

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.10.2017

Delivered on : 24.10.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

CMP.No.5656/2017 & REVIEW APPLN.SR.No.94612/2016 in
WA.No.960/2013

Maxima Electronics
 rep.by its Proprietor P.Rajapandian
 39, South Street, Thenkarai
 Periyakulam 625 601.
 Now at
 C3, Anurag Garden, 17,
 Tholkappiar Street,
 Srinivasa Nagar, New Perungalathur
 Chennai 600 063.

.. Petitioner

सत्यमेव जयते
 Versus

- 1 The Tamil Nadu Industrial Investment Corporation Ltd
 rep.by its Managing Director, 692, Anna Salai
 Chennai 600 035.
- 2 The Branch Manager
 Tamil Nadu Industrial Investment Corporation Ltd.,
 3 to 6, Valmigi Street, Subramaniya Nagar
 Salem 635005, Now at No.7, Second Cross Road
 Kamaraj Colony, Hosur 635109.

3 HI-Q Electronics Private Ltd
rep.by Dr.S.Venkatachalam
Managing Director, Having its
registered Office at No.679,
10th Main Road, 4th Block
Koramangala, Bangalore-560034
Karnataka [State]

.. Respondents

Prayer in CMP.No.5656/2017: Petition filed under section 5 of the Limitation Act, to condone the delay of 1020 days in filing the review application against the judgment in WA.No.960/2013 dated 05.02.2014.

For Petitioner : Mr.N.L.Raja, Senior Counsel assisted
by Mr.E.Jayasankar
For R1 & R2 : Mr.K.Magesh
For R3 : Mr.Arun C. Mohan

ORDER

The petitioner is the appellant in WA.No.960/2013 as well the petitioner in WP.No.33892/2003 and the present review petition is filed to review the order dated 05.02.2014 made in WA.NO.960/2013 and to condone the delay of 1020 days in filing the review application.

2 The petitioner, in the affidavit filed in support of this petition would aver as follows:-

[a] The petitioner had availed a loan of Rs.1.2 lakhs from the Tamil Nadu Industrial Investment Corporation [TIIC] by mortgaging his property consisting of land, building and machinery at Plot No.8, Electrical and Electronics Industrial Estate, Hosur, Krishnagiri District.

[b] Th petitioner Unit was run by manually operated machines between the years 1978 and 1991 and he had paid a sum of Rs.1,19,088/- towards the Principal and a sum of Rs.2,70,719/- towards interest between the years 1991 and 1998 and due to the default in repayment of the said loan, recovery action was initiated and the 2nd respondent / TIIC took possession of the assets of the Unit on 05.05.1998. The 3rd respondent herein evinced interest in purchasing the assets of the petitioner and had himself fixed the bid amount of Rs.10.6 lakhs and the 2nd respondent, in stead of giving wide publicity for sale of the assets, had published a small advertisement in Dinathanthi – a vernacular Tamil Daily along with eight other Units and not even the upset price has been fixed and the respondents 2 and 3 acting in unison and collusion, enabled the 3rd respondent to become the successful in the auction sale conducted on 14.10.2003 and after remission of the auction sale proceeds, the

possession of the assets were handed over to the 3rd respondent on 16.10.2003.

[c] The petitioner made a challenge to the recovery proceedings initiated by the 2nd respondent herein by filing WP.No.33892/2003 and pending disposal of the same, filed WP.MP.No.41065/2003, praying for stay of all further proceedings. The writ petition was entertained and vide interim order dated 10.02.2004, interim stay of all further proceedings was granted. The 3rd respondent herein had filed a petition for impleadment in MP.No.544/2010 on the ground that it has become the successful bidder in the auction proceedings and it was ordered.

[d] The writ petition was taken up for final disposal and vide final order 19.07.2012, the writ petition was dismissed and it was observe that the third party interest also came into being and the successful bidder / 3rd respondent herein had also paid the commercial tax dues. The petitioner, challenging the legality of the said order, filed W.No.960/2013 and it was entertained and the respondents 1 and 2 therein filed a counter affidavit.

[e] The writ appeal was also dismissed on 05.02.2014 and in paragraph NO.15, it was observed that the appellant / writ petitioner / review petitioner herein, during the pendency of the writ appeal, filed an affidavit offering to pay a sum of Rs.35 lakhs and odd and also produced two Demand Drafts for the same and however, taking into consideration the third party right has also been created as early as in the year 2003, the offer made by the appellant/writ petitioner, was not found to be justifiable and therefore, the writ appeal was dismissed.

[f] The petitioner, thereafter, sought information under the Right to Information Act, 2005, as to the consent obtained by the 3rd respondent from the Pollution Control Board, in the light of the stand taken by them that they had put up a Water Treatment Plant and it has also become operational.

[g] The petitioner herein also made a challenge by filing SLP [Civil] No.16003/2014 before the Hon'ble Supreme Court of India and vide order dated 30.01.2015, the Apex Court has dismissed the said Special Leave Petition, by observing that "*we do not find any legal and valid ground for interference.*" The petitioner, to review the order of

dismissal of the Special Leave Petition on 30.01.2015, filed a Review Petition [Civil] No.1183/2015 and it was also dismissed on 14.05.2015 by observing that *"we have carefully gone through the review petition and the connected papers. We find no merit in the review petition and the same is accordingly, dismissed."*

[h] The petitioner, thereafter filed two Miscellaneous Petitions in WP.No.33892/2013, praying for prosecution and punishing the 3rd respondent – Company who has sworn to the counter affidavit under section 193 IPC and to set aside the order dated 19.07.2012 made in WP.No.33892/2003. The said miscellaneous petitions in WPMP.SR.Nos.112021 & 112022/2015 were posted for maintainability before the learned Single Judge.

[i] The learned Single Judge, vide common order dated 14.09.2016, had dismissed both the miscellaneous petitions as not maintainable on the ground that the order passed in the writ petition got merged with the judgment passed in WA.No.960/2013, which has been confirmed by the Hon'ble Supreme Court of India. Thereafter, the

petitioner has filed the present review petition with a petition to condone the delay of 1020 days in filing the same.

3 Mr.N.L.Raja, learned Senior Counsel assisted by Mr.E.Jayasankar, learned counsel appearing for the review petitioner has drawn the attention of this Court to the typed set of documents and would submit that the only ground on which the writ appeal came to be dismissed is that the 3rd respondent, after becoming the successful bidder and after obtaining the possession on account of being successful in the auction proceedings, demolished the existing structure and put up a Water Treatment Plant, after obtaining necessary approval; whereas the information furnished to the review applicant / writ petitioner under the Right to Information Act, 2005, reveals that no consent whatsoever, has been obtained and therefore, the Director of the 3rd respondent – Company, by making a false averment, got the writ appeal dismissed and would further submit that though the Special Leave Petition, challenging the judgment dated 05.02.2014 passed in WA.No.960/2013 has been dismissed as well as the order to review the same, has also ended in dismissal, in the light of the fact that the 3rd respondent has practiced fraud, the review petition is maintainable. It is further urged by the

learned Senior Counsel that the Doctrine of Merger has no applicability to the facts of this case for the reason that the Special Leave Petition came to be dismissed at the admission stage itself ; so also the order to review the same in the said Special Leave Petition and since the fraud vitiates the most solemn proceedings, the review is maintainable.

4 Insofar as the delay in filing the review application is concerned, it is the submission of the learned Senior Counsel for the petitioner that after dismissal of the writ appeal, the review applicant/writ petitioner had moved the concerned authority seeking information under the Right to Information Act, 2005, and after obtaining necessary materials, had filed the review and therefore, the delay had occurred and in the light of the above facts and circumstances, the delay cannot be construed as neither wilful nor wanton and prays for allowing of this petition for condonation of delay and to entertain the review application and give a disposal on merits.

5 *Per contra*, Mr. Arun C. Mohan, learned counsel appearing for the 3rd respondent, has invited the attention of this Court to the counter affidavit and would submit that even as per the own admission of

the writ petitioner, the auction took place during the year 2003 and possession of assets was handed over to the 3rd respondent on 16.10.2003 and after taking possession, the 3rd respondent also took steps to remit the commercial tax dues to the tune of Rs.10,68,808/- as well as the arrears of electricity consumption charges to the Tamil Nadu Electricity Board, Hosur and that apart, also cleared Sales Tax arrears in respect of machinery purchased through public auction and also cleared various tax arrears. Insofar as the allegation as to the Water Treatment Plant is concerned, it is the submission of the learned Standing counsel appearing for the 3rd respondent that after demolishing the existing structure, a state of art Water Treatment Plant compatible with the international standards, was constructed and it has also become operational and the 3rd respondent who is already the owner of Plot No.9, for the purpose of convenience, has made Plot Nos.8 and 9 as a single land and to start the Water Treatment Plant, and make it operational, had invested a sum of Rs.3.50 Crores, by importing equipments and it continues to be in operation and necessary clearances have also been obtained from the Tamil Nadu Pollution Control Board.

6 The learned standing counsel appearing for the 3rd respondent would further submit that the present review application is not maintainable for the reason that the petitioner made a challenge to the order made in WP.No.33892/2003 dated 19.07.2012 by filing WA.No.960/2013 and the said writ appeal was dismissed and the SLP against the dismissal of the writ appeal, was also dismissed and to review order of dismissal passed in Special Leave Petition, review petition was filed and it was also dismissed and as such, the order passed in the Special Leave Petition got merged with the review application and as such, the present review petition is not maintainable.

7 It is the further submission of the learned counsel for the 3rd respondent that the reason for delay has been stated in paragraph 21 of the affidavit filed in support of this petition and except stating that the delay had occurred on account of obtaining information under the Right to Information Act, 2005, no other tenable reasons have been cited and would further contend that the present review petition is nothing but an abuse of process of law and the petitioner, under the guise of filing the review application, wants to unsettle the matter which happened about 14 years back and prays for dismissal of this petition for condonation of delay with exemplary cost.

8 The learned counsel for the 2nd respondent / TIIC would submit that admittedly, the petitioner did not clear the dues on time and therefore, recovery action has been initiated under the provisions of the State Financial Corporations Act, 1951, and after adjusting the sale proceeds of Rs.16.75 lakhs in the third auction conducted on 20.04.2003, the possession of the assets were handed over to the 3rd respondent and the learned standing counsel appearing for the 3rd respondent would submit that in the light of the dismissal of the Special Leave Petition as well as the Review Petition, the present review petition before this Court is not maintainable and prays for dismissal of the same.

9 This Court has carefully considered the rival submissions and also perused the materials placed before it.

10 The petitioner made a challenge to the recovery proceedings initiated by the 2nd respondent under the provisions of the State Financial Corporations Act, 1951, by filing WP.No.33892/2003 and it was entertained and an order of interim-stay was granted on 10.02.2004 and after contest, it was dismissed on 19.07.2012. The petitioner, initially

arrayed the TIIC represented by its Managing Director and the Branch Manager of Salem Branch, TIIC as party respondents in the said writ petition and subsequently, the 3rd respondent got impleaded and also filed a petition to vacate the stay. The writ petition, after contest, came to be dismissed on 19.07.2012 and the petitioner herein challenging the legality of the said order, filed WA.No.960/2013 and it was entertained and subsequently taken up for final disposal and the Hon'ble First Bench of this Court while dismissing the writ appeal on 05.02.2014, has observed that the 2nd respondent / TIIC has complied with the procedure and formalities in letter and spirit and despite the offer made to the petitioner herein to clear the arrears by way of One Time Settlement [OTS], he did not clear the same and it was further observed that though the petitioner herein during the pendency of the writ appeal, filed an affidavit offering to pay a sum of Rs.35,57,451/- and produced two Demand Drafts for the same, the Court was not inclined to accept the same on the ground that the third party right has been created as early as in the year 2003 and taking into consideration, their need and requirement, found that the said offer is not justifiable and dismissed the writ appeal. It is to be pointed out at this juncture that the act of the 3rd respondent in starting the Water treatment Plant, was not the sole consideration for dismissing the writ appeal.

11 The petitioner herein, aggrieved by the dismissal of the writ appeal in WA.NO.960/2013, filed SLP [Civil] No.16003/2014 and it was dismissed by the Hon'ble Supreme Court of India, observing that no legal and valid ground for interference is made out, vide order dated 30.01.2015. The petitioner has filed Review Application [Civil] No.1183/2015 before the Apex Court to review the order of dismissal of SLP [Civil] No.16003/2014, on 14.05.2015, observing that there is no merit in the review petition.

12 The only reason adduced by the petitioner for condonation of delay of 1020 days in filing the present review petition is that he took steps to collect information as to the establishment of the Water Treatment Plant and it took some time and a such, proper and sufficient reasons have been adduced. In the considered opinion of the Court, the assignment of the said reason, is hardly justifiable and no proper, plausible and tenable explanation has been given for condonation of such a huge delay of nearly three years and odd.

13 The Hon'ble Supreme Court of India, in the decision

reported in **2013 [11] SCALE 418 [Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others]**, has considered the invocation of section 5 of the Limitation Act, 1963, by taking into consideration various decisions and it is relevant to extract the relevant paragraphs:-

"13 Recently in *Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai [2012 [5] SCC 157]*, the learned Judges referred to the pronouncement in *Vedabai V. Shantaram Baburao Patil [2001 [9] SCC 106]*, wherein it has been opined that a distinction must be made and a case where the delay is of few days and whereas in the former case the consideration of prejudice to the other side will be a relevant factor, in the latter case no such consideration arises. Thereafter, the two-Judge Bench ruled thus:-

"23 *What needs to be emphasized is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under section 5 of the Limitation Act and other similar statutes, the Courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the*

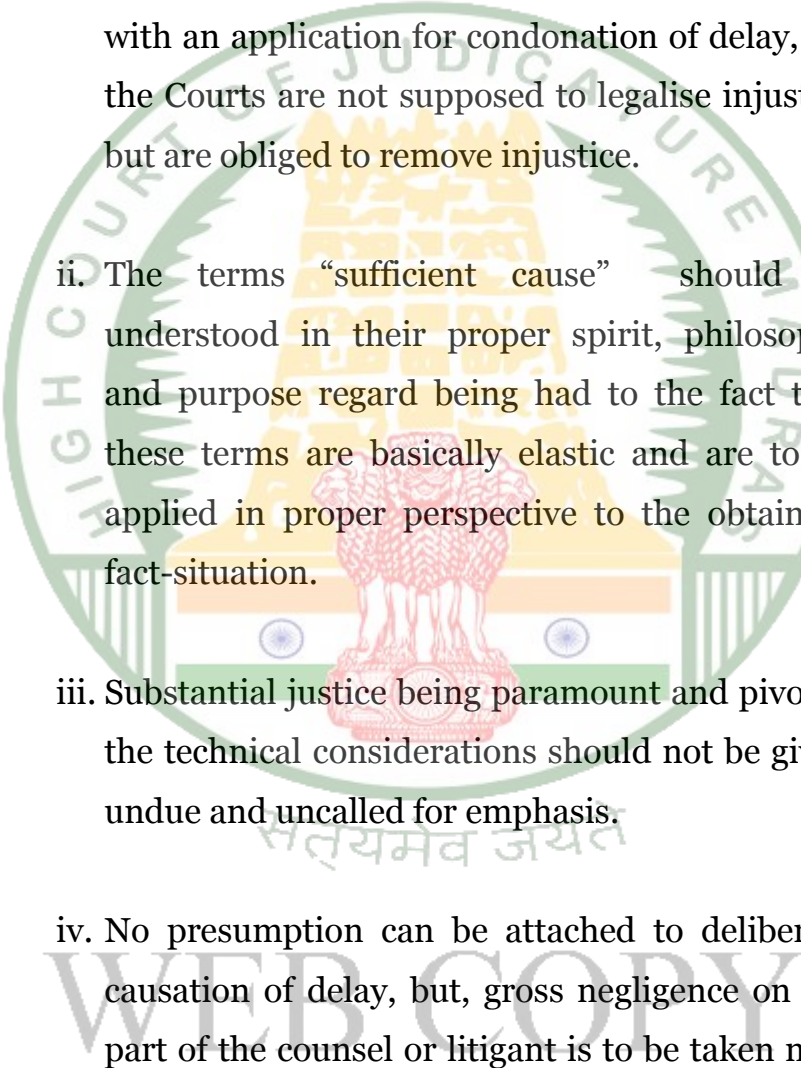
cost.

24 What colour the expression “sufficient cause” would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.”

Eventually, the Bench, upon perusal of the application for condonation of delay and the affidavit on record came to hold that certain necessary facts were conspicuously silent and accordingly, reversed the decision of the High Court which had condoned the delay of more than seven years.

14 In **B.Madhuri Goud V. B.Damodar Reddy [2012 [12] SCC 693]**, the Court, referring to earlier decisions, reversed the decision of the learned Single Judge who had condoned delay of 1236 days as the explanation given in the application for condonation of delay was absolutely fanciful.

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 pivoted 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:-

(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-challant manner requires to be curbed, of course, within legal parameters.”

14

This Court, keeping in mind, the principles which are culled from various decisions extracted above, has carefully considered the submissions made by the learned Senior counsel appearing for the petitioner as to the reasons for the delay of 1020 days in filing the present review application. It is also to be remembered at this juncture that a right has been created in favour of the 3rd respondent herein as early as

during October 2003 and it is the specific case in the counter affidavit, in paragraphs No.8 and 9 that after demolishing the existing structure, a state of art Water Treatment Plant has been put in place and the 3rd respondent's manufacturing facility located in the adjacent Plot No.9, is entirely dependent upon such Treatment facilities and to adhere to the strict standards as imposed by the State Government and that the 3rd respondent is in occupation and enjoyment of the auction property continuously ever since November 2003 and put the same for *bona fide* commercial use.

15 The 2nd respondent – TIIC, which is a quasi-Government Entity, has also stated that the petitioner did not clear the dues on time and therefore, the auction was initiated and though One Time Offer was given, the petitioner failed to avail the same and in the 3rd auction conducted, the 3rd respondent has become successful.

16 The reasons assigned by the petitioner as to the obtaining information under the Right to Information Act, 2005, has resulted in delay. However, this Court is of the view that it can hardly said to be tenable and satisfactory. That apart, the averments as to the

alleged non-starting of the Water Plant has also been seriously disputed by the 3rd respondent and therefore, the same cannot be adjudicated in this review petition.

17 Therefore, in the light of the reasons assigned above, the petition seeking condonation of 1020 days delay in filing the review application is dismissed and consequently the Review Application SR.No.94612/2016 is rejected. No costs.

[M.Sathyanarayanan, J.,]

[G.Jayachandran, J.,]

24th October 2017

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Internet : Yes

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M.SATHYANARAYANAN, J.,
AND
DR. G.JAYACHANDRAN, J.,

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To

- 1 The Managing Director,
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