



**A.No.4904 of 2021
in
C.S No.503 of 2016**

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**MASTER
14.07.2026**

ORDER

1. This is an application filed by the applicant/plaintiff to condone the delay of 1372 days in filing the application to set aside the dismissal order dated 30.01.2018.

2. The case of the applicant is that he has filed the suit in C.S No.503 of 2016 for recovery of a sum of Rs.72,00,000/- as being the amount payable of Rs.65,00,000/- with and the interest for the said amount from April 2014 to January 2016 for a sum of Rs.7,00,000/- along with future interest at the rate of 12% till the payment is made and for permanent injunction restraining the defendants from alienating the suit schedule mentioned property to any third party. The above suit came up for hearing on 27.11.2017, 19.12.2017 and finally on 30.01.2018 before this court and it was dismissed for default on 30.01.2018 by this court. It is further submitted by the applicant that this case was listed before the Master Court on 19.12.2017 and on 30.01.2018 without the knowledge of himself and his counsel and was dismissed on 30.01.2018. The said fact came to their knowledge only in the month of November 2021 and the applicant and his counsel were under the impression that the above suit was transferred to City Civil Court due to the pecuniary jurisdiction and notice will be sent to them from the court. Inadvertently, both the applicant and his counsel did not note the listing of the above suit before the Master Court on the said days due to which the suit was dismissed on 30.01.2018. Hence, this application to condone the delay of 1372 days in filing the set aside application to restore the suit..

3. The first respondent has filed a detailed counter raising several objections



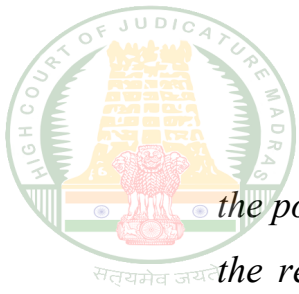
which goes to the merits of the main suit. Since, the present application is only with regard to the condone delay of 1372 days in filing the application to set aside the order of dismissal of the suit, they are not discussed here. One of the main objection raised by the 1st respondent regarding the condone delay application is that no satisfactory reasons to condone the huge delay of 1372 days has been given by the applicant. It is further submitted that the applicant who has not followed the suit cannot blame the court by stating that the suit was listed before this court on 30.01.2018 without his knowledge and to the knowledge of his counsel that too when this court prints daily cause list of the cases and further ignorance of the applicant about the transfer of cases regarding pecuniary jurisdiction cannot be a reason to condone the huge delay of 1372 days. Hence, this application is liable to be dismissed.

4. Whether this application is to be allowed or not?

5. Heard both sides. Perused the records. This application is filed to condone delay of 1372 days in filing this application to restore C.S No.503 of 2016 which was dismissed for default on 30.01.2018.

6. Now, this court wants to refer the judgment rendered by the Hon'ble Supreme Court in ***Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation and Another*** (2010)2 Supreme 115:LNIND 2010 SC 205: (2010) 4 MLJ 141: (2010) 5 SCC 459 and an excerpt from it would run thus:

“8. The law of limitation is found 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 prescribed a period within which legal remedy can be availed for redress of the legal injury. At the same time, the Courts are bestowed with

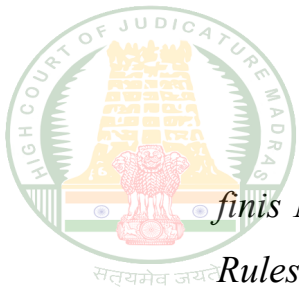


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the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. The expression “sufficient cause” employed in Section 5 of the Indian Limitation Act, 1963 and other similar statutes is elastic enough 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.”

7. This Court also wants to bank upon the decision rendered by his lordship Hon’ble Mr.Justice K.T.Thomas, in ***N.Balakrishnan v. Krishnamoorthy*, (1998) 7 SCC 122: 1999-1-L.W.739** in which it has been held that a lethargic litigant cannot be allowed to leisurely choose his own time in preferring application. The relevant excerpt would run thus:

“Rules of limitation are not meant to destroy the right parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit



finis Mum (it is for the general welfare that a period be put to litigation).

Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.”

8. In the same context this Court also wants to refer the decision of the Hon'ble High Court in **NEPC India Ltd v. S.Gopakumar, 2012(4)TNLJ548(Civil)**. From the light of the aforesaid precedents, it is manifestly enlightened that there is no straight jacket formula for condoning delay and the Court has to follow the adoption of strict approach in while dealing with a delay of longer duration. It is also settled that delay is not a criterion whereas the sufficient cause is the norm.

9. The learned counsel for the applicant in the course of his arguments cited the order passed by our Hon'ble High Court in CRP No.3163 of 2018 dated 31.10.2022 in **S.J.Gopi and 4 Others –Vs-- V.Manivannan and Another** wherein it is held that *"8. On a perusal of the records, it is seen that pending the suit in C.S.No.486 of 2005 before this Court, the defendants herein has filed an application 5350 of 2017 to reject the plaint. It was dismissed by this Court. Against the aforesaid dismissal order, they have filed an appeal in OSA No.204 of 2008. The same was dismissed by Judgment dated 29.10.2014 with a cost of Rs.10,000/- to be paid to the Mediation Centre attached to this Court. Even though the aforesaid suit transferred in the year 2010 itself to the Court below renumbering as O.S.No.11935 of 2010, the appeal in OSA No.204 of 2008 pending before this Court was disposed of only in the year 2014. In the meantime, the 1st plaintiff's father who is the 2nd plaintiff in the suit, died. Hence, they have been unable to follow the suit proceedings before this Court. Further, substantial amount have been parted with by way of advance for the execution of Sale Deed with regard to the suit property pertaining to the 2nd defendant/2nd respondent herein. As this issue is*



not settled out between the parties, the suit is necessary to be restored for full fledged Trial to dispose the case on merit."

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9. Under such circumstances, having considered the facts and circumstances of the case and in the interest of justice, this Court is inclined to allow this Civil Revision petition on condition of payment of Rs.5,000/- payable to the respondent's counsel within a period two weeks from the date of receipt of copy of this order. The Trial Court is hereby directed to dispose of the suit in O.S.No.11935 of 2010 after restoring it as expeditiously as possible."

10. In the case on hand, admittedly the delay is of longer span and the reason assigned by the applicant is that by inadvertent mistake he and his counsel did not note the listing of the above suit before this court and hence the above suit was dismissed for default. Further, they were under the impression that the above suit was transferred to the City Civil Court due to the pecuniary jurisdiction and that notice will be sent to them from the court. Except, the mere statement that they were under the impression that the suit was transferred to the City Civil Court and they will be receiving a notice from the court is not a sufficient cause that would come under Section 5 of the Limitation Act. The citation relied on by the applicant counsel stated supra is not applicable to the facts of the present case, as in this case the applicant has not stated any satisfactory reason to convince this court to condone the huge delay of 1372 days in filing the set aside application to set aside the order of dismissal dated 30.01.2018, except merely stating that they were under the impression that the case was transferred to City Civil Court on the point of the pecuniary jurisdiction which is not sufficient to condone the delay. Even as per the version of the applicant himself inadvertently he and his counsel did not know the listing of the above suit before the Master, which shows that the applicant is not vigilant enough to conduct the proceedings of the suit. Therefore, this court is of opinion



that the applicant is not entitled for the relief as prayed for in the application and the contentions of the applicant is liable to be rejected and the argument of the Respondent in this regard is liable to be accepted by this court.

In fine, the application being devoid of merits stands dismissed. No Costs.

MASTER