



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

Thursday, the Seventeenth day of March Two Thousand Sixteen

PRESENT

The Hon`ble Mr.Justice S.MANIKUMAR
and
The Hon`ble Mr.Justice C.T.SELVAM

CMP(MD) No.2520 of 2016
IN
WA(MD) No.SR8070 of 2016

RAJ KATHIRVEL

... PETITIONER

Vs

1 G.R.SWAMINATHAN,
2 THE BAR COUNCIL OF TAMILNADU
REP BY ITS SECRETARY, BAR COUNCIL OFFICE,
HIGH COURT CAMPUS, MADURAI 600 104 ... RESPONDENTS

Civil Miscellaneous Petition filed under Section 5 of Limitation Act praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to condone the delay of 1510 days in filing the Writ Appeal sought to be preferred against the order dated 02.12.2011 passed in W.P.(MD) No.12892 of 2011.

Prayer in WA(MD)SR.No.8070/2016:-

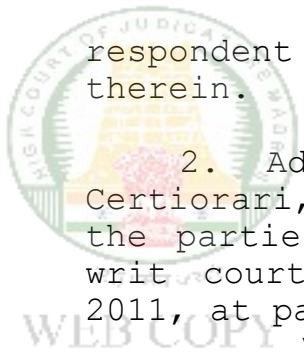
Appeal sought to be preferred under Clause 15 of Letters Patent as against the Order dated 2/12/2011 in WP(MD)No.12892/11.

Prayer in WP(MD)No.12892/2011:-

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records made in Profession Conduct Complaint No.105/2011 dated 30/9/2011 issued by the 1st respondent and to quash the same.

ORDER : This Petition coming on for hearing on this day, upon perusing the petition and the affidavit filed in support thereof on the file of the High Court and upon hearing the arguments of Mr.RAJ KATHIRVEL, Petitioner-in-Person, the Court made the following order:-

Material on record discloses that when the respondent No.1 herein challenged the complaint No.105 of 2011, dated 30.09.2011 in W.P.(MD)No.12892 of 2011, the appellant has been arrayed as



respondent No.2. Bar Council of Tamil Nadu was the respondent No.1 therein.

2. Adverting to the prayer for issuance of a writ of Certiorari, to quash the complaint No.105 of 2011 and upon hearing the parties therein, in particular, appellant/party-in-person, the writ court, vide order dated 02.12.2011, in W.P.(MD)No.12892 of 2011, at paragraph Nos.7 to 10, has passed the following orders:-

"7.A perusal of the complaint filed by the second respondent before the Bar Council and the counter affidavit filed by him before this Court would go to show that the allegations made by him, even if true, do not constitute a professional misconduct. The fact that the petitioner filed Crl.O.P.No.9043 of 2010 is not in dispute. The fact that it is getting adjourned from time to time, by itself, cannot be treated as a professional misconduct on the part of the petitioner. The information regarding the status of any petition, is easily accessible today for anyone. Therefore, I do not think that the first respondent was justified in taking such a shallow complaint on file and initiating an enquiry. Therefore, the whole proceedings are liable to be quashed.

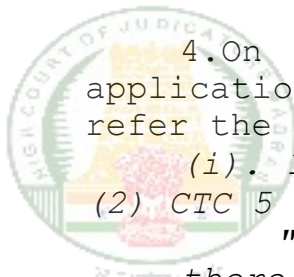
8.However, the learned counsel for the first respondent submitted that it is always open to the petitioner to reply to the notice and state his defence in the enquiry. In other words, it is the contention of the learned counsel for the first respondent that there is no harm in the petitioner facing the enquiry.

9.But a complaint which is very shallow, cannot be allowed to be proceeded with, on the ground that no prejudice will be caused to a person by merely asking him to participate in an enquiry. No person can be subjected to the ordeal or a trial or enquiry without any justification.

10.Therefore, the writ petition is allowed and the impugned proceedings are set aside. It is admitted by the second respondent that the petitioner has handed over the case papers to him. This fact is recorded. There will be no order as to cost. Consequently, connected Miscellaneous Petition is closed."

Resultantly, the writ court has quashed the complaint No.105 of 2011, dated 30.09.2011.

3.Being aggrieved by the same, party-in-person has now filed this appeal with a delay of 1510 days. Supporting affidavit in C.M.P.(MD)No.2520 of 2016 in W.A.SR.No.8070 of 2016 only speaks about the various legal proceedings pending between the spouses viz., the appellant and his wife. Averments also relate to complaints said to have been made to various authorities. There is no plausible reason to condone the inordinate delay. Lack of bona fides is per se apparent.



4. On the aspect, as to how the Court has to consider the applications filed for condonation of delay, this Court deems fit to refer the following decisions;-

(i). In **N. Balakrishnan versus M. Krishnamurthy**, reported in 1998 (2) CTC 533, this Court held as follows:

"14. It must be remembered that in every case of delay there can be some lapse 'on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is put-forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation "

(ii). In the Hon'ble Division Bench Judgment of our High Court, in **C. Subramaniam versus Tamil Nadu Housing Board rep. by its Chairman And Managing Director**, reported 2000 (3) CTC 727 = 2000 3 L.W. 938, the position has been stated, as hereunder.

31. To turn up the legal position, (1) the word "sufficient cause" should receive liberal construction to do substantial justice; (2) what is "sufficient cause" is a question of fact in a given circumstances of the case; (3) it is axiomatic that condonation of delay is discretion of the Court; (4) length of delay is no matter, but acceptability of the explanation is the only criterion' (5) 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 in such finding unless the discretion was exercised on wholly untenable or perverse; (6) The rules of limitation are not meant to destroy the rights of the parties but they are meant to see that the parties do not resort to dilatory tactics to seek their remedy promptly; (7) Unless a party shows that he/she is put to manifest injustice or hardship, the discretion exercised by the lower Court is not liable to be revised; (8) If the explanation does not smack of mala fides or it is put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor; (9). If the delay was occasioned by party deliberately to gain time, then the court should lean against acceptance of the explanation and while condoning the delay, the Court should not forget the opposite party altogether.

(iii). In **M.K. Prasad versus P. Arumugam**, reported in 2001 (6) SCC 176, it has been held as under in para 9.

9. Again in *State of W.B. v. Administrator, Howrah Municipality and G. Ramegowda Major v. Special Land Acquisition Officer* this Court observed that the



WEB COPY

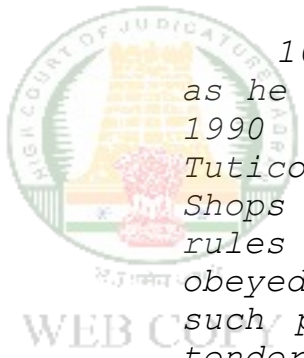
expression "sufficient cause" in Section 5 of the Limitation Act must receive a liberal construction so as to advance substantial justice and generally delays be condoned in the interest of justice where gross negligence or deliberate inaction or lack of bona fides is not imputable to the party seeking condonation of delay. Law of limitation has been enacted to serve the interests of justice and not to defeat it. Again in *N. Balakrishnan v. M. Krishnamurthy* this Court held that acceptability of explanation for the delay is the sole criterion and length of delay is not relevant, in the absence of anything showing mala fide or deliberate delay as a dilatory tactic, the court should normally condone the delay....

(iv). In **Ram Nath Sao @ Ram Sahu & Others versus Gobardhan Sap & Others**, reported in 2002(3) SCC 195 = 2002-3-L.W.417, the position has been succinctly set out in para 12 which reads as under:

12. ...Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine-like manner....

(v). In *Sundar Gnanavolivu's* case, after considering a catena of decisions, the Hon'ble Division Bench, at paragraph Nos.15 and 16, held as follows:

"15. On a conspectus reading of the above principles set out in the various judgments, it is well settled that a liberal approach should be extended while considering the application for condonation of delay. Sufficient caution has been exhibited to note that wherever there is lack of bona fides or attempt to hood-wink the Court by the party concerned who has come forward with an application for condonation of delay, in such cases, no indulgence should be shown by condoning the delay applied for. It is also clear to the effect that it is not the number of days of delay that matters, but the attitude of the party which caused the delay. In other words when the Court finds that the party who failed to approach the Court within the time stipulated comes forward with an explanation for condoning the delay, the Court if satisfied that the delay occasioned not due to the deliberate conduct of the party, but due to any other reason, then by sufficiently compensating the prejudice caused to the other side monetarily, the condonation of delay can be favourably ordered.

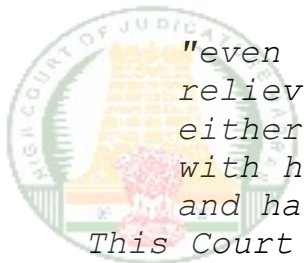


16. As held by His Lordship Mr. Justice M. Srinivasan, as he then was, in the Division Bench Judgment reported in 1990 (1) LLN 457 (Tamil Nadu Mercantile Bank Ltd. Tuticorin versus Appellate Authority Under The Tamil Nadu Shops And Establishments Act, Madurai And Another), the rules prescribing the period of limitation have to be obeyed by the concerned party and in order to get over such period prescribed, sufficient explanation should be tendered. His Lordship was pleased to hold that question of limitation is not merely a technical consideration but based on principles of sound public policy as well as equity and that a litigant cannot be expected to have a Damocles' sword hanging over his head indefinitely for a period to be determined at the whims and fancies of the opponent.

(vi). In **Kaliammal and Others Vs. Sundharammal and another**, reported in **2006 (5) CTC 822**, a learned Single Judge, of this Court, on the facts and circumstances of the case, held that the interest of justice warrants that, there must be finality to the litigation and in absence of such finality, rights accrued to the opposite party would be unsettled by uncertainties of litigation.

(vii). In **Union Bank of India, Oppanakara Street, Coimbatore - 641 001 Vs. K.R.Jewellers and Others**, reported in **2008 (5) CTC 651**, whereas a Hon'ble Division Bench of this Court held that mere allegation of negligence against a counsel is not a ground to condone the delay, because, the party has equal responsibility to follow up the matter. In the above reported case, there was a delay of 1287 days, in filing the appeal, before the Debts Recovery Tribunal and that the appellate Tribunal, has condoned the delay. Upon consideration of the facts and circumstances, this Court has set aside the order of condonation, by agreeing to the contentions of the respondent therein that mere allegations of negligence against the counsel cannot be a sufficient reason to condone the delay.

(viii). In **C.Raghupathy Vs. C.Govindan and Others**, reported in **2009 (1) CTC 319**, there was a delay of 942 days, in setting aside an exparte decree. After contest, the application for condonation was dismissed. The reason assigned, by the revision petitioner therein was that his counsel, did not fulfill his obligations properly and hence, there was a delay. Rebutting the same, the respondents therein, have submitted that there was lack of bonafide and when the question of limitation was based on principles of public policy, the victorious litigant should not be expected to remain disgruntled, indefinitely for the period to be determined, at the whims and fancies of opponent. Objection blaming the counsel for the delay has also been resisted on the ground, that it is for the party to keep in contact with him and failure to do so, amounts to negligence. After considering the rival submissions, this Court has accepted the contentions of the respondents therein, and held that



"even by engaging a counsel, party to the case is not relieved of his duties and obligations. Where a party either does not fully brief the counsel or keep no contact with him, it is the party who is in default and negligence and has to bear the consequences."

This Court has also observed that

"when there is total lack of bonafides on the part of the petitioner, while coming forward with the application, I am of the view that this case does not deserve liberal approach formula in matters relating to condonation of delay. Therefore, the reason adduced by the petitioner that there was a communication gap between him and his previous counsel on record for seeking condonation of extraordinary delay of 942 days in filing an application to set aside the exparte decree has to be dismissed."

(ix). In **Shanmugam Vs. Chokkalingam**, reported in **2009 (5) CTC 48**, this Court was called upon to test the correctness of the order dismissing the application, seeking condonation of the delay in filing an application, to set aside the exparte decree. The reason assigned in the supporting affidavit was that, he could not avail leave from employment and hence could not appear before the Court. He did not know about the passing of the exparte decree. Only when he met his counsel, he came to know about the decree. After considering a catena of decision, on the aspect as to how and in what circumstances, delay could be condoned or not and on the facts and circumstances, this Court held that there was no illegality in dismissing the application filed for condonation of 332 days in seeking to set aside the exparte decree. It is worthwhile to reproduce the decision relied on in Shanmugam's case:

"9. Before going into the merits of the case, it has become absolutely necessary for this Court to refer the Judgment of the Honourable Apex Court reported in MANU/SC/0573/1998 : 1998(7) SCC 123 in between N. Balakrishnan v. M. Krishnamurthy, which reads as under:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The 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. Rules of limitation are not meant to destroy the rights 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. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not



meant to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

Condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. 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 a want of acceptable explanation whereas in certain other case, delay of a very long range can be condoned as the explanation thereof is satisfactory. In every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. The words 'sufficient cause' under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice.

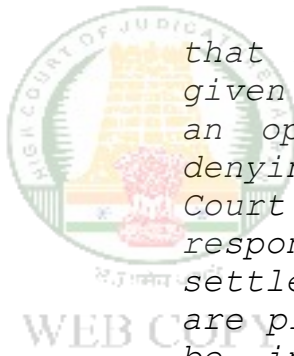
10. Similarly, the judgment of this Court reported in 2002(3) CTC 13 in between Sankaralingam and Anr. v. V. Rahuraman would also enlighten this Court regarding the points to be pondered in a case of condonation of delay. The relevant portion would run as under:

This Court is inclined to point out the following facts and circumstances which would speak volume against the petitioners (i.e.)

- (a) Negligence and inaction, that too wilful, has to be inferred from the facts and circumstances,
- (b) Vagueness of the affidavit and contradiction between the affidavit and deposition before Court,
- (c) Failure to place any materials before Court to substantiate the case, and
- (d) Absence of arguable points and law in the defence.

11. In another judgment of this Court reported MANU/TN/0695/2005 : 2005(3) MLJ 439 between Yanaimal Thottam Trust v. B. Lakshmanan and Anr. it has been held as follows:

The power to be exercised under Section 5 of the Limitation Act is a discretionary exercise that is if the trial Court is satisfied that there is sufficient cause



that is enough to condone the delay. That was the reason given by the courts below that the party should be given an opportunity to meet the case on merits instead of denying the valuable right on technicalities. The trial Court has exercised the jurisdiction in favour of the respondent to meet the case on merits. It is very well settled that when technicalities and substantial justice are pitted against each other, law and Courts would always be in favour of the substantial justice rather than technicalities.

In yet another judgment of our Honourable Apex Court reported in MANU/SC/0534/1971 : AIR 1972 SC 749 in between State of West Bengal v. Administrator, Howrah Municipality, it has been categorically laid down as follows:

From the above observations it is clear that the words 'sufficient cause' should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bonafide is imputable to a party.

The other judgment of this Court made in MANU/TN/0705/2005 : 2005(3) MLJ 425 between Periasamy and Ors. v. Allimuthu and Ors. would go to show as follows:

Of course, it may be stated that the third respondent ought to have been more careful in filing the application. The omission to adopt such care need not be used as a ground in refusing to condone the delay. In every pending case, while impleading the legal representatives, in one way or other, there occurs some lapse on the part of the litigant concerned in filing the application to implead the legal representatives. But that alone is not enough to turn down the plea to implead the legal representatives. When there is no inordinate delay, opportunity is to be afforded to bring on record the legal representatives.

12. Similarly the judgment of this Court made in 2004 (3) MLJ 36 between Rathinathammal v. Muthusamy and Ors. would run as follows:

Admittedly, the 11th defendant received notice in execution proceedings on 26.11.1996, but she filed the petition I.A. No. 259 of 1998 to condone the delay of 545 days in filing the petition to set aside the exparte decree only on 8.6.1998 stating that she was under the impression that her counsel could have taken steps to set aside the exparte decree which is unbelievable as pointed out by the trial Court that she had to wait for about two years after entrusting the matter to the counsel. Therefore, considering all these facts, the trial Court has rightly dismissed the petition that no sufficient reason was shown by the 11th defendant to condone the delay of 545 days in filling the petition to set aside the exparte decree.



WEB COPY

13. On a careful understanding of the aforesaid judgments of our Honourable Apex Court and this Court, I could see that the sufficient cause as explained in Section 5 of the Limitation Act should receive a liberal construction so as to advance a substantial justice when no negligence or inaction or want of bonafide is imputable to a party claiming condonation."

(x). In **Anthonymsamy Vs. Loordhusamy**, reported in **2012 (1) TNCJ 914 (Mad)**, there was a delay of 1486 days. The application for condonation was dismissed. The reason assigned was that the appeal was filed in time, but the papers were mistakenly handed over by the counsel to another client. On the facts and circumstances of the case, the Court below having taken note of the fact that the revision petitioner has participated in the final decree and also in the eviction petition, cannot plead ignorance of legal proceedings and accordingly, upheld the order of dismissal.

5. In the decision of the Hon'ble Apex Court in **Esha Bhattacharjee v. Raghunathpur Nafar Academy**, reported in **(2013) 12 SCC 649**, principles applicable to an application for condonation of delay have been set out, which are as follows:-

21. From the aforesaid authorities the principles that can broadly be culled out are:

i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.



viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

WEB COPY

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

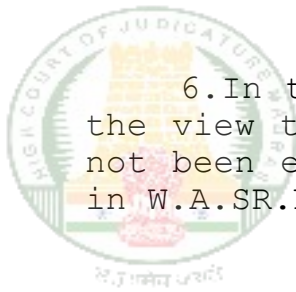
xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

xiv) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

xv) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

xvi) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

xvii) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters."



6. In the light of the above discussion and decisions, we are of the view that the delay of 1510 days in filing the writ appeal has not been explained satisfactorily. Hence, C.M.P. (MD) No. 2520 of 2016 in W.A. SR. No. 8070 of 2016 is dismissed.

WEB COPY

/ TRUE COPY /

Sd/-

Assistant Registrar (RTI)

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

THE SECRETARY,
THE BAR COUNCIL OF TAMILNADU
BAR COUNCIL OFFICE,
HIGH COURT CAMPUS, MADURAI 600104.

RL/2C/11P/GSV/PM/SARI/13/4/2016

ORDER Date : 17/03/2016
ORDER
CMP (MD) No. 2520 of 2016
IN
WA (MD) No. SR 8070 of 2016