision petitioner-Selvaraj within 15 days from this date and accordingly it is ordered.

18. On such compliance, the respective I.As. i.e. the I.A.filed under Order 9 Rule 9 of C.P.C. and the I.A. filed under Order 9 Rule 13 of C.P.C. should be taken on file, if they are otherwise in order, and disposed of. In the event of setting aside the order of dismissal in O.S.No.69 of 2001 and the ex-parte decree in O.S.No.34 of 2002, both the suits should be clubbed together and a joint trial should be conducted and disposed of within three months thereafter.

19. In the result, the civil revision petitions disposed of accordingly. However, there is no order as to costs. Consequently, connected miscellaneous petitions are closed.

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