



A.No.1239 of 2024
in
C.S No.429 of 2016

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MASTER
11.06.2026

ORDER

1. This application is filed by the applicants/defendants under section 5 of the Limitation Act to condone the delay of 2294 days in filing the application to set aside the exparte decree dated 05.07.2017 passed by this court in C.S No.429 of 2016.

2. The case of the applicants are that the respondent/plaintiff filed a summary suit for recovery of Rs.3,05,87,805/- and managed to get an exparte decree from this court by wrongly mentioning their address as Bajanaï Koil Street, Murukeri, Irumbedu, Vandavasal instead of the original address of No.4, Subham Nagar, 1st Street, Kumaran Street, K.K.Thazhai, Madhavaram, Chennai 600 051. Further, the respondent herein had also filed an execution petition in E.P No.27 of 2020 on the file of District Court, Tiruvannamalai by transmitting the exparte decree dated 05.07.2017 passed by this court. The respondent has not at all approached this court with clean hands, knowing well that these applicants are permanent residents of Chennai, the respondent herein filed the above civil suit as well as execution petition before the District Court, Tiruvannamalai with bogus address thereby playing fraud upon the court and the applicants are not at all residing in the said address given in the plaint cause title at any point of time. The first applicant stated that he was carrying on transport businesses in the name and style of Sri Sabarivasan Roadways and Sri Sakthi Vinayagar Transport, from the year 1985 to 2001, due to the loss occurred in the said business the said firms became defunct and subsequently closed.



3. During the course of his business he used to get financial assistance from the respondent/plaintiff between the year 1995 to 1998 for which the plaintiff used to obtain blank signed pro-notes while borrowal. At the relevant point of time the applicant was residing at No.18, MCM Garden, Old Washermenpet, Chennai 600 021 which was his own property and due to loss in the business he had sold the said property and settled the dues payable to the creditors but had not received the documents given to the creditors for security purpose at the time of settling the dues because he was not in a clear state of mind at that point of time. It is further stated that the applicants have not at all received any summons or notices either from the respondent or from this Hon'ble Court or District Court, Tiruvannamalai in the above civil suit or in execution proceedings, further stated that neither themselves or their family members resided at Irumbedu Village at any point of time though they are owning agricultural land in the said plaint address. The applicants further stated that they received information from the Village Headman of Irumbedu in the month of August 2023 as proceedings were received by them from Kilkodungalur Sub Registrar Office with regard to attachment of his property, only then they came to know about the legal proceedings initiated by the respondent against them. Immediately, he contacted his counsel and applied for certified copy of the execution proceedings and summons alleged to have been served to them through the District Court, Tiruvannamalai and in the summons served through the Hon'ble Court the endorsement made by the Village Administrative Officer of Irumbedu Village and the endorsement of the Process Server are as follows:



"jpUtz;zhkiy khtl;lk;/ te;jthrp tl;lk;/ 27 ,Uk;ngL k\$;uh/ KUf;nfhp
 fpuhkj;jpy; ,f;fl;lisapy; fz;l u';frhkp j/bg/ tPuuhftd;/ RrPyh/ f/bg/u';frhkp
 Mfpa ,UtUk; fle;j 10 Mz;Lfshf brd;idapy; trpg;gjhf tprhuiz mog;gilapy;
 bjhpa tUfpwJ vd;gij bjhptpj;Jf; bfhs;fnpwd;."

Xg;gk;11-08-22

fpuhk eph;thf mYtyh;/
 27 ,Uk;ngL fpuhkk;/
 te;jthrp/
 jp/kiy khtl;lk;.

"te;jthrp o. nfhh;l; fl;lis rhh;ghf D/,s';nfhtd; vGJk; hpl;ld; jpU.h;.C.
 mth;fspd; 2.07.22y; ,f;fl;lis vdf;F ,ij ehd; 11/8/22y; ,f;fl;lis fz;l tpyhrk;
 brd;W mf;fk; gf;fk; tprhhpj;jnjhL R1 R2 vjph;kDjhuh;fs; Rkhh; 10
 Mz;LfSf;F nkyhfnt brd;id brd;Wtpl;lhh;fs; vd bjhptpj;jdh;. nkYk; VAO
 mYtyfk; brd;W tprhuiz nkW;bfhz;L ve;jtpj rhh;g[k; bra;ahjjhy; VAO
 nkbyGj;J bgw;W r\fk; nfhh;l;lhh; hpl;ld; bra;fnpwd;."

Xg;gk;.

The applicants further stated that the above endorsement, shows that they are not at all residing in the above said plaint address even prior to filing of the above suit and therefore this application to condone the delay of 2294 days in filing the application to set aside the exparte decree dated 05.07.2017 passed by this court in C.S No.429 of 2016.

4. On the other hand the respondent has filed his counter affidavit stating that rigorous approach is necessitated as the decree has been passed in the summary suit and the liberal ingredients of section 5 of the Limitation Act would not be applicable to the facts of this case. The respondent further submitted that the address in the cause title of



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the suit was not an address furnished on his own, but, it was the address mentioned by the 1st applicant himself in his letter dated 20.10.2013 addressed to him and the said document was filed as plaint Document No.7 in the summary suit. It is further submitted that the respondent being a plaintiff can file the case only based on the address given by the parties and the averment that the applicants are not at all residing in the suit cause title mentioned address at any point of time is nothing but false and the E.B connection to the suit address mentioned in the plaint cause title stands in the name of the 1st applicant and is still working and the E.B meter is also is still running. Further, the applicants have not denied the plaint cause title address is not of theirs, similarly it is not their case that they have rented out, their house in the said address to someone and so the meter is running. The fact which can be gathered from the affidavit filed by the applicants is that he admits that he was residing in Washermenpet address which address was shown in the letters sent by the applicants which is filed as plaint Document Nos.5 & 6 dated 10.08.2000 and 12.02.2002 respectively, and similarly the applicants have admitted the relationship between them and also the execution of plaint documents. The applicants themselves have given the Vandavasi address as their address in their letter dated 20.10.2013 which being the last and latest known address of the defendant and so he laid the suit on the said address. The respondent further stated that he had filed the application for grant of leave to sue the applicants/defendants by way of filing A.No.789 of 2016 in the suit in which the private notice to both the applicants/defendants were received and acknowledged at the address given in the suit cause title. The alleged Village Administrative Officer endorsement is nothing but farce as the said Village Administrative Officer is the informant of the applicants as projected by the applicants themselves and the alleged endorsement of the Village Administrative Officer cannot over rule the private notice refused by the applicants or the factum of E.B service connection still standing in the name of 1st applicant and still active. In fact by the endorsement of the Village Administrative Officer it is informed that the plaint cause



title is the applicants native address. Since the suit properties were attached as early as 20.02.2017 by Tom-Tom method and that too in the presence of Village Headman and Village Administrative Officer, it is improbable that the applicants being the natives of the same village are not aware of the suit and attachment proceedings and therefore, the very date on which the applicants claim knowledge of the legal proceedings is proved to be false. Therefore, this application is liable to be dismissed.

5. Now, the point for consideration is that whether this application to condone the delay of 2294 days in filing the set aside application is to be allowed or not?

6. Heard. Both side counsels and materials on record perused. Before going into the merits of the case, 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 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



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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).*

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9. 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.

10. It is also settled that delay is not a criterion whereas the sufficient cause is the norm. In this case on hand, admittedly the delay is of longer span and the reason assigned by the applicants are that they have not been served with summons for which the applicants have not adduced any satisfactory evidence before this Court.

11. It is more pertinent to note that the applicants have not stated the exact date of their knowledge about the pending legal proceedings on the one hand they stated that they came to know about the legal proceedings during the month of August 2022 when the attachment proceedings were initiated through the office of the Sub Registrar Office, Kilkodungalur and on the other hand states that they came to know about the legal proceedings in the month of August 2023 when they had received information from the Village Headman of Irumbedu as the proceedings were received by them from Kilkodungalur Sub Registrar Office with regard to attachment of their property.

12. The burden lies upon the applicants seeking condonation of delay to establish the "sufficient cause" for not approaching the court within the prescribed period. Though a liberal approach is ordinarily taken while considering the application for condonation of delay, such liberal approach cannot be extended to cases where negligence, lack of bona fides or absence of due diligence is apparent. In the present



case the respondent states that the plaintiff cause title mentioned address has been furnished by the applicants themselves in their letter dated 20.10.2013 and therefore the contention that the respondent deliberately furnished the wrong address cannot be prima facie accepted. Similarly, the respondent has specifically asserted that notice sent to the same address in the earlier proceedings were refused by the applicants. As rightly pointed out by the learned counsel for the respondent, the endorsement of the Village Administrative Officer merely reflects information gathered on enquiry and does not establish that the respondent was aware of any different address or that summons had been fraudulently served.

13. Moreover, in the present case apart from the above the delay sought to be condoned is 2294 days which is highly inordinate. Except stating that they came to know about the decree during attachment proceedings the applicants have not furnished any satisfactory and convincing explanation for the prolonged delay. The explanation offered by the applicants does not inspire the confidence of this court, to entertain the present application under section 5 of the Limitation Act. The applicants had not established by way of proper oral or documentary evidence that they have never resided at the plaintiff cause title mentioned address and that too, here is a case where the applicants themselves admitted that the plaintiff cause title mentioned address is the address of the their property in their native.

14. Further, it could be seen that the applicants herein have filed the application to condone the delay in filing the set aside exparte order in E.P No.27 of 2020 pending before the Hon'ble Principal District Court, Tiruvannamalai, a copy of which has been filed by the respondent in his type set wherein in Para 9 the applicants herein has stated that they have also taken appropriate steps before the Hon'ble High Court for setting aside exparte decree along with the condone delay application in filing the set aside



application along with written statement in D.No.135173 of 2023 filed on 16.10.2023 and the condone delay petition was numbered as A.No.985 of 2024 and the same was allowed by the Hon'ble High Court, Madras and 29.02.2024 the set aside application was also been numbered as A.No.1239 of 2024 which is yet to be listed for hearing. From the above averment made by the applicants in the E.A filed before District Court, Tiruvannamalai it is clear that as rightly pointed out by the learned counsel for respondent that the applicants are in the sheer habit of making falsehood which can be seen from the records available before this court. Therefore, in the considered opinion of this court, the reason assigned by the applicants does not come within the ambit of “sufficient cause” under section 5 of the Limitation Act.

15. Thus, the applicants are not entitled for the relief as prayed for by them in this application and the contentions of the applicants are liable to be rejected and the arguments of the respondent counsel in this regard is liable to accepted.

In fine, the application being devoid of merits is dismissed. No cost.

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