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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 01.07.2016

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THE HONOURABLE MR. JUSTICE K. KALYANASUNDARAM

C.R.P (NPD) (MD) No. 2452 of 2015

and

MP (MD) No. 1 of 2015

Ramakrishnan @ Pavuldurai : Petitioner/Petitioner/5th defendant

Vs.

Thangakani : Respondent/Respondent/Plaintiff

Prayer: Civil Revision Petition is filed under Section 115 of the Code of the Civil Procedure, against the order passed in I.A.No.36 of 2014 in O.S.No.65 of 2005, dated 21.08.2015 on the file of the Additional District Court No.III, Tirunelveli.

For Petitioner : Mr.S.R.Anburasu

For Respondent : Mr.S.Meenakshi Sundaram

ORDER

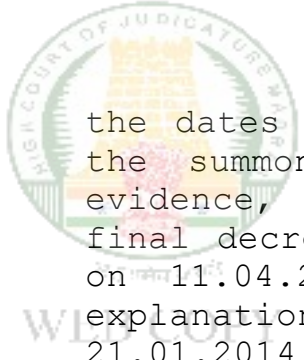
This civil revision is directed against the order, dated 21.08.2015 made in I.A.No.36 of 2014 in O.S.No.65 of 2005 on the file of the III Additional District Court, Tirunelveli.

2.Heard Mr.S.R.Anbarasu, learned counsel appearing for the petitioner and Mr.S.Meenakshi Sundaram, learned counsel appearing for the respondent and perused the materials placed before this court.

3.The facts in nutshell:-

The respondent herein filed the suit O.S.No.65 of 2005 for partition and recovery of possession. The petitioner is the 5th defendant in the suit. The petitioner/5th defendant received summons and filed a written statement along with the defendants 1, 2, 3 and 8 on 03.04.2006. The defendants allowed the suit to be decreed ex-parte on 22.07.2011. Thereafter, the petitioner filed an application in I.A.No.36 of 2014 to condone the delay of 1045 days in filing for setting aside the ex-parte decree stating that at the time of trial, he was suffering from jaundice; due to the death of his counsel, he was not informed about the stage of the case and that only after receiving summons in I.A.No.213 of 2013 filed for passing of final decree, he came to know about the ex-parte decree.

4.Though, the affidavit was sworn on 17.02.2014, it came to be filed only on 11.04.2014. The petitioner except stating that he was suffering from jaundice, he has not given the details, i.e.,



the dates of his illness and recovery and the date of receipt of the summon in the final decree application. However, in the evidence, the petitioner admitted that he received summons in the final decree application on 21.01.2014 and the petition was filed on 11.04.2014. Admittedly, the petitioner has not given any explanation for the delay in filing this petition i.e., from 21.01.2014 to 11.04.2014. Further, he has not produced any material to prove his illness. Ex.P2 would show that the Advocate of the petitioner died in the year 2009, but in the affidavit, it is stated as if his counsel was alive on the date of passing of the ex-parte decree. The application was dismissed. Against the order, the present revision has been preferred.

5.Mr.S.R.Anbarasu, learned counsel for the petitioner would vehemently contend that the petitioner is having valid defence in the suit and to provide opportunity to the parties, the court has to appreciate the merits of the case. The learned counsel for the petitioner has relied upon the following judgments in support of his contention:-

01.In Collector, Land Acquisition, Anantnag vs. Katiji [AIR 1987 SUPREME COURT 1353], wherein the Hon'ble Apex Court held as follows:-

"3.The legislature has conferred the power to condone delay by enacting Section 51 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:-

"Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908. may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."



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 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.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a stepmotherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal)



and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."

(2) In *Union of India vs. Giani* reported in (2011) 11 SCC 480, wherein the Hon'ble Apex Court held as follows:-

"2. Having examined the averments made in the applications for condonation of delay in filing all the appeals and after hearing the learned counsel for the parties, we are satisfied that the application for condonation of delay in preferring the appeals must be allowed as the statements in the applications for condonation of delay, in our view, do constitute sufficient cause in not preferring the appeals within the period of limitation. We, therefore, condone delay in all the appeals. We have taken such a view in this matter as we feel that there is a strong arguable case on behalf of the appellants and, therefore, it is felt necessary that the court should decide the matter on merit by giving the expression sufficient cause a pragmatic justice oriented approach."

(3). In *Arthanari Goundar vs. Anusuya & another*,



reported in (2007)0 Supreme(Mad) 70228, wherein this court held as follows:-

"7.It is settled law that while considering the application filed under [Section 5](#) of the Limitation Act, Court should liberally exercise the discretionary power. Delay is to be condoned where there is no negligence, deliberate inaction or malafides on the part of the applicant. Even while liberally exercising the discretion, Court is to test the bonafide of the reason stated by the applicant. Exercise of discretion by the Court should not cause relative hardship to the Respondent. As held by the Supreme Court in [[M. Balakrishnan v. M.Krishnamurthi](#)], rules of limitation are not meant to destroy the rights of the parties, but they are meant to show that the parties do not resort to dilatory tactics to seek their remedy promptly. If the explanation does not smack of malafides or it is put forth as part of dilatory strategy, the Court must show utmost consideration to the suitor.

8.In [[N. Balakrishnan v. Krishnamurthy](#)], Supreme Court has held that ...condonation of delay is a matter of discretion of the Court and when there is laches on the part of the application the Court should compensate by imposing terms. The Supreme Court has also held that length of delay is no matter, acceptability of the explanation is the only criterion.

9.In this case, on a consideration of various facts and events, this Court is of the view that there is lack of bonafide on the part of the Petitioner. The Petitioner and his children viz., Defendants 2 to 5 were duly served in the suit and they have entered appearance in the partition suit in November, 2001. For filing of Written Statement, case was adjourned a number of times, for nearly two years. But the Petitioner has not chosen to file Written Statement and the suit was decreed ex parte. In the Final Decree proceedings, in I.A. No. 422/2004, Petitioner has received notice through Court in August, 2004. Even at that stage, Petitioner has not chosen to appear. Children of the Petitioner have deliberately evaded the proceedings and they have evaded receipt of postal notice and Court notice,



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thrice. With no other alternative, on 04.01.2005, Court has ordered substituted Service for service on Defendants 2 to 5 in Final Decree in I.A. No. 422/2004. Only after paper publication was effected, Petitioner and other Defendants have filed vakalat in Final Decree proceedings. Obviously the Petitioner and his children have been closely watching the proceedings through out. Petitioner having been served with notice in the Final Decree proceedings way back in August, 2004, has not chosen to contest the proceedings at that stage.

10. In the supporting affidavit, Petitioner has averred that he is aged and suffering from Jaundice and taking native treatment. Petitioner has not produced any material showing his illness nor nature of treatment. Pointing out the conduct of the Defendants, Court below has rightly observed that there is a deliberate inaction on the part of the Petitioner.

11. The Court below also referred to the decision in 2004(1) LW 406 [*A.P. Ramasamy v. Dhanalakshmi*] to base its Order and has exercised its discretion declining to condone the delay, the revisional Court would not interfere with the same unless the impugned Order suffers from perversity or illegality. When no sufficient cause is shown for the inordinate delay of 586 days, the impugned Order cannot be interfered with. This revision is devoid of merits and is bound to fail."

6. Per contra, Mr. S. Meenakshi Sundaram, learned counsel for the respondent would submit that the plaintiff, who is the sister of the defendants 1 to 8, is a senior citizen. The defendants deliberately remained absent, one after another and later taking steps to set aside the ex-parte decree with an intention to delay and defeat the right of the plaintiff. It is further submitted that the affidavit is very vague and also not supported by any documentary evidence. The learned counsel placing reliance on the decision reported in 2009(5) CTC 48 [*Shanmugam vs. Chokkalingam*] prays for dismissal of the revision. The relevant portion of the judgment is extracted hereunder:-

"14. In this backdrop, when we approach the facts and circumstances of the case, I could see that the petitioner had applied for condonation of delay of



332 days to set aside the exparte decree on 9.6.2007 that was long after he had received notice in the EP and after taking time for filing counter in the said EP on 14.12.2006 and 25.1.2007. This would go to show that the petitioner was not diligent in filing the petition to set aside the exparte decree immediately after he received the notice in the execution proceedings. However, he had affirmed in his affidavit that he had filed the petition immediately after the receipt of the notice in the execution petition and that is found to be untrue. Admittedly, the petitioner is working in a Bank and the reason stated by him was that he was not granted leave on 12.6.2006, on which date the exparte decree was passed. He had also alleged that he was negligently silent and therefore, he could not take steps to set aside the exparte decree immediately. Nothing was available in the affidavit towards the reasons for such negligence. Therefore, it could be construed as an inaction coupled with negligence on the part of the petitioner. The attitude of the petitioner in not filing the petition to set aside the exparte decree immediately after the receipt of the notice in the EP would also make that inaction coupled with negligence as wilful and that would also go to show that the petitioner has not placed the truth before the Court. Apart from that, he had not explained the delay in taking steps to set aside the exparte decree from the date of receipt of the notice in the execution proceedings till he files the petition to set aside the exparte decree on 9.6.2007. That would show that the petitioner was not diligent in defending the case. According to the aforesaid judgments of this Court, the inaction even after taking notice from the EP Court would amount to wilful negligence on the part of the petitioner. Even if the Court wants to construe the reason assigned by the petitioner liberally in order to give him an opportunity to contest the suit, the laches on the part of the petitioner in not taking steps to file the petition to set aside the exparte decree immediately on knowing the passing of exparte decree against him would render no assistance from the Court. Even though the delay caused in filing the petition to set aside the exparte decree was 332 days, it was not explained by the petitioner with sufficient cause to condone the delay as contemplated in the judgment of our Honourable Apex Court. The petitioner is ~~in error in law~~ lacking to apply the provision of [Section 5](#) of Limitation Act, as the affidavit filed by the petitioner before the lower Court was also vague and



bereft of particulars without any explanation for period commencing from the date of passing of the *ex parte* decree i.e., on 12.6.2006 till the date of filing of the petition i.e., on 9.6.2007.

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In the aforesaid circumstances, I could see that the lower Court had correctly exercised its jurisdiction to dismiss the application filed by the petitioner. Therefore, I find no reason to interfere with the order passed by the lower court."

7.It is settled law that the length of delay is immaterial and the acceptability of the explanation is the sole criteria and the application for condonation of delay requires liberal consideration, it if it not smacked with *mala fides*. The court shall take into the conduct and *bona fides* of the parties.

8.It is appropriate to refer the decision reported in 2013(5) CTC 547 [Esha Bhattacharjee Vs. Managing Committee of Raghunathpur, Nafar Academy and others], wherein the Hon'ble Supreme Court has held as follows:-

"15.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.

(vii) 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.

(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.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

<https://hcservices.ecourts.gov.in/hcse/vcs/> An application for condonation of delay should be drafted with careful concern and not in a half hazard 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.

(b) 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.

(c) 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.

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

9. In the case of H.Dohil Constructions Co. Pvt. Ltd. vs. Nahar Exports Ltd., [2015(5)CTC 534], the Hon'ble Supreme Court has held as follows:-

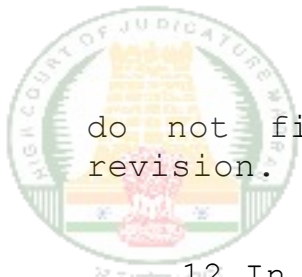
"23. When we apply those principles to the case on hand, it has to be stated that the failure of the Respondents in not showing due diligence in filing of the appeals and the enormous time taken in the refiling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bonafides as displayed on the part of the Respondents. Further, when the Respondents have not come forward with proper details as regards the date when the papers were returned for refiling, the non-furnishing of satisfactory reasons for not refiling of papers in time and the failure to pay the Court fee at the time of the filing of appeal papers on 06.09.2007, the reasons which prevented the Respondents from not paying the Court fee along with the appeal papers and the failure to furnish the details as to who was their counsel who was previously entrusted with the filing of the appeals cumulatively considered, disclose that there was total lack of bonafides in its approach. It also requires to be stated that in the case on hand, not refiling the appeal papers within the time prescribed and by allowing the delay to the extent of nearly 1727 days, definitely calls for a



stringent scrutiny and cannot be accepted as having been explained without proper reasons. As has been laid down by this Court, Courts are required to weigh the scale of balance of justice in respect of both parties and the same principle cannot be given a go-by under the guise of liberal approach even if it pertains to refiling. The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the Respondents not deserving any indulgence by the Court in the matter of condonation of delay. The Respondents had filed the suit for specific performance and when the trial Court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the Respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered."

10. It is not in dispute that the petitioner received suit summons and through his counsel filed a written statement and thereafter, he did not take part in the suit proceedings. The averment in the affidavit is vague and bald in nature. Ex.P2 reveals that the petitioner's counsel passed away in the year 2009, while the ex-parte decree was passed on 22.07.2011. This fact is also suppressed by the petitioner. Admittedly, the petitioner has not produced any material in support of his case. Further, no explanation is offered for the delay between 21.01.2014 and 11.04.2014. The set aside petition was also filed in a very casual manner, after three months of receiving notice in the final decree petition. In similar facts, this court in 2009(5) CTC 48 dismissed the petition to condone the delay of 332 days. Keeping in mind the principles laid down in 2013-5-CTC 547 and 2015(5) CTC 534 by the Hon'ble Apex Court, this court is of the opinion that the petitioner has not given proper explanation/reason to condone the enormous delay. In view of the lasted decisions of the Hon'ble Supreme court, with great respect, I could not follow the judgments relied on by the counsel for the petitioner.

11. The trial court, after analyzing the entire facts of this case, held that the petitioner has not shown sufficient cause for condoning the inordinate delay. In view of my findings supra, I



do not find any reason to upset the order impugned in this revision.

12. In fine, the revision fails and the same is dismissed. However, no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/True copy/

Sub Assistant Registrar

To,

III Additional District Judge,
Tirunelveli.

+1 cc to Mr.S.R.Anbarasu, Advocate in SR No.34832
+1 cc to Mr.S.Meenakshi Sundaram, Advocate in SR No.34485

ANR-SS-3-SAR.3/3.11.2016/12P:4C

Order in
C.R.P (NPD) (MD) No.2452 of 2015
01.07.2016