

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 03rd DAY OF MARCH 2017

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

A. No.1032 of 2017

IN

C.S.NO.497 OF 2010

A.Pathima,
W/o Hassan,
No.8 A, South Kavarai Street,
West Mambalam, Chennai 33 ... Plaintiff/Applicant

Vs.

1.J.Devarajalu
S/o D.Jayaram Naidu
No.47, 3rd Cross, V.G.Layour, Palavakkam,
Chennai 41

2.J.Vijayaraghavalu
S/o D.Jayaram Naidu,
83 & 84, Moore Street,
Chennai 1

3.J.Sathyanarayananana
S/o D.Jayaram Naidu,
H 110, G 1, 1st Seaward Road,
Valmiki Nagar,
Thiruvannamalai
Chennai

4.J.Ananthakrishnan,
S/o D.Jayaram Naidu,
28, 2nd Street, Bharathi Nagar,
Madhavoyal,
Chennai 102

5.Vedavalli
D/o D.Jayaram Naidu,
W/o Chandraprakasam
96/1, GST Road,
Chengalpatti
(Behind Reliance Show Room)

6.Pushpavalli
W/o Shantha Kumar
No.13/4A, Natha Muni Street,
Near Panagal Park,
T.Nagar,
Chennai 17

7.J.Ethirajulu
S/o D.Jayaram Naidu,
No.13/4A, Natha Muni Street,
Near Panagal Park,
T.Nagar,
Chennai 17

8.Lakshmipathi Narayanan,
S/o D.Jayaram Naidu,
No.13/4A, Natha Muni Street,
Near Panagal Park,
T.Nagar,
Chennai 17

9.J.Lakshmipathi,
S/o D.Jayaram Naidu,
No.13/4A, Natha Muni Street,
Near Panagal Park,
T.Nagar,
Chennai 17

... Defendants/Respondents

Application praying that this Hon'ble Court be pleased to condone the delay of 2013 days in setting aside the order dated 8.7.2011 passed in CS 497 of 2010.

This Application coming on this day before this court for hearing the court made the following order:

This is an application filed to condone the delay of 2,013 days in setting aside the order dated 08.07.2011 of the Master dismissing the suit against the 3rd defendant.

2. The applicant is the plaintiff, who has filed the suit in C.S.No.497 of 2010 for a direction against defendants 1 to 5 and 9th defendant to pay a sum of Rs.31,32,000/- [Rupees thirty one lakhs and thirty two thousand only] together with interest @ 24% per annum on

Rs.18,00,000/- [Rupees eighteen lakhs only] and for a charge over the schedule mentioned property and for other reliefs.

3. There were totally 9 defendants in the suit. All the defendants are sons and daughters of Late D.Jayaram Naidu. It is the case of the applicant/plaintiff that the defendants had offered to sell the suit schedule property and an agreement of sale was entered into on 25.01.2007 and the applicant had also paid substantial advance amounts out of which, the defendants have repaid Rs.17,00,000/- [Rupees seventeen lakhs only]. It had been stated that the suit has been filed seeking repayment of the balance advance amount of Rs.18,00,000/- together with interest. In the said suit, on 08.07.2011, the Master had noted as follows:-

"No representation. There are nine defendants. Service except D1, D3, D8 and D9 got effected and D5 is still awaited. Suit against D1,D3,D8 and D9 stands dismissed for default. As D5 process is still awaited, for giving an opportunity, await by 05.08.2011".

4. However, there is a noting on the next hearing date by the office that "Batta filed for D1,D3,D8 and D9 - D.No.29001/2011 and returned on 19.08.2011". The combination of both the notices reveal that the plaintiff had taken steps, however belatedly and the batta had been returned and the Master has dismissed the suit for not

taking steps as against D1, D3, D8 and D9.

5. This application has been filed to condone the delay of 2,013 days in setting aside the order dated 08.07.2011 passed by the Master, as far as D3 alone is concerned.

6. In the affidavit filed in support of the application, it has been stated that summons had been served on the 3rd defendant and the same counsel who appears for D6 and D7 had also filed vakalat for D3. It had been stated that in the interest of justice, the delay should be condoned.

7. The counter has been filed by the 3rd defendant stating that the delay has not been explained. It has been stated that some of the defendants had entered into an agreement of sale with the plaintiff and a sum of Rs.17,00,000/- has also been repaid. Owing to the dispute, the relationship among the defendants had become strained. It had been further stated that the property had been partitioned among the defendants. It had been further stated that the delay of five years, without sufficient reasons, should not be condoned by this Court. In support of such submission, the learned counsel for defendants 3, 6 & 7 relied on **Pundlik Jalam Patil (dead) by LRS. Vs Executive Engineer, Jalgaon Medium Project and another**

[(2008) 17 SCC 448], wherein, the Hon'ble Supreme Court had observed as follows:-

"17. The applicant having set the machinery in motion cannot abandon it to resume it after number of years because the authority with whom it had entered into correspondence did not heed to its request to file appeals. The question is: Can the respondent applicant in this case take advantage of its negligence, after a lapse of number of years, of the decision of the Government? It knew the exact grounds on which appeals could have been preferred. The law will presume that it knew of its right to file appeal against the award. Everybody is presumed to know law. It was its duty to prefer appeals before the court for consideration which it did not. There is no explanation forthcoming in this regard. The evidence on record suggests neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and "do not slumber over their rights".

8. The learned counsel for defendants 3, 6 & 7 also relied on **Sundar Gnanaolivu rep. by his Power of Attorney Agent Mr.Rukmini Vs. Rajendran Gnanavolivu Rep. by its Power of Attorney Agent Veina Gnanavolivu [2003 (1) LW 585]** wherein, a Division Bench of this Court had observed as follows:-

"Length of the delay is a relevant matter to be taken into account while considering whether the delay should be condoned or not. It is not open to any litigant to fix his own period of limitation for instituting proceedings for which law has prescribed periods of limitation."

and also posed a rhetoric as under:

"Rules of limitation are based on principles of sound public policy and principles of equity. Is a litigant liable to have a Damocles' sword hanging

over his head indefinitely for a period to be determined at the whims and fancies of the opponent?"

9. Heard both sides.

10. I have carefully perused the records. It is seen that the learned Master had originally noted as follows:-

"120. No representation. Steps not taken as directed earlier. Hence, list it in the 'default list' by 08.07.2011."

11. It was only thereafter on 08.07.2011 that the suit was dismissed as against D3. Further perusal of the records reveals when the parties had appeared before the Lok Adalat, there was an order on 07.04.2014, repeated on 30.04.2014 that the defendants must deposit a sum of Rs.18,00,000/-. The defendants had not deposited the said sum. At any rate, the laches on the part of the plaintiff cannot be overlooked and brushed aside. There is serious objection raised on the part of the respondent/D3. As pointed out by the Hon'ble Division Bench of this Court in the judgment referred to above, wherein it is stated as follows:-

"The other side would have in all probability destroyed the records would not be relevant as there was no further proceeding in the matter."

I hold that it will be extremely unfair to now call upon D3

to answer to the claim of the plaintiff in the suit. It is seen that the suit is of the year 2010 and nearly seven years have passed and the plaintiff has not taken effective steps to proceed with the suit.

12. I therefore hold that the plaintiff did not make out any reason to condone the delay of 2,013 days as the affidavit did not disclose any reason for the delay at all.

13. In the result, this application is dismissed.

Sd/.C.V.K.J

03.03.2017

//Certified to be a true copy//
Dated this the th day of 2017.

gm/22.03.2017

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.