

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2016

CORAM:

THE HON'BLE MR.JUSTICE M.VENUGOPAL

CRL.M.P.NO.1413 OF 2016
IN
CRL.RC.NO.SR.5074 OF 2016

K.Ganesh ... Petitioner

Vs.

C.Arasukumar .. Respondent

Prayer: Miscellaneous Petition filed under Section 5 of Limitation Act, to condone the delay of 122 days in filing the above Criminal Revision SR.No.5074 of 2016 against the order passed by the Learned Judicial Magistrate, FTC, Alandur dated 04.07.2015 in Crl.M.P.No.1284 of 2015 in C.C.No.144 of 2014.

Prayer in Crl RC SR No.5074 of 2016: To set aside the order passed by the learned Fast Track Court (Judicial Magistrate) Alandur in Crl.M.P.No.1284/15 in C.C.No.144/2014 dated 4.7.15 and pass orders.

For Petitioner : Mr.B.Ravichandran
for Mr.N.Subramani

For Respondent : Mr.T.Easwaradhas

ORDER

The Petitioner/Accused has preferred the instant Crl.M.P.No.1413 of 2016 praying for passing of an order by this Court to condone the delay of 122 days in filing the Criminal Revision in SR.5074 of 2016.

2.According to the Petitioner/Accused, the Respondent/Complainant had filed a Petition under Section 138 of the Negotiable Instrument Act by using forged documents and further, the Respondent/Complainant had failed to explain the different signatures in Ex.P1/Pro-note etc.

3.The stand of the Petitioner/Accused is that he filed a Petition in CrI.Mp.No.1284 of 2015 on the file of the trial Court under Section 293 of the Criminal Procedure Code and also under Section 45 of the Indian Evidence Act, 1872, seeking an expert opinion. The trial Court had ultimately dismissed the CrI.M.P.No.1284 of 2015 in C.C.No.144 of 2014 on 04.07.2015 assigning reasons thereto.

4.The Learned counsel for the Petitioner/Accused submits that the Petitioner/Accused was suffering from urinary problem and also because of the family problem, he could not contact his Learned counsel and obtain a copy of the order passed in the subject matter in issue. Later, the Petitioner/Accused's learned counsel gave the certified copy of the order in question during the first week of January 2016. Immediately, the Petitioner/Accused had arranged money and handed over the case bundle to the Learned counsel at High Court, Madras. Thereafter, the counsel for the Petitioner/Accused has filed the Revision Petition before this Court on 02.02.2016 and in this regard, there had occasioned a delay of 122 days in preferring the present Criminal Revision which is neither wilful nor wanton but due to the above said reasons.

5.Per contra, it is the contention of the Learned counsel for the Respondent/Complainant that the Respondent/Complainant had filed C.C.No.144 of 2014 against the Petitioner/Accused before the Fast Track Court, Alandur on 28.04.2014 and the Petitioner/Accused appeared before the Court on 07.07.2014 and thereafter, continuously projected petitions under Section 317 of the Criminal Procedure Code before the Court and only his Learned counsel used to appear before the Court for filing petition under Section 317 of the Criminal Procedure Code.

6.The Learned counsel for the Respondent/Complainant projects an argument that in the main case in C.C.No.144 of 2014 on the file of the trial Court, the Respondent/Complainant filed the above affidavit on 07.08.2014 and the matter was posted for cross examination on the side of the Petitioner/Accused on 11.08.2014 and thereafter, adjourned to the following dates viz., 12.08.2014, 26.08.2014, 08.09.2014, 17.09.2014, 25.09.2014, 07.10.2014, 20.10.2014, 13.11.2014, 01.12.2014, 10.12.2014, 22.12.2014, 06.01.2015, 22.01.2015, 04.02.2015, 10.02.2015, 17.02.2015, 26.02.2015, 04.03.2015, 11.03.2015, 16.03.2015, 25.03.2015, 08.04.2015, 13.04.2015. Moreover, the matter was posted finally for cross examination of the Respondent/Complainant on 20.04.2015. At that time only, the Petitioner/Accused had constrained to file the CrI.M.P.No.1284 of 2015 before the trial Court (under Section 45 of the Indian Evidence Act, 1872).

7.The prime contention advanced on behalf of the Respondent/Complainant is that the Petitioner/Accused had admitted the execution of the cheque in the subject matter in issue and its dishonour and also the acknowledgment of statutory notice and failed to send a reply notice and only for adopting a dilatory tactics, the Petitioner/Accused had chosen to file the present Crl. M.P.No.1413 of 2016 before this Court. Furthermore, on 06.10.2015, the Petitioner/Accused again with mala-fide intention projected two petitions viz., one under Section 247 of the Criminal Procedure Code and another under Section 91 of the Criminal Procedure Code. The matter was adjourned to 12.10.2015, 15.10.2015, 26.10.2015, 02.11.2015 & 18.11.2015. Indeed on 18.11.2015, both the petitions/applications were dismissed and the main case was adjourned to 09.12.2015.

8.It is represented on behalf of the Respondent/Complainant that only in the aforesaid circumstances, the Petitioner has focused the Crl.M.P.No.1413 of 2016, seeking to condone the delay of 122 days in filing the revision in SR.No.5074 of 2016 on the file of this Court.

9.The core submission advanced on behalf of the Respondent/Complainant is that the delay of 122 days in preferring the present Criminal Revision Petition in SR.5074 of 2016 has not been properly explained on behalf of the Petitioner/Accused and nowhere in the affidavit, he had stated that he was suffering from urinary problem and family problem which prevented him from contacting his counsel and the said averments have not been explained properly. In fact, the urinary and family problem reasons are only invented for the purpose of filing the Crl.M.P.No.1413 of 2016 on the file of this Court, lacks bona-fide and hence, the Petition is liable to be dismissed.

10.It is to be noted that when a Court of Law deals with an Application/Petition for condonation of delay in filing a Revision Petition or an Appeal, as the case may be, ordinarily, it is to adopt a lenient and liberal approach so as to attain the cause of justice. Generally, a litigant does not file a Revision Petition belatedly, in a deliberate manner. If he files the same in a deliberate manner, he runs a serious risk. By condoning the delay, the highest thing that would happen is that a litigant would be provided with an opportunity to take part in the main arena of proceedings and there is a possibility for deciding the case on merits. Per contra, if the doors are shut at the threshold, then even a meritorious matter may be thrown out at the nascent stage.

11.At this juncture, it is not out of place for this Court to make a significant mention about the decision of the Hon'ble Supreme Court in H.Dohil Constructions Company Private Ltd., V.

Nahar Exports Ltd., and another reported in 2015 (1) SCC at page 680 and at Special page 682 whereby and whereunder it is observed and held as under:

"Courts are required to weigh the scale of balance of justice in respect of both the parties and the same principle cannot be given a go-by under the guise of liberal approach even if it pertains to refiling. The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the respondents not deserving any indulgence by the court in the matter of condonation of delay. The respondents had filed the suit for specific performance and when the trial court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the respondents were really keen to get the decree for specific performance for filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered.

Thus there is total lack of bona fides in its approach and the impugned order of the High Court in having condoned the delay in filing as well as refiling, of 9 days and 1727 days respectively, in a casual manner without giving any reason, much less acceptable reasons, cannot therefore be sustained."

12. Also in the decision of the Hon'ble Supreme Court in State of Gujarat and another V. Shree Ratnakar Enterprise in 2016 SCC Online SC 48, wherein at para 6, among other things it is observed as follows:

"... Further, the application having been rejected by the District Collector on 18.12.1999, Revision was preferred more than five years later. This Revision was rejected on the ground of delay and was taken up in challenge before the High Court again after a delay of five years. In the circumstances the

Single Judge of the High Court was right in observing that the respondent had remained indolent in pursuing its remedy and that because of delay and laches on its part, no indulgence could be shown. In our considered view, the Division Bench was not justified in reversing the judgment and order passed by the Single Judge, nor was it right in directing the Collector to allot to the respondent land for salt production from any other survey number."

13.As far as the present case is concerned, this Court is not inclined to take a lenient and liberal view because of the simple reason that the Petitioner/Accused had not satisfactorily explained to the subjective satisfaction of this Court in regard to the delay of 122 days that had occurred in the subject matter in issue. Lack of bona-fides attributable to a party praying for condonation of delay as a relevant and significant fact, as opined by this Court. As a matter of fact, the conduct, behaviour and attitude of a litigant pertaining to his inaction or negligence or some of the attendant facts to be taken into account. Moreover, if the explanation offered by a party is fanciful, then a Court of Law ought to be careful, circumspect and to adopt a vigilant attitude by not exposing the opposite party unnecessarily to face a litigation. It appears that the main case in C.C.No.144 of 2014 on the file of the trial Court is posted for cross examination of P.W.1 on 13.07.2015, 28.07.2015, 13.08.2015, 31.08.2015, 07.09.2015, 12.09.2015, 21.09.2015, 23.09.2015, 06.10.2015. Only on 06.10.2015, the Petitioner/Accused had filed two applications/petitions before the trial Court viz., one under Section 247 of the Criminal Procedure Code and another under Section 91 of the Criminal Procedure Code and ultimately, the said applications/petitions were adjourned to different dates beginning from 12.10.2015, 15.10.2015, 26.10.2015 and 02.11.2015 and finally, on 18.11.2015, they were dismissed. The main case now stands posted to 02.03.2016. At this juncture, the Learned counsel for the Respondent/Complainant brings it to the notice of this Court that the main case is posted today before the trial Court for cross examination of P.W.1.

14.In this connection, this Court very pertinently points out that a valuable right accrued to a party cannot be taken away by a Court of Law, extending its arms of Judicial Generosity (in regard to condonation of delay petition). It is true that the length and breadth of delay is immaterial and rules of limitation are not there to destroy the rights of parties. Yet this Court is of the considered view that the Petitioner/Accused in CrI.M.P.No.1413 of 2016 suffers from lack of bona-fides. Viewed in that perspective, this Court is not inclined to take a lenient and liberal approach, but dismisses

the Petition to prevent an aberration of justice and to promote the cause of justice.

15.In fine, the Criminal Miscellaneous Petition is dismissed. Consequently, Crl.RC.SR.No.5074 of 2016 stands rejected.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

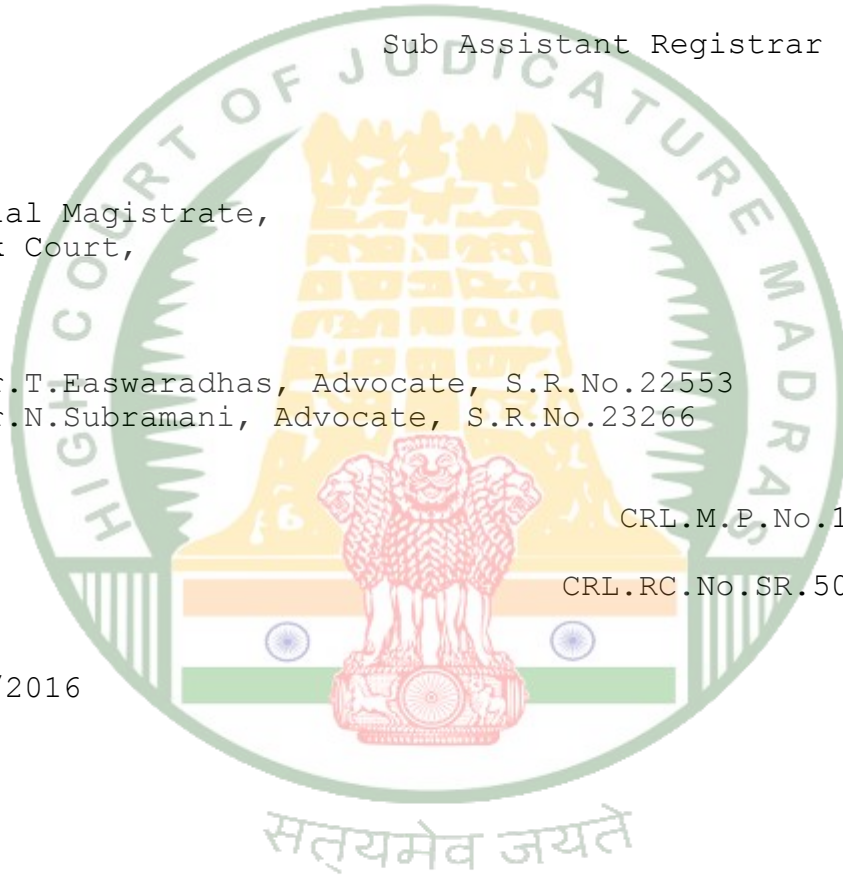
To

The Judicial Magistrate,
Fast Track Court,
Alandur.

+1cc to Mr.T.Easwaradhas, Advocate, S.R.No.22553
+1cc to Mr.N.Subramani, Advocate, S.R.No.23266

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