

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Tuesday, the Fourteenth day of March Two Thousand Seventeen

PRESENT

THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

CMP No.1010 of 2017

in CMA SR.NO.2711 of 2017

H.K.KRISHNAMURTHY

[PETITIONER]

Vs

1 CHENNAI METROPOLITAN [RESPONDENTS]
DEVELOPMENT AUTHORITY, REP.BY ITS MEMBER
SECRETARY, GANDHI IRWIN ROAD,
ANSARI ESTATE, EGMORE, CHENNAI-8

2 CORPORATION OF CHENNAI
REP.BY ITS COMMISSIONER,
RIPON BUILDINGS, CHENNAI-3

3 S.VENKATARAMAN

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to condone the delay of 106 days in filing the above CMA (On the file of XIX Additional District Judge (Full additional charge), XVIII Additional City Civil Court, Chennai pending CMA SR.NO.2711 of 2017.

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MS.P.T.ASHA for M/S. SARVABHAUMAN ASSO, Advocate for the petitioner and of MR.K.VENAKATAKRISHNAN Advocate for the 3rd respondent the court made the following order:-

This is an application filed by the third defendant seeking to condone the delay of 106 days in filing the above Civil Miscellaneous Appeal.

2. The suit is filed by the third respondent/plaintiff for declaration and other reliefs.

3. The short facts of the case would run thus:

(i) The third respondent/plaintiff filed the suit seeking declaration and mandatory injunction. Written statement was also filed by the petitioner herein. However, as the defendants did not appear the suit was decreed exparte. Aggrieved by the same, the petitioner herein filed an application seeking to set aside the exparte order.

(ii) It is the contention of the petitioner before the Court below that the junior counsel, to whom the matter was entrusted had his wedding ceremonies and due to that he could not follow up with the case. It was further stated that the exparte order passed by the Court below came to his knowledge, only when another counsel checked the Court A-Diary in respect of some other suit. It was also stated that earlier the plaintiff allowed the suit to be dismissed for default. After that, he has filed a petition to set aside the same and that counter was also filed by the third defendant. However, without considering the aforesaid facts the court below had decreed the suit exparte. Therefore, the petitioner has taken out an application to set aside the exparte decree. But, the Court below had dismissed the same by stating that the petitioner has not shown sufficient cause as to what prevented him from appearing before the Court. Aggrieved by the same, the present Civil Miscellaneous Appeal has been filed, but with a delay of 106 days in filing the same, which is neither wilful nor wanton.

4. The learned counsel for the third respondent/plaintiff by filing counter, vehemently opposed this petition by contending that the defendant never attended the Court and remained absent. Therefore, the suit was taken up for trial and after the evidence of the plaintiff's side was recorded, the same was closed. The defendant did not appear for cross examination and therefore, an exparte decree came to be passed. It is further submitted the petitioner ought to have filed this appeal within a period of 90 days as against the dismissal order passed by the Court. However, he has not chosen to file. The plaintiff also waited till the expiry of the appeal period, for filing the execution petition. It is also stated that notices for caveat was also sent to the petitioner, which was acknowledged by the petitioner's staff. Accordingly, he would submit that the reason given by the petitioner for the delay, is not true. Therefore, it is submitted by the learned counsel for the third respondent/plaintiff that the Court below after considering all these facts had dismissed the application filed by the petitioner seeking to set aside the exparte order, warranting no interference in this petition.

5. Heard both sides and perused the records.

6. Though the delay petition is being vehemently opposed by the third respondent/plaintiff, it has been repeatedly highlighted by the Hon'ble Supreme Court that Courts have to adopt certain

principles while dealing with the application for condonation of delay and that the same has to be condoned, without going into the technicalities in order to permit the parties to contest the matter on merits.

7. In this regard, the following judgments could be fruitfully referred.

(i) **2013(12) SCC 649 [Esha Bhattacharjee vs. Raghunathpur Nafar Academy]**, certain excerpts would run thus:

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

a) 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-chalant manner requires to be curbed, of course, within legal parameters.

(ii) **2012(4) Scale 152 [S.Ganesharaju (d) their Lrs and another vs. Narasamma (d) through their Lrs and others]** and certain excerpts from it would run thus:

"15. The expression "sufficient cause" as appearing in Section 5 of the Indian Limitation Act, 1963, has to be given a liberal construction so as to advance substantial justice.

16. Unless respondents are able to show malafide in not approaching the court within the period of limitation, generally as a normal rule, delay should be condoned. The trend of the courts while dealing with the matter with regard to condonation of delay has tilted more towards condoning delay and directing the parties

to contest the matter on merits, meaning thereby that such technicalities have been given a go-by.

17. Rules of limitation are not meant to destroy or foreclose the right of parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly.

18. We are aware of the fact that refusal to condone delay would result in foreclosing the suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate.

19. In fact, it is always just, fair and appropriate that matters should be heard on merits rather than shutting the doors of justice at the threshold. Since sufficient cause has not been defined, thus, the courts are left to exercise a discretion to come to the conclusion whether circumstances exist establishing sufficient cause. The only guiding principle to be seen is whether a party has acted with reasonable diligence and had not been negligent and callous in the prosecution of the matter. In the instant case, we find that appellants have shown sufficient cause seeking condonation of delay and same has been explained satisfactorily."

(iii) **2010(2) Supreme 115 (Oriental Aroma Chemical Industries Ltd., vs. Gujarat Industrial Development Corporation and another)** and an excerpt from it would run thus:

"8.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. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and other similar statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves 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, Land Acquisition,
Anantnag v. Mst.Katiji, (1987) 2 SCC 107,
N.Balakrishnan v. M.Krishnamurthy, (1998) 7 SCC 123
and Vedabai v. Shantaram Baburao Patil, (2001) 9 SCC
106."

(iv) **AIR 2002 SC 1201 (Ram Nath Sao alias Ram Nath Sahu and aothers v. Gobardhan Sao and others)** and certain excerpts from it would run thus:

"13. 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 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. While condoning the delay, the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses."

The Hon'ble Supreme Court has also time and again held that 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.

8. Following the aforesaid judgments and also taking into consideration the fact that the delay is also only of 106 days, in the interest of *audi alteram partem*, this Court is of the considered view that one more opportunity could be given to the petitioner/third defendant to get the matter adjudicated on merits.

9. Accordingly, the delay of 106 days in filing the Civil Miscellaneous Appeal is condoned and this petition is **allowed**, however, on condition that the petitioner/third defendant shall pay a sum of Rs.2,000/- (Rupees two thousand only) to the third respondent/plaintiff within a period of two weeks from the date of receipt of a copy of this order, failing which, this order will not enure to the benefit of the petitioner.

10. With the above direction, this Civil Miscellaneous Petition is disposed of.

-sd/-
14/03/2017
/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE REGISTRAR
CITYCIVIL COURT, CHENNAI-104.

C.C. to M/S. SARVABHAUMAN ASSOCIATES Advocate on payment of
necessary charges

C.C. to MR.K.VENAKATAKRISHNAN Advocate on payment of necessary
charges

Order

in
CMP.1010/2017

in
CMA.SR2711/2017

Date :14/03/2017

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VS 15.03.2017