

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2017

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CRP (NPD) No.1650 of 2011

Sampath (Died)

1. C.Ramalingam

2. C.Thulasi

3. Pavunammal

4. E.Chinnaponnu

5. Thangamani

6. Latha

7. Jaichitra

... Petitioners

Vs.

Vanamayil

... Respondent

PRAYER: Revision Petition under Section 115 of the Code of Civil Procedure against the order dated 15.12.2010 passed in I.A.No.105 of 2005 in A.S.No. Nil of 2005 on the file of the Subordinate Court, Ranipet.

For Petitioners : Mr.P.Jagadeesan

For Respondent : No Appearance

ORDER

The petitioners have filed this revision assailing the order dated 15.12.2010 passed in I.A.No.105 of 2005 in A.S.No. Nil of 2005 on the

file of the Subordinate Court, Ranipet.

2. According to the petitioners, the respondent herein filed a suit in O.S.No.24 of 1993 on the file of the Subordinate Court, Ranipet, against the petitioners seeking partition and separate possession. The said suit was decreed on 10.7.2001 and a preliminary decree of partition was passed. Thereafter, final decree was passed on 31.12.2004.

3. Alleging that the allotment made in the decree is not a reasonable one, the petitioners have filed an appeal before the Sub Court, Ranipet, along with I.A.No.105 of 2005 under Section 5 of the Limitation Act seeking condonation of delay of 161 days in filing the appeal.

4. The Court below dismissed the application seeking condonation of delay in filing the appeal holding that the delay was not satisfactorily explained. Assailing the said order, the present revision petition is filed for the relief stated supra.

5. The learned counsel for the petitioners vehemently contended

that the original defendant in the suit, namely Sampath, was suffering with jaundice and was taking native treatment and, therefore, he was unable to contact his counsel and hence, the petitioners were unaware of the passing of the final decree on 31.12.2004 and could not file the appeal within the period of limitation. He added that even though the first respondent as P.W.1 had categorically proved the illness of the deceased original defendant, the trial Court, did not give credence to the same.

6. It is his further contention that the petitioners initially filed the appeal with a delay of 105 days, but as the certified copy of the judgment was not filed, the same was not taken on file and again re-presented, of course, with a delay of 161 days, enclosing the certified copy of the judgment and, therefore, he submits that the petitioners were continuously pursuing the appeal remedy and were diligent.

7. I heard Mr.P.Jagadeesan, learned counsel for the petitioners. There is no representation on behalf of the respondent and perused the documents available on record.

8. It is not in dispute that the petitioners and the respondent

belong to the same family.

9. In the case on hand, admittedly, the delay in filing the appeal is 161 days. The Supreme Court and this Court have time and again held that the power to condone delay is to enable the courts to do substantial justice to parties by disposing of matters on merits; that the expression "*sufficient cause*" employed by the Legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which serves the ends of justice which is the life purpose for the existence of the institution of courts; substantial justice deserves to be preferred as against technical considerations; and the courts should prefer to deliver justice on merits in preference to the approach which scuttles a decision on merits.

10. Let us now analyze the scope of revision under Section 115 of the Code of Civil Procedure. It is trite that the powers of a High Court to entertain a revision are circumscribed by Section 115 of the Code of Civil Procedure. Section 115 of the Code of Civil Procedure empowers the High Court to entertain a revision against the decision of the Subordinate Court, only where the Subordinate Court appears to have—

- i. exercised jurisdiction not vested in it by law;

- ii. failed to exercise jurisdiction so vested; or
- iii. acted in exercise of its jurisdiction illegally or with material irregularity.

11. The main ground urged by the petitioners is that the original defendant, who was pursuing the matter before the Court below, had been suffering with jaundice and was not in a position to contact his advocate and by dint of the same, he was unaware of the passing of the final decree.

12. In this factual backdrop, let us analyze whether the petitioners has shown sufficient cause for condonation of delay. The Courts are empowered to allow the application for condonation of delay, on sufficient cause being shown or reject such an application in exercise of its judicious discretion. However, such judicious discretion to condone the delay by adopting a liberal approach has to be exercised only in deserving cases, and not in cases where the delay is on account of lethargic attitude and negligence on the part of the applicant. It is not as if each application for condonation of delay has to be allowed as a matter of right, no matter whether any "*sufficient cause*" for the delay is shown or not. Each case is to be decided on facts and circumstances. The length of delay is no matter. All that matters is the acceptability of explanation.

13. In *Mohammed Aslam and others v. C.N.A.Gowdhaman, 2005*

(2) CTC 766, the delay was of 1251 days. In the said judgment, a Division Bench of this Court observed as under:

"12. In the impugned order, as said earlier, the learned Judge has not considered the explanation offered by the applicant for the delay of 1251 days. Though the learned Judge was conscious of the fact that by condoning the inordinate delay, the respondents therein (appellants herein) will be put to great hardship, instead of compensating them, directed for the payment of Rs. 10,000/- to the State Legal Services Authority, Chennai, admittedly, which is not a party in this proceedings. We are unable to share the above view. Having found that by condoning the inordinate delay only on the ground that the applicant should be given an opportunity and having found that the said act will cause great hardship to other side, viz., respondents therein, it is but proper to compensate them by awarding reasonable costs to them. The learned Judge has not resorted to such recourse. It is not in dispute that the Courts are here to render justice to both parties. We are unable to understand how the respondents will be compensated by payment of Rs. 10,000/- to the State Legal Services Authority, Chennai. Equally, we are conscious of the fact that the length of delay is no matter, and acceptability of the explanation is the only criterion. Sometimes the delay of shortest range may be uncondonable due to want of acceptable explanation, whereas in certain other cases, delay of a very long range can be condoned as the explanation therefor is satisfactory. In every case of delay, there may be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and shut the door against him. If the explanation does not smack the 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 not lean towards acceptance of the explanation. We are also aware that refusal to condone the delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the Court is always deliberate. Now, even the higher court of this land have interpreted that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice. Accordingly, in order to give one opportunity to the respondent/applicant and at the same time, to compensate the appellants/respondents, we intend to modify the order of the learned Judge dated 10.03.2005. Though it is stated that the applicant had paid a sum of Rs. 10,000/- to the State Legal Services Authority, Chennai as ordered, in addition to the said amount, the applicant/respondent is directed to pay a further sum of Rs. 20,000/- (Rupees twenty thousand only) to the appellants/respondents within 15 days from today, failing which the order of the learned Judge dated 10.03.2005 shall stand set aside. OSA. No. 44 of 2005 is disposed of accordingly."

(emphasis supplied)

14. In yet another decision of this Court in *Pavayammal and another v. S.N.Chockalingam and others*, 2009 (5) CTC 414, a learned Single Judge of this Court held as under:

"7.The word 'sufficient cause' under Section 5 of the Limitation Act will have to be interpreted in a purposeful and meaning way. As a matter of fact, the Court of law is not supposed to adopt a pedantic approach instead it has to take a liberal view while dealing with the Application of condonation of delay. Ordinarily a party does not stand to gain by lodging in Appeal belatedly. Refusing to condone a delay will result in meritorious matter being thrown out at the

nascent stage and thereby the cause of justice being defeated. On the other hand, if a party is allowed to enter into the scene of main proceedings, then the matter can be decided on merits. Of course a Court of law providing due opportunities to the parties to prove their case. The judiciary is respected not on account of its power to legalise injustice on technical grounds but it is capable of removing injustice and is expected to do so. This Court is of the considered view that substantial justice will have to be delivered to the parties overriding technicalities."

(emphasis supplied)

15. In the instant case, the final decree was passed against the petitioners in the suit. It is not the case of the respondent that the petitioners had voluntarily delayed filing of the appeal. The petitioners, though had taken steps to set aside the final decree, it was initially with a delay of 105 days and, thereafter, the delay increased to 161 days. It is categorically pleaded that the delay was on account of the ailment suffered by the original defendant, who later passed away. It is also the case of the petitioners that the partition of the properties was not done in a justifiable manner and they would be put to irreparable loss, if they are not allowed to put forth their case on merits and contest the appeal.

16. For the foregoing reasons, I am of the firm view that, to do substantial justice to the parties and to deliver justice on merits in

preference to the approach which scuttles a decision on merits, this is a fit case where the petitioners should be given an opportunity to put forth their case by way of appeal, rather than curtailing their rights by sticking on technicalities.

17. In the result:

a) The civil revision petition is allowed by setting aside the order dated 15.12.2010 passed in I.A.No.105 of 2005 in unnumbered A.S. of 2005 on the file of the learned Sub Court, Ranipet;

b) The Sub Judge, Ranipet, is hereby directed to number the appeal and dispose of the same within sixty days from the date of numbering of the appeal, without giving any adjournment to either side on unreasonable grounds; and No costs. Consequently, M.P.No.1 of 2011 is closed.

07.02.2017

Note: Issue order copy on 05.01.2018

vs

Index : Yes
Internet : Yes

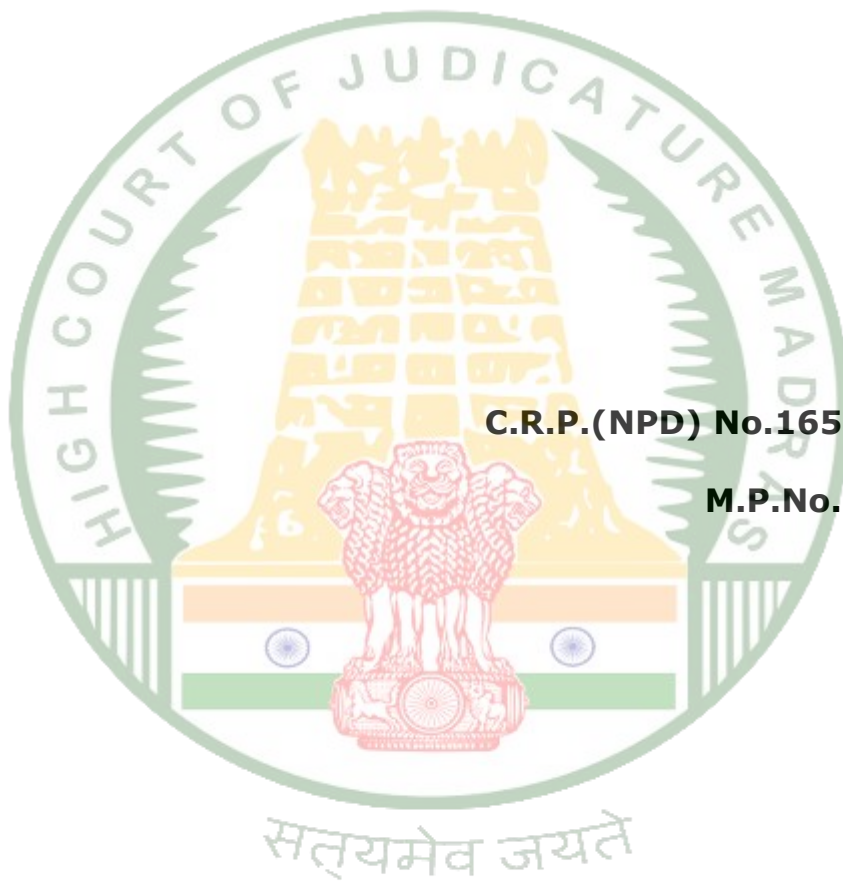
To

The Sub Judge
Ranipet.

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M.V.MURALIDARAN,J.

VS



**C.R.P.(NPD) No.1650 of 2011
and
M.P.No.1 of 2011**

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