

Madras High Court

Gunasekaran vs Ganesan on 12 May, 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.05.2010

CORAM

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

C.R.P. (NPD) No.4246 of 2008

and

M.P.No.1 of 2008

Gunasekaran

... Petitioner

vs.

Ganesan

... Respondent

Civil Revision Petition under Article 227 of the Constitution of India against the fair

For Petitioner : Mr.T.Murugamanickam

For Respondent : Mr.P.Mathivanan

O R D E R

The Revision Petitioner/Defendant has filed this Civil Revision Petition as against the order dated 09.08.2008 made in I.A.No.945 of 2007 in O.S.No.442 of 2004 passed by the learned District Munsif, Mettur.

2. The trial Court viz., the learned District Munsif, Mettur while passing orders in I.A.No.945 of 2007 filed by the Revision Petitioner/Defendant (under Section 5 of the Limitation Act) has among other things observed that sufficient cause has not been put forward by the Revision Petitioner in filing an application to set aside the Exparte Decree dated 04.03.2005 and consequently, dismissed the Application without cost.

3. According to the learned counsel for the Revision Petitioner/Defendant, the order of the trial Court in dismissing the I.A.No.945 of 2007 dated 09.08.2008 is not correct because of the fact that there is no suppression of filing of the previous application and that the Revision Petitioner's previous counsel has filed an Application but it is not within the knowledge of the Revision

Petitioner as to how and upto what stage that the learned Advocate had processed the matter.

4. It is the further contention on the side of the Revision Petitioner/Defendant that the trial Court had not appreciated of the fact that every day's delay need not be explained and also that the Revision Petitioner has clearly explained that he took all steps through his previous counsel to enter appearance and also filed an application to set aside the Exparte Decree but these aspects of the matter have not been adverted to by the trial Court in a proper perspective which has resulted in the miscarriage of justice and therefore, prays for allowing the Civil Revision Petition to prevent an aberration of justice.

5. However, the learned counsel for the Respondent/Plaintiff submits that the trial Court has come to a right conclusion that the Revision Petitioner/Defendant in his affidavit in I.A.No.945 of 2007 has suppressed the factum of filing of the previous application and consequently, dismissed the Interlocutory Application without costs after taking into account all the relevant facts and circumstances of the case and the same need not be interfered by this Court at this stage of the Revision.

6. The Learned counsel for the Respondent/Plaintiff cites the decision of this Court SIVAKUMAR AND ANOTHER V. R.SENGODAN, 2007 (4) CTC 506, wherein it is observed that 'Court, though, must take a liberal view should not do so on exercising equity as it would be nothing but extension of limitation not available under enactment and in the absence of sufficient and convincing reasons, Court should not excuse delay.'

7. He also cites the decision of this Court C.RAGUPATHY V. C.GOVINDAN AND OTHERS, 2009 (1) CTC 319, wherein it is held that 'Limitation is not merely a technical consideration but is based on principles of sound public policy as well as equity and a victorious litigant cannot be expected to remain disgruntled indefinitely for period to be determined at whims and fancies of opponent.'

8. Yet another decision of this Court G.JAYARAMAN V. DEVARAJAN, 2007 (2) CTC 643, is cited on the side of the Respondent/Plaintiff wherein it is among other things held that '....the delay cannot be condoned as matter of judicial generosity and the right accrued to the other side ought to be kept in view while considering plea relating to affording an opportunity to advance substantial justice.'

9. In the affidavit in I.A.No.945 of 2007 filed by the Revision Petitioner/Defendant, it is among other things mentioned that he appointed one K.Ramachandran, Dharmapuri to conduct his case but the said Advocate has employed another Mettur Advocate and conducted the suit O.S.No.442 of 2004 and further that he used to go along with his family in search of a coolie job and he went to Cuddappah District in Andhra Pradesh in connection with the stone breaking job and till 25.08.2005, he could not meet his counsel to file a written statement and therefore, he had not filed the written statement on 28.02.2005 and lastly, an Exparte Decree was passed on 04.03.2005.

10. Further, it is the stand of the Revision Petitioner/Defendant that the Respondent/Plaintiff filed an Execution Petition and sent a notice to him on 26.11.2006 and he instructed his counsel to file a reply to Execution Petition but the Dharmapuri Advocate had not filed his counter and again, he was

set exparte and an arrest warrant was issued by the Execution Court and only after he was brought to the Court after arrest he came to know about the case details. Also, in Paragraph No.8 of I.A.No.945 of 2007, the Revision Petitioner/Defendant had averred that he came to his village in connection with Mariamman Temple Festival and came to know about the Exparte Decree being passed against him and therefore, there had occasioned a delay of 883 days in filing the application to set aside the Exparte Decree dated 04.03.2005 passed by the trial Court.

11. In the counter filed by the Respondent/Plaintiff, it is inter alia mentioned that he filed a suit against the Revision Petitioner/Defendant on the basis of pronote and obtained a decree on 04.03.2005 in the main suit and also filed E.P.No.48 of 2006 before the Execution Court.

12. It is the case of the Respondent/Plaintiff that the Petitioner/Defendant at the time of filing of E.P.No.48 of 2006 was residing near Vellar at Kammampatti in Mettur Circle of Salem District and notice was issued through Court and also through the Registered Post in E.P. which was duly served on the Revision Petitioner/Defendant and on 21.12.2005, the Revision Petitioner/Defendant filed vakalat and entered appearance through an Advocate and the matter was posted to 29.03.2007, 04.06.2007 and on 19.06.2007 for filing counter and finally, since no counter was filed on the side of the Revision Petitioner/Defendant an order of arrest was issued by the Executing Court.

13. According to the learned counsel for the Respondent/Plaintiff, when the Court Ameen went with an Arrest warrant and called the Revision Petitioner/Defendant, the Revision Petitioner/Defendant pushed the Court Ameen and ran away and therefore, the arrest was not effected and again Police Aid was ordered by the Executing Court on 24.07.2007 in E.P.No.28/2007 and only with the help of police, the Court Ameen arrested the Revision Petitioner/Defendant and produced him on 22.08.2007 before the Executing Court. After admitting the Decree, the Revision Petitioner/Defendant informed that he would pay the amount without default and accordingly, paid a portion of decree amount of Rs.10,000/- and after executing a muchalika he was let out.

14. The Revision Petitioner/Defendant through Dharmapuri Advocate filed a Section 5 Limitation Act, Application to condone the delay of 689 days in setting aside the Exparte Decree dated 04.03.2005, on 22.01.2007. That application was returned by the concerned Court and there had occasioned a delay of 132 days in representing the same (for the period from 22.02.2007 to 04.07.2007).

15. The contention of the Respondent/Plaintiff is that in the two Section 5 Applications filed by the Revision Petitioner/Defendant two different reasons were assigned. To put it shortly, in the condonation of delay application filed by the Revision Petitioner on 22.01.2007 for 689 days, no proper reasons were assigned by the Revision Petitioner for the same relief on 11.09.2007. When the Revision Petitioner/Defendant filed an application to condone the delay of 841 days, no proper reasons were mentioned. The Execution Court had dismissed REA 61/07 on 11.01.2006 to set aside the Exparte order passed in E.P.No.48 of 2006 only after hearing both sides and the matter was adjourned to 21.02.2008 for payment of the decree amount by the Revision Petitioner/Defendant.

16. By and large, a Litigant does not stand to gain by preferring an application belatedly. It is true that by resorting to delay a party does not stand to profit. However, he/she runs a grant risk. It is true that when the substantial justice and technical consideration are pitted against each other the cause of substantial justice deserves to be preserved for the other side cannot claim any vested right in injustice being done, because of a non deliberate delay.

17. That apart, there is no presumption that a delay had occasioned deliberately or on account of malafides. It is to be noted that the term 'sufficient cause' is wide enough to apply the Law in a meaningful manner to secure the ends of justice. Generally, a liberal view must be adopted when a Court of Law deals with an Application for condonation of delay filed under Section 5 of the Limitation Act. As far as the present case is concerned, the Revision Petitioner/Defendant had filed earlier an Application under Section 5 of the Limitation Act to condone the delay of 689 days to set aside the Exparte Decree dated 04.03.2005. In that application, notice was given to the Respondent/Plaintiff on 04.07.2007. However, the said Section 5 Application was not represented. The present I.A.No.945 of 2007 was the second one presented by the Revision Petitioner/Defendant before the trial Court praying to condone the delay of 841 days in filing the application to set aside the Exparte Decree. In the earlier application filed by the Revision Petitioner/Defendant, the stand taken by the Revision Petitioner/Defendant was that due to his absence an Exparte Decree was passed against him but his counsel intimated the stage of the case but that had not reached him in time. However, in I.A.No.945 of 2007, the Revision Petitioner/Defendant had assigned a reason that he along with his family went to Cuddappah, Andhra Pradesh in search of a job, etc., To put it shortly, the averments in the earlier Section 5 Application and the averments in I.A.No.945 of 2007 are diametrically opposite to each other.

18. The plea of Limitation is a good public policy, based on Fair Play and Good Conscience and moreover, a successful party cannot be permitted to wait for a longer time simply at the mercy of the other side, as opined by this Court. Also, the valuable right that had accrued to the opponent could not be easily taken away by viewing the term 'sufficient cause' liberally so as to cause prejudice to M.VENUGOPAL,J.

vri the Respondent/Plaintiff in the instant case on hand. Viewed in these perspectives, this Court comes to an inescapable conclusion that the Civil Revision Petition filed by the Revision Petitioner/Defendant is devoid of merits and resultantly, the same fails.

19. In the result, the Civil Revision Petition is dismissed. Consequently, the order passed by the trial Court in I.A.No.945 of 2007 in O.S.No.442 of 2004 is confirmed by this Court. Having regard to the facts and circumstances of the case, the parties are directed to bear their own costs. The connected miscellaneous petition is closed.

.05.2010

Index :Yes/No
Internet :Yes/No
vri
To

The District Munsif Court,
Mettur.

PRE DELIVERY ORDER IN
C.R.P NPD NO.4246 OF 2008
PRE DELIVERY ORDER IN
C.R.P NPD NO.4246 OF 2008
To

THE HON'BLE MR.JUSTICE M.VENUGOPAL

Most respectfully submitted
by

(V.RAJESWARI)
P.A. TO HON'BLE JUDGES