

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).Nos.3692 and 3693 of 2016
and C.M.P.No.18775 of 2016

1.Munisamy (since deceased)
2.Yesoda
3.Selvam
4.Dhanabaggiam
5.Panchatcharam
6.Jaisankar @ Sankar
7.Lakshmiammal
8.Babu

9.M.Gunasekaran
10.M.Vijaya
11.M.Chitra
12.M.Saravanan
13.Govindammal
14.V.Revathy
15.Bhagyarathna
16.V.Nandakumar
17.V.Jayaseelan

.. Petitioners in
both the CRPs.

(Petitioners 9 to 17 brought on record as legal representatives of the since deceased 1st petitioner vide order dated 10.08.2016 made in CMP.Nos.12740 & 12743 in CRP.NPD.SR.Nos.12698 and 12700 of 2015)

Vs.

- 1.Raniammal
- 2.Kaliammal

Krishnan (died)

- 3.K.Hamsa
- 4.M.Jaya
- 5.K.Seetha
- 6.K.Rukmani
- 7.S.Venda
- 8.K.Murugesan

.. Respondents in both
the CRPs.

Prayer:- Civil Revision Petitions are filed under Section 115 of C.P.C., against the fair and decreetal order dated 31.07.2014 made in I.A.Nos.87 and 88 of 2013 in A.S.No.Nil of 2013 on the file of the Principal District Judge, Vellore.

For Petitioners :Mr.G.Ashokpathy
for M/S.Pass Associates

For R1 : Mr.J.Anthony Jesus
For R2 to R8 : Ms.D.Chitra Maragatham

COMMON ORDER

Civil Revision Petitions are filed against the fair and decreetal order dated 31.07.2014 made in I.A.Nos.87 and 88 of 2013 in A.S.No.Nil of 2013 on the file of the Principal District Judge, Vellore.

2.The respondents 1 and 2 and the deceased Krishnan as the plaintiffs filed a suit in O.S.No.287 of 2003 for partition and separate possession of 1/5th share in the suit property. The suit was decreed on 23.08.2005 and preliminary decree was passed. There is no quarrel over the quantum of share. So the plaintiffs filed an application in I.A.No.466 of 2005 for passing of final decree, after appointment of Advocate Commissioner, final decree was passed on 21.04.2011 for allocation of property. Since the first petitioner (since deceased) is aged above 80 years, his son namely, Venkatesan alone was looking after the above matter. Later the son died and subsequently, the petitioners on enquiry, came to know about the fact of final decree passed. Aggrieved over the same, the petitioners 1 to 8 herein, who are the defendants, preferred an appeal in A.S.No.Nil of 2013. So there was a delay of 858 days. Therefore, they have come forward with the application in I.A.No.87 of 2013 under Section 5 of Limitation Act for condonation of delay of 858 days in preferring the appeal and the application in I.A.No.88 of 2013 to bring the proposed parties/respondents 4 to 9 as the legal heirs of deceased third plaintiff and as respondents 4 to 9 in the appeal.

3.The respondents/plaintiffs filed a counter. The trial Court, after considering the arguments advanced by both sides, dismissed

both the applications, against which, the present revisions are preferred.

4.Learned counsel for the petitioners would submit that the first petitioner is aged above 80 years and he was depending his son Venkatesan. Since his son died, he is unable to know whether final decree was passed and also when did it was passed. Whenever the defendants came to know about the passing of final decree, immediately, they have preferred the appeal along with the applications for condonation of delay and to bring the legal heirs of deceased third plaintiff. He would further submit that the petitioners are coolie workers and they are not educated and ignorants of the Court proceedings. But the trial Court without considering the above aspects erroneously dismissed the applications. Therefore, he prays for allowing the revisions.

5.Resisting the same, learned counsel for the respondents 2 to 8/plaintiffs would submit that in pursuant to final decree proceedings, the property was sold to third parties and now they are in possession and enjoyment of the same. Further, the petitioners have not given any sufficient cause for condonation of delay. He would further submit

that the trial Court after considering all the aspects came to the correct conclusion. Hence, he prays for dismissal of the revisions.

6.Heard both sides. There is no representation on behalf of the first respondent.

7.On perusal of the typed set of papers, it reveals that the suit has been filed by the respondents 1 and 2 and the deceased Krishnan for partition and separate possession. Preliminary decree has been passed. Admittedly, quantum of share is not disputed. Hence, the plaintiffs filed an application in I.A.No.466 of 2005 in O.S.No.287 of 2003 for passing of final decree, wherein Commissioner was appointed and he filed his report and on that basis, final decree was passed on 21.04.2011. Aggrieved over the same, the petitioners herein had preferred an appeal in A.S.No.Nil of 2013 only on 18.11.2013 with the delay of 858 days. It is the duty of the petitioners to give sufficient cause for condonation of delay.

8.According to the petitioners, first petitioner's son by name Venkatesan, who was looking after the case, on their behalf, also died. Therefore, they were ignorant about the passing of the final decree.

When they came to know about the passing of final decree, immediately they have preferred the appeal with the above said applications.

9. On perusal of the affidavit filed in support of the application under Section 5 of the Limitation Act, the petitioners have not mentioned about when did Venkatesan died and when did they know about the passing of final decree.

10. As per the dictum of the Apex Court reported in **AIR 1998 SC 3222 (N.Balakrishnan v. M.Krishnamurthy)**, it was specifically held that if the length of delay is immaterial, sufficient cause for condonation of delay has to be explained. It is appropriate to extract para-9 to 11, which read as follows:

"9. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding, much less in revisional

jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior Court would be free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammelled by the conclusion of the lower Court.

10.The reason for such a different stance is thus:The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11.Rules of limitation are not meant to destroy the right of 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. "

In the case on hand, final decree was passed on 21.04.2011. A perusal of the affidavit filed in support of the application reveals that the petitioners have not mentioned when did they know about the passing

of final decree and when did Venkatesan, who was looking after the case, died. That factum was rightly considered by the trial Court.

11. Further, in the judgment of the Apex Court reported in **2011 (4) SCC 363 (Lanka Venkateswarlu (Dead), rep. by legal heirs) Vs. State of Andhra Pradesh and others**), in para-19, 23, 28 and 29, it was held as follows:

"19. We have considered the submissions made by the learned counsel. At the outset, it needs to be stated that generally speaking, the courts in this country, including this Court, adopt a liberal approach in considering the application for condonation of delay on the ground of sufficient cause under Section 5 of the Limitation Act. This principle is well settled and has been set out succinctly in Collector, Land Acquisition v. Katiji (1987) 2 SCC 107.

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23. The concepts of liberal approach and reasonableness in exercise of the discretion by the Courts in condoning delay, have been again stated by this Court in Balwant Singh v. Jagdish Singh (2010) 8 SCC 685 as follows:- (SCC p.696, paras 25-26)

"25. We may state that even if the term

'sufficient cause' has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of 'reasonableness' as it is understood in its general connotation.

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise (sic a lis). These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly"

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28. We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as "liberal approach", "justice oriented approach", "substantial justice" can not be employed to jettison the substantial law of limitation. Especially, in cases where the Court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any lis between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms.

29. The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. Whilst considering applications for condonation of delay under Section 5 of the Limitation Act, the Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or

predilections cannot and should not form the basis of exercising discretionary powers."

It is well settled dictum of the Apex Court that for condonation of delay, the discretion has to be exercised in a systematic manner informed by reason and justice must be done to both parties. Further, the condonation of delay is only a discretion that too judicial discretion and while exercising the judicial discretion, the Court should consider the loss caused to the opposite party. As per the above decision, valuable rights of the other side also looked into. According to the respondents, after passing of final decree, they formed a lay out and sold the same to the third parties. The trial Court, in para-9 of its order, rightly considered the above aspect.

12.Considering the aforestated circumstances of the case, it is clear that the petitioners with a malafide intention to prevent the decree holder to enjoy the fruits of the decree, have come forward with the petition for condonation of delay. Therefore, applying the dictum laid down in Balakrishnan and Lanka Venkateshwarlu cases, I am of the view that the delay of 858 days has not been properly explained and hence, I am not inclined to condone the delay. So I do not find any illegality or irregularity in the fair and decreetal order

passed by the trial Court and therefore, they are hereby confirmed.
Consequently, the Civil Revision Petitions are dismissed.

13.In the result, the Civil Revision Petitions shall stand dismissed by confirming the fair and decreetal order passed by the trial Court in I.A.Nos.87 and 88 of 2013 in A.S.SR.No. of 2013. No costs. Consequently, connected Miscellaneous Petition is closed.

21.12.2016

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Index:Yes/No

To

The Principal District Judge, Vellore.

R.MALA,J.

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