

N.Ramu. Vs. Pillappa

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Court : Chennai

Decided On : Jul-19-2012

Judge : G.Rajasuria, J.

Appeal No. : C.R.P.NPD.No.837 of 2012 and M.P.No.1 of 2012

Appellant : N.Ramu

Respondent : Pillappa

Advocate for Def. : Mr.D.Rameshkumar, Adv.

Advocate for Pet/Ap. : Mr.R.Jayaprakash, Adv.

Judgement :

Civil revision petition preferred against the order dated 2.1.2012 passed by the Subordinate Court, Hosur, in C.M.A.No.2 of 2010 confirming the order dated 16.10.2009 passed by the District Munsif, Hosur, in I.A.No.709 of 2009 in O.S.No.238 of 2000.

ORDER

1. Animadverting upon the order 2.1.2012 passed by the Subordinate Court, Hosur, in C.M.A.No.2 of 2010 confirming the order dated 16.10.2009 passed by the District Munsif, Hosur, in I.A.No.709 of 2009 in O.S.No.238 of 2000, this civil revision petition is filed.

2. A thumbnail sketch of the germane facts absolutely necessary and germane for the disposal of this civil revision petition would run thus:

(i) The respondent herein, as plaintiff, filed the suit seeking the following reliefs:

"a) to declare the easement right of the plaintiff over the cart track by way of easement of necessity.

b) to grant permanent injunction restraining the defendants and their men from interfering the plaintiff's peaceful enjoyment of the cart track.

c) to award the cost of the suit."

(extracted as such)

(ii) At the first instance written statement was not filed by the defendants. Whereupon ex-parte decree was passed, which was subsequently, set aside and opportunity was given to the defendants to file the written statement and proceed with the matter.

(iii) Thereafter written statement was filed and at the trial stage itself once again ex-parte decree was passed, in view of the default committed by the defendants. Thereafter also opportunity was given to the defendants to participate in the proceedings, after setting aside the ex-parte decree.

(iv) Thereafter also for the 3rd time, the defendants remained ex-parte, as they had not cross-examined P.W.1. Whereupon only ex-parte decree was passed.

(v) In order to get the said ex-parte decree set aside I.A.No.709 of 2009 was filed. After hearing both sides, the said application was dismissed.

(vi) Whereupon C.M.A.No.2 of 2010 was filed as against the order passed in the I.A., which also was dismissed, confirming the order of the lower Court.

3. Being aggrieved by and dissatisfied with the orders of both the Courts below, this civil revision petition has been focussed by the defendants on various grounds.

4. The learned counsel for the revision petitioners/defendants, by placing reliance on the grounds of revision would submit that owing to giddiness and vomiting sensation suffered by the first revision petitioner herein, who was in charge of conducting the proceedings, could not attend the Court, and as such, for the 3rd time the ex-parte decree was passed.

5. He would also submit that the matter is relating to neighbours; adjacent to the main road; the defendants are owning lands, over which alone, easementary right of necessity is claimed by the plaintiff, who is owning land beyond the land of the defendants. If the defendants are not given opportunity to contest the matter, then once and for all, they would be losing their admitted ownership over the extent of 58 metres X 5 metres, which is the suit property.

6. In a bid to torpedo and pulverise the arguments as put forth and set forth on the side of the revision petitioners/defendants, the learned counsel for the respondent/plaintiff would pilot his arguments, which could pithily and precisely be set out thus:

(i) No doubt opportunity should be given to the defendants to contest the matter and that too, in respect of disputes relating to immovable properties. But in this case, the defendants deliberately and wilfully refrained from participating in the bid purely for the purpose of dragging on the proceedings and to put the plaintiff in discomfiture.

(ii) Ex-parte decree was passed for the third time and in such a case, both the Courts below au fait with law and au courante with facts thought fit not to give any more opportunity and if any more opportunity is given, then that would also be misused by the defendants for putting the plaintiff in a difficult situation.

7. The point for consideration is as to whether any more opportunity has to be given to the petitioners/defendants to participate in the trial?

8. The above narration of facts would unambiguously and unequivocally display and demonstrate that ample opportunities were given to the defendants to participate in the trial, however, for one reason or other they did not participate.

Before passing for the 3rd time the ex-parte decree, opportunity was given to the defendants to cross-examine P.W.1-the plaintiff. However, according to D1, who claims to be in-charge of conducting the defence on behalf of the defendants, could not appear before the Court on that day, because he was feeling giddiness and vomiting sensation. However, both the Courts below felt that such reasons are nothing but a load of baloney, fraught with falsity and mendacity and that such pleas were dished out purely for the purpose of getting the ex-parte decree set aside by hook or by crook.

9. As first blush if the matter is taken as such, there is no other go but to hold that there were laches on the part of the defendants in prosecuting the defence before the trial Court. The trial Court also thrice gave opportunities, but those were not utilised by the defendants. What looms large in the mind of this Court is that the dispute is relating to easementary right and the parties are neighbours. They are agriculturists. If the dispute is not adjudicated, after full trial, certainly there might be likelihood of the dispute persisting, which might not be conducive for agriculturists to carry on with their agriculture operation.

10. Here there is no gain saying of the fact that I.A.No.709 of 2009 was filed without any delay and that alone is indicative of the fact that with due diligence, the said application was filed by the defendants to get the ex-parte decree set aside.

11. At this juncture, I would like to fumigate my mind with the following decisions of the Honourable Apex Court.

(i) 2010(2) Supreme 115 (Oriental Aroma Chemical Industries Ltd., vs. Gujarat Industrial Development Corporation and another) and an excerpt from it would run thus:

"8.The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time,

the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and other similar statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate - Collector, Land Acquisition, Anantnag v. Mst.Katiji, (1987) 2 SCC 107, N.Balakrishnan v. M.Krishnamurthy, (1998) 7 SCC 123 and Vedabai v. Shantaram Baburao Patil, (2001) 9 SCC 106."

(ii) AIR 2002 SC 1201 (Ram Nath Sao alias Ram Nath Sahu and aothers v. Gobardhan Sao and others) also could fruitfully be cited; certain excerpts from it would run thus:

"13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the Court should lean against acceptance of the explanation. While condoning the delay, the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses." (emphasis added)

A mere running of the eye over those precedents would exemplify and demonstrate that in appropriate cases, for valid reasons to be cited, delays could be condoned and not as a matter of course. A cue can be taken from the precedents in respect of the setting aside even an ex-parte decree as it is involved in this case.

12. In this singularly singular factual matrix, I am of the view that one more opportunity could be given to the defendants to participate in the trial, subject to

payment of cost of Rs.15,000/- (rupees fifteen thousand) payable by the revision petitioners herein/defendants to the respondent herein/plaintiff within one week from the date of receipt of a copy of this order and accordingly it is ordered; whereupon the ex-parte decree shall stand automatically set aside and the lower Court shall see that the entire matter is disposed of within two months thereafter.

13. Both the parties shall co-operate with the trial Court. If there is any non-cooperation on the part of the defendants, the same shall be reported to this Court and no more opportunity would be given to the defendants in such an event.

14. The civil revision petition is disposed of accordingly. However, there is no order as to costs. Consequently, connected miscellaneous petition is close.

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