

In the High Court of Judicature at Madras

Dated: 15.06.2015

Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and
The Hon'ble Mr.Justice M.VENUGOPAL

W.A.No.714 of 2015 and
M.P.No.1 of 2015

The Management,
Vasambadi Estate,
Yercaud - 636 601
rep. By LRMK Valliappan,
Receiver, Vasambadi Estate

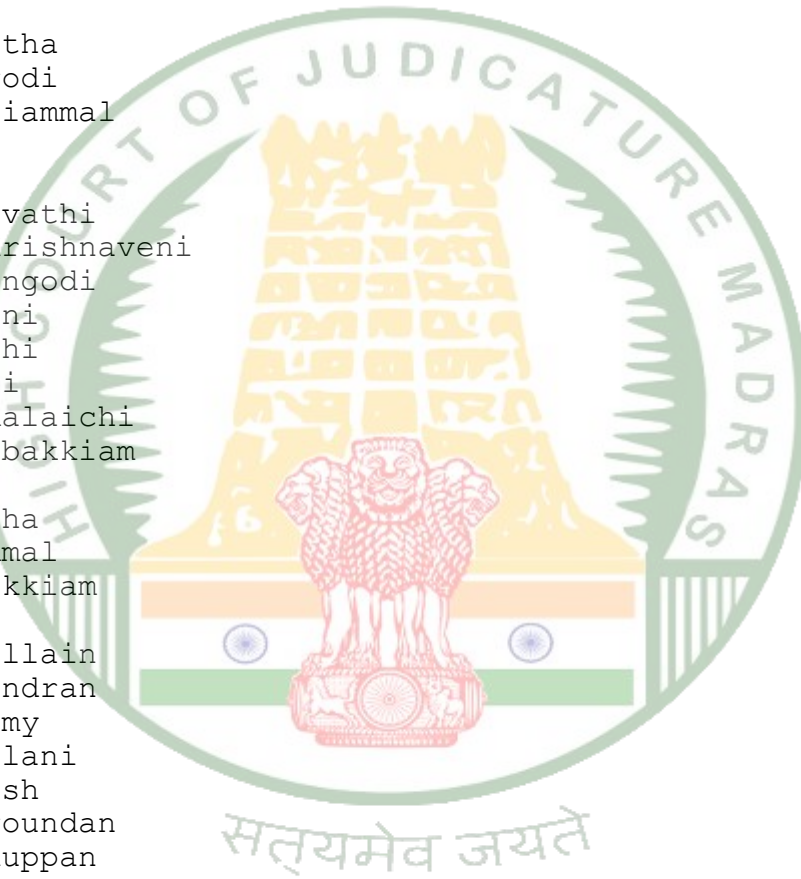
...Appellant/Petitioner

Vs.

1 Thavasimuthu
2 M.Raja
3 P.Palanisamy
4 V.Poochi
5 P.Venkatachalam
6 K.Kandasamy
7 Kuzhanthaisamy
8 Mariammal
9 Maathammal
10 Saroja
11 Elisa
12 Chinna
13 Kamalam
14 Palaniammal
15 K.Unnamalai
16 Pappathi
17 Periamallika
18 P.Selvi
19 Muniammal
20 Pushpam
21 Thaymmal
22 Kumari
23 Nagammal
24 Thangammal
25 Regina
26 P.Pappa
27 R.Lakshmi
28 M.Chitra
29 Priya
30 Dhanabakkiam
31 Anbuvali
32 Murugayee
33 Kasi. Maathammal
34 Manjula
35 P. Maniammal

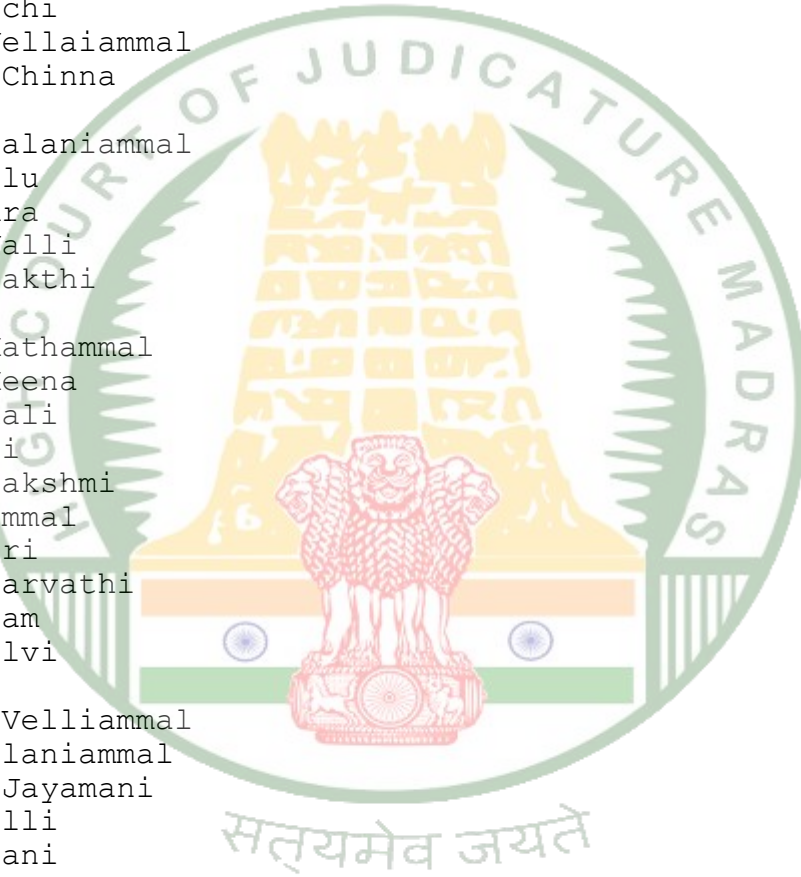
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36 Kodi. Bakkiam
37 P.Maathammal
38 Aath. Karutha
39 Pali. Muthumani
40 Amaravathi
41 Muluvi. Valli
42 V.Vasanth
43 Santhavalli
44 Suseela
45 A.Dhanam
46 P.Kuppayee
47 M.Deivanai
48 P.Rani
49 A.Vasanth
50 P.Poongodi
51 K.Palaniammal
52 Malar
53 Santha
54 Pali.Revathi
55 Seng. Krishnaveni
56 P.M.Poongodi
57 Kalaimani
58 Banumathi
59 Malaichi
60 K.Annamalaichi
61 C.Dhanabakkiam
62 K.Kanga
63 P.Lalitha
64 Chennammal
65 Dhanabakkiam
66 Saroja
67 Pali.Vellain
68 Jeyachandran
69 Kandasamy
70 Seng.Palani
71 K.Mathesh
72 Periyagoundan
73 Periyakuppan
74 Bakkiraj
75 Kathiresan
76 K.Rajaram
77 K.Kuppusamy
78 P.Raman
79 Siva
80 Pali.Sundaram
81 Kodi.Lakshmi
82 K.Palaniammal
83 K.Saroja
84 P.Parvathi
85 P.Lakshmi
86 A.Vellachi
87 K.Jothi
88 M.Lakshmi
89 Kasi. Vellaiaammal



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90 Sakunthala
91 Puthu. Vellaichi
92 P.Vijaya
93 M.Mallika
94 Mysore. Kamalam
95 P.Manichi
96 A.Mathammal
97 K.Unnamalai
98 Mangalam. Vasantha
99 Pali. Pachayee
100 A.Chinthamani
101 P.Geetha
102 A.Vellachi
103 Seng. Vellaiammal
104 Vazha. Chinna
105 A.Valli
106 Mani. Palaniammal
107 P.Alamelu
108 P.Chandra
109 Pili. Valli
110 Seng. Sakthi
111 P.Pappu
112 Seng. Mathammal
113 Pali. Meena
114 K.Panchali
115 Indarani
116 Samu. Lakshmi
117 K.Mathammal
118 P.Sundari
119 Mani. Parvathi
120 K.Bakkiam
121 Samu.Selvi
122 Rukmani
123 Thalai.Velliammal
124 Andi Palaniammal
125 Thalai Jayamani
126 Sora Valli
127 Pushparani
128 Nagavalli
129 K.Kuppayee
130 A.Dhanabakkiam
131 G.Lakshmi
132 K.Sulochana
133 Boopathi
134 Kala
135 Chinnavellayan
136 Theerthagiri
137 A.Kuppusamy
138 Eswaran
139 Chandran
140 Mariammal
141 Viijiyan
142 Chinnakuppan
143 Paramasiyam



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144 Allimuthu
145 Moyyasamy
146 Peruchandi
147 Pil.Kozhanthan
148 Pali.Goundan
149 Rajendran
150 Vijayakumar
151 Palanisamy
152 Periyamanian
153 Elangovan
154 Balakrishnan
155 S.Mani
156 Perumal
157 A.Andi
158 Rathinavalli
159 Annamalai

(Respondents 1 to 159 are rep.

By Neelamalai Thotta Thazhilalar Sangam,
Thotta Thozhilalar Illam,
Main Road, Yercaud.

160 The Presiding Officer,
Labour Court, Salem. ...Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent
Appeal against the Order of this Court dated 25.03.2015 made in
W.P. No. 25896 of 2014.

Writ petition filed under Art 226 of the Constitution of India
to issue a writ of certiorarified calling for the order of the
160th respondent Labour Court, Salem dated 18.8.2014 in I.A.
No.395 of 2009 in C.P.No.117 of 2006 and quash the order dated
18.8.2014 in C.P.No.117 of 2006.

For Appellant : Mr.AR.L.Sundaresan
Senior Counsel for
Mr.Sivavarthan

For Respondents: Mr.K.M.Ramesh

JUDGMENT

[Judgment of the Court was Delivered By
M.VENUGOPAL, J.]

The Appellant / Management/Petitioner has focused the instant
intra court Writ Appeal as against the Order dated 25.03.2015 in
W.P.No.25896 of 2014 passed by the Learned Single Judge.

2.The Learned Single Judge while passing the Impugned Order
dated 25.03.2015 in W.P.No.25896 of 2014 filed by the
(Appellant/Management/Petitioner) in Paragraph Nos. 5 to 9 had
observed the following and consequently dismissed the Writ
Petition. Furthermore, the Learned Single Judge had permitted the
Respondents/Workers to withdraw the entire amount deposited by the

Appellant/Petitioner/Management and the Respondents/Workers were also granted liberty to claim balance amount, if any, in accordance with law.

"....5. On a perusal of the affidavit filed in support of the application in I.A.No.395 of 2009 in C.P.No.117 of 2006, it could be seen that the representative of the Management has stated that he was suffering from heart ailment and that he was taking treatment for the past several years. Therefore, he could not appear before the Court on 10.01.2007. The Management also produced the Medical Certificate issued by the Doctor in support of their contention. However, on a perusal of the Medical certificate dated 10.11.2009 produced by the petitioner Management, it could be seen that the Doctor has not stated that the representative of the Management was taking treatment during the relevant period and that he was bed-ridden and that he was not in a position to move around or appear before the Court. That apart, the Management has not examined the Doctor on its side. In fact, the Management has not examined their representative also in order to substantiate the averments stated in the affidavit filed in support of the writ petition.

6. In the absence of any acceptable reason given by the Management for condoning the inordinate delay of 1017 days, the application filed by the Management was rightly dismissed by the Labour Court.

7. In these circumstances, I do not find any error or irregularity in the order passed by the Labour Court and the writ petition is devoid of merits and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

8. It is submitted by the learned counsel for the respondents that the Management has already deposited a sum of Rs.5,00,000/- in the earlier writ proceedings and the same has been withdrawn by the workers. Thereafter, in the present writ petition, this Court had directed the Management to deposit a sum of Rs.5,00,000/- on 24.9.2014. According to the learned counsel on either side, the said amount was also deposited by the Management in due compliance of the order dated 24.9.2014. It is also brought to the notice of this Court that the petitioner Management has deposited sum of Rs.3,00,000/- even during the pendency of the application before the Labour Court.

9. Since the writ petition has been dismissed by this Court, I permit the respondents workers to withdraw the entire amount deposited by the petitioner Management and the respondents workers are also at liberty to claim the balance amount, if any, in accordance with law."

3.The Learned Senior Counsel for the Appellant/Management submits that the Impugned Order of the Learned Single Judge dated 25.03.2015 in W.P.No.25896 of 2014 is contrary to law and as such is liable to be set aside.

4. According to the Learned Senior Counsel for the Appellant, the Learned Single Judge should have seen that the Appellant/Management/Petitioner had explained the delay in filing the petition to set aside an ex parte order and the reasons assigned by the Appellant are bonafide and as such, the Appellant should have been provided with an opportunity to contest the case on own merits.

5. While advancing his arguments, it is the contention of the Learned Senior Counsel of the Appellant that the Learned Single Judge should not have dismissed the case on the ground that in the Medical Certificate produced by the Management, the Doctor had not stated that the Representative of the Management was taking treatment during the relevant period and that he was not in a position to move around or appear before the Court. Furthermore, the Appellant/Management had assigned sufficient reasons for not appearing before the Labour Court and therefore roving enquiry was not required based on the facts and circumstances of the case.

6. The plea of the Appellant is that the Learned Single Judge should have seen that the claim of the Respondents/Workers is that recovery of interest for the delayed payment of wages amounting to Rs.17,10,536.44 and out of the same, the Appellant had deposited Rs.13,00,000/- before the Labour Court, Salem and had proved its bonafide in contesting the case on merits.

7. In effect, the prime contention of the Appellant/Management is that sufficient opportunity needs to be provided to it, when substantial amount was deposited and unfortunately, this aspect of the matter was not discussed by the Learned Single Judge at the time of passing the Impugned Order.

8. Yet another strenuous plea projected on the side of the Appellant is that the Learned Single Judge should have seen that under the 'Payment of Minimum Wages Act' payment of interest is not adumbrated and as such the terms of Section 12(3) settlement under Industrial Disputes Act, 1947 dated 03.12.2003 is outside the purview of the Act and in reality the issue as regards the enforcement of such terms under Section 33(3)(2) of the Industrial Disputes Act, 1947 is to be decided by the Labour Court and further it is not a mere computation of amount, therefore, the Appellant / Management should be provided with an opportunity to put forth his views for the purpose of adjudicating the matter in issue.

9. The Learned Senior Counsel for the Appellant vehemently proceeds to submit that the Learned Single Judge should have seen that I.A.No.395 of 2009 was filed on 09.11.2009 and the Writ Petitions challenging the Revenue Recovery Proceedings were filed only during the period 2010 and therefore, it is quite clear that the participation by the Appellant/Management in the proceedings before the Hon'ble High Court was after filing of the petition to condone the delay but, the Labour Court, Salem erroneously had

concluded that the Appellant/Management was agitating before the High Court and as such had knowledge about the exparte order dated 10.01.2007. Viewed in that perspective such finding is an error apparent on the face of record and therefore, the Impugned Order of the Labour Court, Salem is necessarily to be set aside in the interest of justice.

10. Apart from the above, the real grievance of the Appellant/Management is that the Learned Single Judge should have seen that the Appellant's Representative was suffering from ailment and he was undergoing treatment which was established by Ex.P.1, Medical Certificate and therefore, the fact that he was admitted in hospital on 10.01.2007 or he was undergoing treatment need not be proved through a witness. In fact, the Learned Single Judge should not have carried away by the fact that the Appellant/Management had not examined the Doctor or its Representative.

11. Lastly, it is the stand of the Appellant/Management that the Labour Court, Salem in its Impugned Order had never held that the Appellant had knowledge about the exparte order and deliberately filed the petition to set aside the exparte order with delay.

12. Per contra, the Labour Court proceeded merely on assumption that the Appellant is dragging on the proceedings and as such, the Impugned Order is liable to be set aside.

13. At this stage, it is to be pointed out that the Presiding Officer of Labour Court, Salem in I.A.No.395 of 2009 in C.P.No.117 of 2006 filed by the Appellant/Management/Petitioner had in Paragraph No.10 among other things observed the following:

"....The Petitioner has failed to produce any supportive documents to prove the fact that he was continuously taking treatment and also he was bed ridden in hospital on 10.01.2007. The petitioner has participated in the proceeding between himself and respondent before various forum including the High Court. It shows that the petitioner was aware of the fact that the he was set exparte in C.P.117/2006 on 10.1.2007 due to his absence. Knowing fully well of the fact of the exparte order against him, he has not taken any steps to set aside the same immediately after the order. It is clear that the petitioner was highly negligent to file a petition to set aside the exparte order though he was aware of the fact. The documents on the side of the respondent could clearly indicates the attitude of the petitioner in dragging on the proceedings which cost much inconvenience and great hardship to the respondent and it cannot be compensated by way of cost...."

and ultimately opined that the Appellant had failed to assign acceptable and sufficient reason for the delay in filing the petition to set aside the exparte order passed against him on 10.01.2007 and further held that the delay would not be condoned as a matter of right etc., and dismissed the petition without costs.

14.It cannot be gainsaid that the term 'Sufficient Cause' is undoubtedly an elastic one. No doubt, an unfettered discretion is conferred on a Court of Law to do substantial justice between the parties, ofcourse based on the facts and circumstances on a particular case.

15.It cannot be forgotten that the Rights accrued to the other side cannot be so easily erased by a Court of Law in condoning the delay of 1017 days in a casual and cavalier manner.

16.In this connection, this Court more significantly points out the decision of the Hon'ble Supreme Court H.Dohil Constructions Company Private Limited V. Nahar Exports Limited and Another reported in (2015) 1 Supreme Court Cases 680 at Special Page 681 whereby and whereunder it is held as follows:-

"...It is true that the delay in filing the appeals was only 9 days and that the longer delay was only relating to the refiling of the appeal papers. But even if it is related to refiling of the appeals, the net result is that the appeals could be taken into records only when such a delay in refiling is condoned. Therefore, if the refiling had been made within the time granted by the Registry of the High Court, no fault can be found with anyone much less with the party concerned or whomsoever was entrusted with the filing of the papers into the registry. But when an enormous delay of nearly five years occurred in the matter of refiling, it definitely calls for a closer scrutiny as to what was the cause which prevented the party concerned from refiling the papers in time to enable the Registry to process the papers and ascertain whether the papers were in order for the purpose of numbering the appeals...."

17.Be that as it may, on a careful consideration of the Impugned Order passed by the Learned Single Judge in W.P.No.25896 of 2014 dated 25.03.2015, this Court is of the considered view that the Learned Single Judge had rightly opined to the effect that "...in the absence of any acceptable reason given by the Management for condoning the inordinate delay of 1017 days, the application filed by the Management was rightly dismissed by the Labour Court" and finally concurred with the view taken by the Labour Court, Salem in the Order dated 18.08.2014 in I.A.No.395 of 2009 in C.P.No.117 of 2006 and the same does not call for any interference. Resultantly the Writ Appeal fails.

In the result, Writ Appeal is dismissed leaving the parties to bear their own costs. Consequently, the Impugned Order dated 25.03.2015 in W.P.No.25896 of 2014 passed by the Learned Single Judge is affirmed by this Court for the reasons assigned in this Writ Appeal. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

True Copy

Sub Assistant Registrar

To

The Presiding officer,
Labour Court, Salem.

+1 cc to Mr.M.Sivavarthanam, Advocate, SR.29224.

+1 cc to Mr.Ramesh, Advocate, SR.29152.

Lrs (co)
krd 24/6

W.A.No.714 of 2015 and
M.P.No.1 of 2015



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