



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Monday, the Twenty Ninth day of February Two Thousand Sixteen

PRESENT

The Hon`ble Mr Justice R.MAHADEVAN

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CMP(MD) No.1641 of 2016
IN
SA(MD) No.SR5600 of 2015

1 MUTHUKAALAI,
2 THAVASIYANANTHAM,
3 DHANALAKSHMI,
4 MARIMUTHU,
5 SUBRAMANIAM,

... PETITIONERS/APPELLANTS

Vs

1 PACKIALAKSHMI AMMAL
2 GNANASEKARAN
3 PARVATHI
4 VALLIMAYIL
5 THILLAISIVAGAMI,
6 RAMASAMY
7 UMayALPARVATHI,
8 PARVATHI,

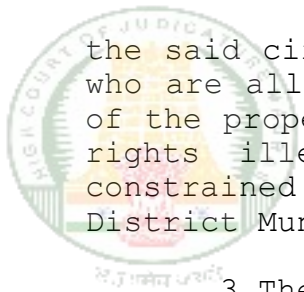
... RESPONDENTS/RESPONDENTS

Application filed under section 5 of Limitation Act, praying this court to condone the delay of 3963 days in filing the above SA(MD) SR.No.5600 f 2015 before this Honourable Court.

ORDER : This Application coming on for hearing upon perusing the Application and the affidavit filed in support thereof and upon hearing the arguments of M/S. K.K.KANNAN, Advocate for the petitioner and the respondents not appearing in person or by an Advocate, the court made the following order:-

This Miscellaneous Petition has been filed to condone the delay of 3963 days in filing S.A.(MD)SR.No.5600 of 2015.

2.It is stated in the affidavit filed in support of this petition that the suit property belongs to one Veerasangili Moopanar and he purchased the property on 25.12.1923 through a registered sale deed. He had two sons by names Ilayaperumal and Seeni @ Veeraiah. After the death of Veerasangili Moopanar, the suit property devolved around his two sons. Thereafter, both have constructed their houses in the above said property with their own income. The said Seeni @ Veeraiah was unmarried and the other son Ilayaperumal died leaving behind his son, who is the first appellant herein. After the death of the said Ilayaperumal, his brother Seeni @ Veeraiah was managing the properties. Thereafter, the said Seeni @ Veeraiah executed a lease deed on 05.09.1973 in favour of the first respondent / first defendant, and from that date the first respondent has been in possession of the said property. The said Seeni @ Veeraiah thereafter left for Andhra Pradesh for his job purposes and he did not return for the last 15 years. Hence there was a presumption that he is no more. In



the said circumstances, the first petitioner herein and other petitioners who are all legal heirs of Ilayaperumal, have become the absolute owners of the property. However, the defendants / respondents are claiming their rights illegally over the property and hence the petitioners were constrained to file a suit in O.S.No.21 of 1995 before the learned District Munsif Court, Aruppukottai.

3.The above suit filed by the petitioners were dismissed and the appeal preferred in A.S.No.58 of 2002 before the Subordinate Judge, Aruppukottai against the order passed in the suit, was also dismissed. Aggrieved by the same, the present second appeal has been preferred.

4.It is stated that even though the above second appeal ought to have been filed immediately after the order passed in the Appeal Suit, due to the pendency of the review petition, the same could not be filed earlier. Further, the first petitioner was suddenly bed ridden due to severe chest pain and was undergoing treatment and hence, the first petitioner was not able to contact the other petitioners in time.

5.The learned counsel for the petitioners proceeded with the arguments in line with the statements made in the affidavit filed in support of this petition, and submitted that since sufficient cause has been adduced, the delay in filing the second appeal may be condoned.

6.In support of his submissions, the learned counsel for the petitioners placed reliance upon the decision of the Hon'ble Supreme Court in **Collector, Land Acquisition, Anantnag v. Katiji** reported in **AIR 1987 SUPREME COURT 1353** and it is relevant to extract paragraph 3 as follows:

"3. The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice – that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause



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of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

7. After perusal of the averments made in the affidavit filed in support of this petition and upon hearing the submissions of the learned counsel for the petitioners, this Court is of the view that enormous delay of 3963 days in filing the second appeal has not at all been explained.

8. The Hon'ble Supreme Court in **R.B.Ramlingam v. R.B.Bhuvaneshwari** reported in **2009(2) SCALE 108**, has considered the delay of 568 days in filing the Special Leave Petition and observed as follows:

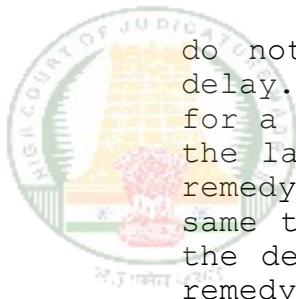
"3. ... Reading the said judgment, it also becomes clear that filing of Review Petition is no impediment to the filing of the special leave petition. Large number of judgments were cited before us by learned counsel. It is not necessary at this stage to discuss each and every judgment cited before us for the simple reason that Section 5 of the Limitation Act, 1963 does not lay down any standard or objective test. The test of "sufficient cause" is purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike. The statute of Limitation has left the concept of "sufficient cause" delightfully undefined, thereby leaving to the Court a well-intentioned discretion to decide the individual cases whether circumstances exist establishing sufficient cause. There are no categories of sufficient cause. The categories of sufficient cause are never exhausted. Each case spells out a unique experience to be dealt with by the Court as such.

4. For the aforesaid reasons, we hold that in each and every case the Court has to examine whether delay in filing the special leave petition stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition."

9. In **Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation** reported in **(2010) 5 Supreme Court Cases 459**, the Hon'ble Supreme Court considered the inordinate delay on the part of the State Corporation in filing the appeal and observed as follows:

"14. We have considered the respective submissions.

The law of limitation is founded 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 prescribes 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.

15. The expression "sufficient cause" employed in Section 5 of the Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which subserves the ends of justice. Although, no hard-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—Collector (L.A.) v. Katiji [(1987) 2 SCC 107 : AIR 1987 SC 1353], N. Balakrishnan v. M. Krishnamurthy [(1998) 7 SCC 123 : JT (1998) 6 SC 242] and Vedabai v. Shantaram Baburao Patil [(2001) 9 SCC 106]."

10. Though the expression "sufficient cause" should receive a liberal consideration, the above said reasons stated by the petitioners cannot hold to be sufficient cause.

11. Since the delay is enormous, strict approach is required and in the considered opinion of this Court, no proper and sufficient reasons have been adduced for condonation of delay of 3963 days in filing the second appeal. In the absence of proper and sufficient reasons, such an enormous delay cannot be condoned.

12. In the result, this Miscellaneous Petition in C.M.P(MD)No.1641 of 2016 is dismissed. Consequently, the second appeal in S.A.(MD) SR.No.5600 of 2015 is rejected.

Sd/-

Assistant Registrar(Co.Dept.)

/True copy/

Sub Assistant Registrar

TO

1. The Subordinate Judge, Aruppukottai

2. The District Munsif, Aruppukottai

+1cc to Mr.K.K.Kannan, Advocate SR.No.11895

Date : 29/02/2016

ORDER

CMP(MD) No.1641 of 2016

IN

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Dismissing the petition etc., as stated within.



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