

N THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.02.2016

CORAM:

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

C.R.P.(PD)No.2024 of 2013

S.S.Mathalaimuthu ... Petitioner

Vs.

A.Mathalaimuthu ... Respondent

Prayer: Petition filed under Article 227 of the Constitution of India against the Fair and Decretal order of the learned District Munsif of Palacode, dated 27.01.2011 in I.A.No.1272 of 2010 in Unnumbered suit.

For Petitioner : Mr.V.Nicholas
For Respondent : Mr.M.Guruprasad

ORDER

The Revision Petitioner/Plaintiff has filed the present Civil Revision Petition before this Court as against the order dated 27.01.2011 in I.A.No.1272 of 2010 (Unnumbered suit) passed by the Learned District Munsif, Palacode.

2.The Learned District Munsif, Palacode, while passing the impugned order, in I.A.No.1272 of 2010, on 27.01.2011, at paragraph 8, had observed the following:

"8.As per the above said provision the Plaintiff is liable to be rejected as the deficit court fees is not paid within the stipulated time. The Petitioner has filed this application to condone the delay of 883 days in representing the suit papers. The petitioner has contended that he had shifted his office and that the suit papers mingled with other suit bundles and thus he could not trace out the same and represent the Plaintiff in time. The petitioner has not given any sufficient reason for a delay of 883 days in representing the Plaintiff. No prudent man who has lended a higher amount would have kept quite for a delay of nearly 2 ½ years. Admittedly, in the present case the suit filed within the limitation period there was deficiency in the court fee payable by the Plaintiff. Further, when the suit papers were represented by the Plaintiff, the suit was barred by limitation and in such circumstances, the Plaintiff ought to have taken an application under Section 149 CPC to condone the delay in paying the deficit court fees. The Petitioner has not filed any application under Section 149 CPC for extension of time for payment of deficit court fees within the stipulated time nor has the Petitioner paid the deficit court fees within the stipulated time given by the court. There is no merit in the application."

and consequently, dismissed the petition.

3.According to the Learned Counsel for the Revision Petitioner/
Petitioner/Plaintiff, the trial Court had failed to appreciate that the

Petitioner/Plaintiff had assigned sufficient reasons for not representing the Plaintiff and as such, the delay in representing the Plaintiff ought to be condoned. As a matter of fact, it is represented on behalf of the Petitioner/Plaintiff, the suit ought to have been numbered and decided on merits.

4.The Learned Counsel for the Petitioner/Plaintiff contends that the Petitioner/Plaintiff had filed a suit in time and as such, it could not be stated that the suit was barred by Limitation when the Plaintiff was represented.

5.The other plea taken on behalf of the Petitioner/Plaintiff is that the trial Court should have allowed the I.A.1272 of 2010 to condone the delay in representing the Plaintiff and should have provided an opportunity to proceed with the suit and to decide the matter on merits.

6.Lastly, it is the stand of the Petitioner/Plaintiff that the trial Court had failed to exercise the jurisdiction vested on it when it declined to condone the delay in representing the Plaintiff.

7.At this stage, this Court relevantly points out that a cursory perusal of the affidavit in I.A.No.1272 of 2010 in unnumbered suit on

the file of the trial Court (filed by the Revision Petitioner/Plaintiff) shows that the Petitioner/Plaintiff's Advocate had sworn to the affidavit, whereby and whereunder, he had stated that the Plaint was returned for certain defects on 04.06.2008 and further that the Plaint should have been represented before 09.06.2008. However, owing to shifting of his Advocate's Office and since the case bundle had got mixed up along with the disposed of bundles, the Plaint was not represented in time and further, now only the Plaint was found out after search. There was no reason to procrastinate the time in not conducting the case. Also that, at the time of filing of the suit, adequate Court Fee was enclosed (paid). Since the Revision Petitioner/Plaintiff has opportunity of obtaining a success, if the case was taken on file, the delay of 883 days in presenting (representing) the Plaint and has to be condoned, otherwise much hardships and loss would be caused to him.

8.It is to be noted that the Revision Petitioner/Plaintiff had filed I.A.No.1272 of 2010 before the trial Court under Section 148 C.P.C. Before the trial Court, the Respondent/Defendant had filed a detailed counter to I.A.No.1272 of 2010, whereby and whereunder, he had, among other things, stated that the Petitioner/Plaintiff's Advocate is

running an Office at S.T.N. Complex for the past 5 years and that the Petitioner's Advocate in the year 2008 had not shifted his Office and since the Petitioner, who has filed the present petition, had filed the present suit and had not taken steps by meeting his Advocate for the past 2 ½ years to know about the nature of the case, for which, necessary reasons have not been assigned. Further, I.A.No.1272 of 2010 filed by the Petitioner/Plaintiff is not maintainable. Added further, the reason for each and every day's delay was not explained and also for the delay, proper reasons were not assigned by the Petitioner/Plaintiff.

9.It is not in dispute that originally, the Petitioner/Plaintiff was given 15 days time on 04.06.2008 to pay the deficit Court Fee and however, that opportunity was not availed of by the Petitioner/Plaintiff. But the Petitioner/Plaintiff's counsel has filed I.A.No.1272 of 2010 and averred reasons like, he had shifted his Office and as such, the present case bundle got mixed up with other disposed of bundles and now only after search, it was found out etc.

10.The reasons assigned on behalf of the Revision Petitioner/

Plaintiff were denied by the Respondent/Defendant and according to the Respondent/Defendant, the Petitioner/Plaintiff's counsel had not shifted his office during the year 2008 and further, the Petitioner/Plaintiff had not filed the Petition under the Limitation Act, had filed the same under the Civil Procedure Code, which is not maintainable.

11.It is to be noted that when a Court of Law deals with a petition for condonation of delay, ordinarily, it is to adopt a lenient and liberal approach (avoiding a pedantic approach) overriding technicalities or hyper technicalities. Moreover, a litigant does not stand to gain when he files the petition belatedly. However, if he files any application to condone the delay in a given case, in a deliberate and negligent manner, then, he runs a serious risk. If by adopting a lenient and liberal view, if the petition for condonation of delay is allowed by a Court of Law, the maximum thing that would happen is an opportunity is provided to the concerned party to enter into the main arena of proceedings and there is a possibility of his case/cause being decided on merits.

12.Ordinarily, 'delay in representation' is a matter between the Applicant and the concerned Court. It is also true that there is a

distinction between 'a petition to condone delay' in proper presentation in terms of Section 5 of the Limitation Act, 1963 and 'petition to condone delay' in representing the papers in time. In fact, the length and breadth of delay is not a factor. However, a Court of Law is primarily concerned with the 'acceptability of the explanation' for the delay.

13.As far as the present case is concerned, this Court is not in a position to take a lenient and liberal view in the subject matter in issue because of the simple reason that the reasons assigned by the Petitioner/Plaintiff's counsel in I.A.No.1272 of 2010 to the effect that his Office was shifted and that the bundle got mixed up in his Office with other disposed of bundles etc. were seriously denied by the other side. In fact, the Respondent/Defendant had taken a categorical stand that the Petitioner's Advocate (who had sworn to in I.A.No.1272 of 2010), during the year 2008 had not shifted his Office and that has not been repudiated. In short, the reasons ascribed for the delay by the Petitioner, in the affidavit in I.A.No.1272 of 2010, have not been satisfactorily explained to the subjective satisfaction of this Court as 'Sufficient Cause'. It is to be remembered that the delay in the present case cannot be excused as a matter of Judicial Generosity. Indeed, the

discretion of the Court is to be exercised with utmost care and caution. To put it succinctly, the delay of 883 days in presenting/ representing the Plaint is a huge/enormous one, as opined by this Court. As a sequel, the reasons ascribed by the trial Court in para 8 of the impugned order in I.A. to the effect that '... The Petitioner has not given any sufficient reason for the delay of 883 days in representing the Plaint. No prudent man who has lended a higher amount would have kept quite for a delay of nearly 2 ½ years etc.' are proper and valid. Viewed in that perspective, the Civil Revision Petition fails.

14. In the result, the Civil Revision Petition is dismissed, leaving the parties to bear their own costs.

04.02.2016

Index : Yes / No

Internet : Yes / No

sgl

To

The District Munsif,
Palacode.

M.VENUGOPAL,J.

Sgl

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