BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2020

CORAM

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.R.P.(MD)No.1045 of 2020
and
CMP(MD) No.6673 of 2020

Fathima ... Revision Petitioner/Petitioner/Plaintiff

Vs

1.Rahamutullah
2.Shaul Hameed
3.Jinnah
4.Abdul Kadar
5.Mohamed Yusuf
6.Mymoon Sulaihal ... Respondents/Respondents/Defendants

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records pertaining to the fair and decreetal order dated 19.11.2020 passed by the learned Principal District Munsif Court, Madurai in I.A.No.275 of 2020 in O.S.No.641 of 2012 on the file of the learned Principal District Munsif Court, Madurai and set aside the same.

For Petitioner : Mr.S.M.A.Jinnah

ORDER

The plaintiff in O.S.641 of 2012 has approached this court with this revision under Article 227 of the Constitution, challenging an order dismissing her application in I.A.275/2020 for re-opening the case for cross-examining D.W.1. She has laid the suit *inter alia* against her husband and the parents-in-law for injunction and for other reliefs.

2. The learned trial Judge has dismissed the application Vide the order now impugned. Be it a cursory reading, or a careful reading, what this order conveys in paragraphs 5 to 10 is evident: it is a general statement, expressing the agony which the courts are put to by some litigants. It is extracted below:

> "*5.The instant suit was filed in the year of 2012 for the relief of permanent injunction to restrain the defendant from interfering with the peaceful possession of the suit property without following due process of law. This petition is filed before this court at the stage of final argument. Hence, this court forms opinion that, it is necessary to find out the real intention of the petitioner/plaintiff from the available case records to decide his application. On perusal of case diary, it shows that issued were framed by this court on 14.09.2013 itself and this suit was posted for trial on*

22.10.2013-11.11.2013-05.12.2013 and finally this suit was dismissed for default for non-prosecution on 06.01.2014.

6. Subsequently this suit was restored as per order in I.A.No.68 of 2014 dated 28.09.2015 and the suit was listed for trial on many hearings (i.e ., 12.10.2015 - 05.11.2015 – 18.11.2015). On 24.11.2015, the plaintiff examined herself in chief as P.W.1 by filing proof affidavit and at the request of the petitioner/plaintiff, the main suit was adjourned to 09.12.2014 to 18.12.2015 – 19.01.2016 – 29.01.2016 – 02.02.2016 for the purpose of marking documents.

7. After availing such opportunities, instead of marking documents on her side, on 11.02.2016 the petitioner/plaintiff filed an application in I.A.No.178 of 2016 to receive additional documents and it was adjourned for enquiry on 04.04.2016 – 12.04.2016 – 02.06.2016. On perusal of docket sheet in I.A.No.178/2016, it reveals that, the petitioner/plaintiff was not ready to conduct enquiry in I.A.NO.178/2016. Finally, in the interest of justice, this court allowed the petition (I.A.No.178/2016) on 14.06.2016 itself, without conducting any enquiry from the side of petitioner/ plaintiff.

8. Even after allowing such interim application (I.A.No.178/2016), the petitioner/plaintiff (P.W.1) was not appeared before this court for the purpose of marking documents on her side for many hearings (i.e 29.06.2016 – 26.07.2016 – 29.08.2016 – 19.09.2016– 19.09.2016 – 04.10.2016 – 20.10.2016) and the plaintiff/petitioner (P.W.1) marked documents on her side only on 02.11.2016. Even after that, the petitioner/plaintiff has repeatedly requested for

adjournment on 21.11.2016 – 05.12.2016 to 20.12.2016 – 12.01.2017 – 06.02.2017 – 22.04.2017 – 29.04.2017 – 17.06.2017 – 12.07.2017 and finally petitioner /plaintiff (P.W.1)cross examined only on 27 .07.2017.

9.Thereafter, the main suit was posted for further P.W's on 09.08.2017, but the suit was adjourned to 29.08.2017 – 13.09.2017 – 03.10.2017 – 10.10.2017 as per request made by the petitioner/plaintiff. On 30.10.2017, a witness was examined in chief as P.W.2 and cross examined by the defendant side on 11.01.2018. After that the plaintiff side evidence was closed on 22.02.2018, because of non-representation from the side of petitioner/plaintiff. Thereafter the defendant side evidence was closed by this Court on 12.07.2018 and posted for arguments. But the petitioner/plaintiff side failed to argue their cases on 24.07.2018 – 07.08.2018 – 16.08.2018 – 30.08.2018 – 06.09.2018 to 19.09.2018 to 04.10.2018 – 23.10.2018 and this court closed the petitioner/plaintiff side argument on 31.10.2018, because of non-cooperation from the side of the petitioner/plaintiff.

10. Thereafter the defendant side reopened their evidence, but it was reported as the 6th defendant is died. Thereafter, the amendment petition filed by the petitioner/plaintiff in I.A.No.243 of 2017 and it was allowed on 04.07.2019, even after allowing such amendment petition, the petitioner/ plaintiff filed amended application only after 5 hearings (18.07.2019 – 03.08.2019 – 14.08.2019 – 16.08.2019 – 04.09.2019).”

3.1 The institution of Courts are available for remedying a wrong done to the right for the justly aggrieved. Still, the Courts do not invite the litigants to its premises, but merely make a remedial forum available and keep their doors open to all those who seek remedy. It is an invitation by appointment for those who have a reason to access the Courts for justice. It is their choice. But, once approached, they need to follow a certain discipline and a reasonable timetable.

3.2 The Bar and the litigants need to realise that everytime the Courts give a posting for hearing their case, it is an appointment the Courts give them. Professionalism of the Bar and the responsibility of the litigants should impel them to realise that no appointments with the Courts are wasted. Incidentally, do they miss an appointment with their physician? It is time they realised that Courts are doctors of injured rights, and the appointments they grant them are honoured and made use of. When the litigants do not miss, say a train or a plane in time, miss a marriage or other social events in time, miss a cinema or a live show in time, miss an examination or an interview in time - and the list is endless, what makes them believe that their

appointments with the courts alone should figure the least in their list of priorities?

3.3 Is it a problem of inandequate professionalism of the Bar, or plain irresponsibility of the litgants, or unmindful generosity of the Courts that they themselves choose not to the take the appointments that they have given the litigants seriously? The pathalogy of delay in disposal of cases lies somewhere in this malady. The courts may not be solely responsible for this, but it cannot seek an exemption either. However, it is passed for, and derided as judicial delay. The same stakeholders who do not spare an opportunity to abuse and/or waste their appointments with the courts, and at times even with a design, blame them. With pain it has to be stated that, for the sin of a section of the Bar and the litigants, the Courts are forced to carry the cross all alone, struggling to explain the delay for the disposal of cases to the citizens of this country all the time.

4. This court understands that there ought to be procedural elasticity for accommodating unforseen contingencies that affect human affairs. But to stretch it beyond its elastic limits will defeat the existential objectives of the

courts, and the promise they hold for the citizens. We, the People, may not betray the trust the Constitution has reposed on us, and shame it.

5. The primary challenge to the District judiciary is in handling procedural discretion. The Procedural law is a rule book of fairness, and the mindless abuse of procedural discretion, no matter who is responsible for it, would necessarily breed processual inequality among litigants. An overwhelming compassion to one of the litigants may be an expression of procedural fairness to that litigant, but it shall not be forgottten that it would be an act of unfairness to the other litigant. Right to justice is a composite concept: it includes both right to substantial justice as well as procedural justice. As the Mahatma has said, the means is as important as the end, and the process to obtain justice is as significant as the justice as an end.

6. Having stated thus, the trial courts and the first appellate courts are reminded that the procedural law has its inherent elasticity and flexibility to accommodate multivarious circumstances which human imagination may not be able to visualise or catalogue. Hence, the Courts cannot afford to assume a disciplinarian-attitude, and obstruct the litigant's apiration for

securing justice. Watch, Weigh and Value may be a reasonable approach that may enable balancing processual justice in individual cases. The Courts may not ignore that we are a country chiefly made of illiterate and ignorant citizens, most of who have to combat economic and social disabilities for their meaningful existence under the Constitution. Their right to justice therefore, should not be killed by fitting them all in a common denominator. Every case has its flavour, and every litigant has his own share of misery. It is hence, imperative that the Courts should watch, weigh and value each of them for accommodating their request for exercising procedural discretion.

7. May the Bar and the litigants be now told firmly, but not impolitely, that the appointment which the courts give them is as precious as an appointment a physician gives his patient, for the Courts are doctors of bleeding rights.

8. Turning to this case, here is a trial judge who has reasoned how the petitioner has developed it her habit to abuse the appointments that the Court has given her. Or, is it her Advocate's strategy?. The courts have been charitable to evolve a doctrine that for the fault of the counsel the

litigant should not suffer. The point is, what is that point where a just compassion turns into an undeserving charity? And, is it not true that a section of the bar that has once abused the procedural opportunity is helped with unending opportunities to escape from their inadequate responsibility? Strong expressions they surely are, but this Court considers them as essentially just.

9. The attitude of the revision petitioner is plainly and painfully nonsensical, and somewhere this game should end. And it has ended now.

10. In conclusion, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

14.12.2020

Index: Yes/No
Internet: Yes/No
Cm

To

1. The Principal District Munsif Court, Madurai.
2.The Section Officer,
V.R Section,Madurai Bench of Madras High Court,
Madurai.

N.SESHASAYEE, J.

CM

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