



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

Thursday, the Eighteenth day of August Two Thousand Sixteen

PRESENT

The Hon`ble Ms.Justice R.MALA

CMP(MD) No.6977 of 2016

IN

SA(MD) No.SR37239 of 2012

CHINNAN

... PETITIONER

Vs

1 CHANDRAKANTHAN,
2 PALCHAMY,
3 BALAKRISHNAN,

... RESPONDENTS

Prayer in CMP.(MD).NO.6977/2016:

Civil Miscellaneous Petition filed under order IV Rule 9(4) of A.S.Rules, praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to Condone the delay of 1362 days caused in representation of the above appeal S.A.S.R.N.37239/2012.

PRAYER IN S.A.S.R.N.37239/2012: Second appeal sought to be filed under section 100 of CPC against the Judgment and decree of the Sub Judge, Aruppukottai in A.S.No.15/2011 dated:28/3/2012 confirming the Judgment and decree of the District Munsif, Aruppukottai in O.S.No.310/2004 dated:9/9/2011.

ORDER : This Civil Miscellaneous petition coming on for orders 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 M/S. V.RAGHAVACHARI, Advocate for the petitioner and respondents not appearing either through counsel or by in person, this court has order as follows:-

The plaintiff, who lost the legal battle before both the Courts below, has come forward with this second appeal with a petition to condone the delay of 1362 days in representing the appeal.

2.The learned counsel for the petitioner would submit that even though the appeal has been preferred within the time stipulated, that has been returned to rectify some defects and that has not been represented within the time stipulated. Therefore, the petitioner has come forward with this application.

3.Notice has been ordered to the respondents. Even though <https://hcservices.ecourts.gov.in/hcservices/> notice has been served no one appeared on behalf of the respondents and their names have been printed in the cause list.



4. Heard the learned counsel for the petitioner and perused the materials available on record.

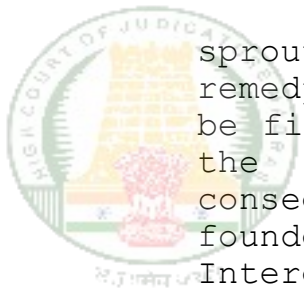
5. The learned counsel for the petitioner would submit that due to the old age of the petitioner, he was unable to represent the documents before the Court and hence, the delay has been occurred and he prayed for allowing of the application.

6. Considering the submission made by the learned counsel for the petitioner and also perusal of the typed set of papers would show that the reason assigned by the petitioner is only due to the old age of the petitioner. Perusal of the affidavit filed by the petitioner, it is mentioned that the age of the petitioner is 62 years. I am of the view that 62 years is not an old age and hence, the reason assigned by the petitioner to condone the delay is not acceptable.

7. It is well settled dictum of Apex Court in the case in **N. Balakrishnan Vs. M. Krishnamurthy** reported in **(1998) 7 Supreme Court Cases 123**, that the length of delay is immaterial, provided, the parties must have given a cause for condonation of the delay. Paras 9 and 11 are extracted herein:

"9. It is axiomatic that 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 uncontainable 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 regional 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.

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. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would



sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae ut sit finis litum (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort 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."

8. Furthermore, the dictum of the Apex Court in the case in **Lanka Venkateswarlu V. State of A.P.** Reported in **(2011) 4 Supreme Court Cases 363**, wherein, the Apex Court has held that for condonation of delay, judicial discretion must be exercised and while exercising the judicial discretion, the Court ought to have considered the case of the appellant and decided the matter. It is appropriate to incorporate paras 28 and 29, which are as follows:

"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 2 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 can not and should not form the basis of exercising discretionary powers."

9. In the case in **H. Dohil Constructions Company Private Limited V. Nahar Exports Limited** reported in **(2015) 1 Supreme Court Cases 680**, the Apex Court has held in paras 23 and 24 as follows:



"We may also usefully refer to the recent decision of this Court in **Esha Bhattacharjee (supra)** where several principles were culled out to be kept in mind while dealing with such applications for condonation of delay. Principle Nos. (iv), (v), (viii), (ix) and (x) of paragraph 21 can be usefully referred to which read as under:

"21.4(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.

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

21.8(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.

21.9(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.

21.10(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.

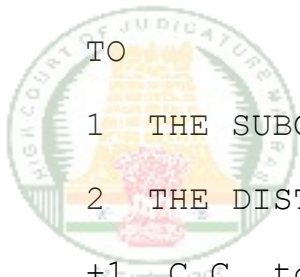
24. When we apply those principles to the case on hand, it has to be stated that the failure of the Respondents in not showing due diligence in filing of the appeals and the enormous time taken in the refiling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bonafides as displayed on the part of the Respondents."

10. Therefore, applying the dictum laid down in **N. Balakrishnan, Lanka Venkateswarlu, Esha Bhattacharjee and H. Dohil Constructions Company Private Limited**, I do not find any reason to allow this application and this application is dismissed. No costs. Consequently the S.A.(MD).SR.No.37239 of 2012 is also dismissed.

Sd/-

Assistant Registrar(CS I)

/True copy/



TO

1 THE SUBORDINATE JUDGE, ARUPPUKOTTAI.

2 THE DISTRICT MUNSIF, ARUPPUKOTTAI

+1. C.C. to M/S. V.RAGHAVACHARI Advocate SR.No.45747

WEB COPY

Date of Order:18/08/2016
ORDER

CMP (MD) No.6977 of 2016

IN

SA (MD) No.SR37239 of 2012

Dismissing the petition as
stated within etc.,

sm:PV:SAR 1:20/09/2016:5P/4C