

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31-10-2007

CORAM:

THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

C.R.P.No.3368 of 2007 &
M.P.No.1 of 2007

The Commissioner,
Corporation of Chennai,
Chennai-600 003.

. . . Petitioner

Vs.

Kala @ Kribavathy

. . . Respondent

This Petition is filed against the order dated 26.09.2007 made in I.A.No.11005 of 2007 in O.S.No.3874 of 2002 on the file of the XVI Assistant Judge, Chennai.

For Petitioner : Mr.R.Subramanian
Senior Counsel for
Mr.P.Udhayakumar

For Respondent : M/s.Thamiarasi & Associates

ORDER

The defendant in the suit has filed the present revision petition under Article 227 of the Constitution of India. The respondent has filed the suit as in forma pauperis claiming an amount of Rs.3,00,000/- with 18% interest per annum at the principal amount from the date of the plaint till the date of the realisation of the amount as damages for the negligence caused by the petitioner corporation in performing sterilisation on the plaintiff on 10.05.1995. After the operation, the petitioner was discharged on 12.05.1995 and she was paid Rs.160/- as a reward for having undergone sterilisation. However the petitioner felt the experiences of pregnancy on 30.12.1996 and immediately she got herself checked up and she came to know about the pregnancy and therefore till date the plaintiff is undergoing constant check up.

2. The family of the plaintiff are in poor economic condition and her husband is a daily labourer getting monthly income of Rs.600/-. It was only considering the poor condition of the family, the plaintiff was driven to undergo sterilisation for Rs.160/- which

was itself required for the livelihood of the family. It was due to the negligence of the corporation and its medical officers, the sterilisation operation was not done properly, which has resulted in bad health of the plaintiff in course of time. Therefore, on the basis that the medical negligence has been committed by the petitioner corporation, the plaintiff has filed the suit for damages as stated above.

3. It is seen that the petitioner corporation has filed the written statement. One of the main contentions raised by the corporation is that the plaintiff having signed the necessary consent form which contains a clause that there is possibility of spontaneous reconciliation of the surgery and therefore she is estopped from filing the suit. The corporation has further thrown the blame on the plaintiff stating that after sterilisation operation, she has not chosen periodically to come to the hospital to report about the further development. Admittedly, PW1 was examined and when the case was posted for cross-examination of PW1, the corporation remained exparte and exparte decree was passed on 14.12.2004. Then the corporation has filed an application in I.A.No.11005 of 2007 under Section 5 of the Limitation Act for condoning the delay of 907 days in filing petition to set aside the exparte decree dated 14.12.2004.

4. In the affidavit filed in support of the petition for condonation of delay, the only reason assigned by the corporation is as follows;

"5. I humbly submit that the above suit is Decreed on 14.12.2004 as exparte decree. I further submit that it is not properly informed to this office through proper channel. I humbly submit that this petition is neither wilful nor wanton, for above said reason only."

This is the only reason assigned by the Corporation for condoning such a large number of delay of 907 days in filing a petition to set aside the exparte decree especially when the trial has commenced and PW1 was examined on the witness box. Considering the reasons assigned by the Corporation for the purpose of condoning the delay and on the basis that the respondent has already filed the execution petition for recovery of the amount as per the exparte decree, in fact arrest warrant was issued against the Commissioner of Corporation of Chennai, the learned trial Judge, in my considered view, correctly dismissed the petition since no reason has been assigned by the corporation for condoning the said long delay in filing the petition to set aside the exparte decree dated 14.12.2004.

5. I have heard the learned Senior Counsel appearing for the petitioner corporation as well as the respondent.

6. The learned Senior Counsel appearing for the petitioner would submit that in the execution petition filed by the respondent, the petitioner corporation has deposited the entire amount and therefore the interim order of stay can be passed so as to enable the Court to decide the issue on merit. The learned Senior Counsel also relied upon the judgment of this Court reported in 2006(5) CTC 136 (M.N.ABDUL WAHAB vs. SALEM CITY MUNICIPALITY CORPORATION) wherein in similar circumstances, while dealing with the delay of 482 days in filing a petition to set aside the exparte decree and on considering the factual position contained therein this Court has come to the conclusion that the delay cannot be termed as dilatory tactics by the corporation and allowed the condone delay petition on payment of costs Rs.1500/-. That was the suit for declaration and the stand of the corporation in that case was that the corporation was not at all aware of the suit in which the expart decree was passed and it was only after the execution petition was filed, the corporation came to know for the first time and in those circumstances the condone delay petition was filed. It was considering the said factual position, this Court has allowed the application on payment of costs. The said judgment relied on by the learned counsel appearing for the petitioner, is not applicable to the facts and circumstances of this case. The case on hand is not the case of sufficient reason for condoning the delay. But It is the case, where no reason has been assigned.

7. In STATE OF NAGALAND v. LIPOK AO AND OTHERS, 2005 (3) SCC 752, the Honourable Apex Court considering the delay of the State in filing an appeal, in paragraph 5 has held as follows;

" It is axiomatic that decision are taken by officers/agencies proverbially at a slow pace and encumbered process of pushing the files form table to table and keeping it on the table for considerable time causing delay - intentional or otherwise - is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the Appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which

are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The Court decides the matters on merit unless the case is hopelessly without merit."

8. As I have narrated above, a reading of the plaint categorically shows that the medical negligence alleged to have been committed was of the year 1995 and an exparte decree came to be passed on 14.12.2004 and after a lapse of more than 12 years making the victim to undergo the agony of trial especially in the case of tortious liability will certainly cause prejudice to the plaintiff. In view of the same, I do not see any reason, to interfere with the order of the learned trial Judge and there is no illegality or irregularity in the order passed by the Court below. The revision fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

jikr

To

1. The Registrar,
City Civil Court,
Chennai.

1 cc to Mr.P. Udayakumar, Sr. 65767

1 cc to M/s. Thamizarasi, Associates, SR. 65554

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