

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)No.1708 of 2011

and

M.P.No.1 of 2011

Ramani Ammal

.. Petitioner

Vs.

1.Sivakumar

2.Loganadhan

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 07.04.2011 made in I.A.No.90 of 2009 in A.S.No.Nil of 2009 on the file of the Learned Subordinate Judge, Ranipet.

For Petitioner : Mr.G.Jeremiah

For Respondents : Mr.Suriyaprakash

ORDER

The defendant in the main suit and respondent in Unnumbered A.S.No.Nil of 2009 is the revision petitioner before this Court, challenging the order of allowing I.A.No.90 of 2009 on the file of the Sub-Court, Ranipet.

2.The case of the revision petitioner is that the father of the respondents herein A.V.Ekambaram filed a suit against the revision petitioner in O.S.No.187 of 1991. Pending suit, the respondents' father A.V.Ekambaram died and the respondents herein were brought on record as plaintiffs 2 and 3 in the said suit. While so, in the first week of August 2003 the 1st respondent herein got affected by Paralytic stroke and for that he had taken native treatment at Karikkal Village. The 2nd respondent herein abandoned the family and had left Arakkonam, therefore the 1st respondent herein alone looked after the case on behalf of his brother also. After getting cured from Paralytic attack, when he met his advocate he was informed that the above suit came to be dismissed on merits on 27.08.2003. Immediately thereafter the respondents herein have taken steps to file appeal as against the dismissal of the above said suit. However as there was

delay that the Appeal came to be filed beyond the prescribed limitation, appeal was filed along with an application to condone delay application in I.A.No.90 of 2009. However, there is a delay of 2240 days have occurred in filing the appeal. According to the respondents herein the delay is due to the above said health issues of the 1st respondent herein.

3.On the other hand, it was contented by the revision petitioner that absolutely there is no explanation for the huge delay of 2240 days. The reason assigned by the respondents herein that 1st respondent herein was suffered with Paralytic attack is totally false. Even assuming that the 1st respondent herein was having the ailment of Paralytic stroke, his brother the 2nd respondent herein is available and he could have contacted their counsel and filed the appeal in time, since the appeal was presented by both respondents jointly. The appeal suit was filed after a delay of nearly about 7 years to harass the revision petitioner, hence he prayed to dismiss the same.

4.The Learned Subordinate Judge upon considering the case, condoned the delay by order dated 07.04.2011. Challenging the same the present civil revision petition is filed this petitioner who is the

respondent in the condone delay petition.

5.I heard Mr.G.Jeremiah, learned counsel for the petitioner and Mr.Suriyaprakash, learned counsel for the respondents and perused the entire records.

6.From the perusal of the records it reveals that the respondents herein filed appeal suit in the year 2009 as against the Judgment and Decree made in O.S.No.187 of 1991 dated 27.08.2003 with a delay of 2240 days. In order to substantiate the case, the 1st respondent herein examined himself as PW-1 and one Mr.Mathivanan was examined on his side as PW-2. On perusal of affidavit filed along with I.A.No.90 of 2009 to condone the delay of 2240 days and the cross examination of Pw-1 E.Sivakumar, the 1st respondent herein is totally contrary. The affidavit states that the 1st respondent herein recovered totally from Paralytic stroke only a week before filing the above appeal, whereas the above appeal appears to be filed on 17.12.2009. Per Contra in his cross examination, it is deposed by himself that he suffered with the disease for two years. Thus the averment appears to be false and untenable.

7. That apart in the cross of PW-1, he has deposed that he obtained the certified copy of Judgment in O.S.No.187 of 1991 on 30.09.2003 and thereupon the next three month he fell ill. The above said averment would show the conduct of the respondents as unfair and unsustainable. The respondents have not come with clean hands to the Court.

8. As rightly contented by the learned counsel for the revision petitioner, the respondents herein have not assigned any valid, acceptable and sufficient reason to condone the long delay of 2240 days. The affidavit is lack of particulars. Normally this Court would not interfere with the discretion exercised by the lower Court in the matter of delay condonation. But in this case, as discussed above, this Court is compelled to interfere with the order passed by the Court below as the impugned order is not legally sustainable in the facts and circumstance of the case. The Learned Subordinate Judge had not considered the prejudice caused to the revision petitioner is more than the prejudice caused to the respondents herein in condoning the delay of 2240 days.

9. On proper appraisal of the above fact, the Learned

Subordinate Judge ought to have dismissed the condone delay application for want of proper explanation and reason.

10. Before parting with the case, I would like to highlight a decision of mine reported in 2017 (3) CTC 151 in the matter of Sathyanarayana Vs T.J.Dhanakoti @ Koti whereby after placing reliance upon various decisions of the Hon'ble apex Court it was held as following that:

"23. In yet another case in Suo motu proceedings against R. Karuppan, Advocate reported in (2001) 5 SCC 289 the Hon'ble Supreme Court has passed orders as follows:

13. Courts are entrusted with the powers of dispensation and adjudication of justice of the rival claims of the parties besides determining the criminal liability of the offenders for offences committed against the society. The Courts are further expected to do justice quickly and impartially not being biased by any extraneous considerations. Justice dispensation system would be wrecked if statutory restrictions are not imposed upon the litigants, who attempt to mislead the Court by filing and relying upon false evidence particularly in cases, the adjudication of which is dependent upon the statement of facts. If the result of the proceedings are to be respected, these issues before the Courts must be resolved to the extent possible in accordance with the truth. The purity of

proceedings of the Court cannot be permitted to be sullied by a party on frivolous, vexatious or insufficient grounds or relying upon false evidence inspired by extraneous considerations or revengeful desire to harass or spite his opponent. Sanctity of the affidavits has to be preserved and protected discouraging the filing of irresponsible statements, without any regard to accuracy.

24. In yet another case of A.Muthusamy v. Muniammal and others reported in 2006 (1) CTC 187, this Court while considering the delay of 477 days in representation of bundle, which was dismissed by the trial Court, in a revision filed before this Court in CRP(NPD)No.1205 of 2005, this Court has dismissed the said Civil Revision Petition on 06.12.2005 and pass orders as follows:-

"7.The appeal was filed on 11.4.2003; subsequently returned on 21.4.2003 for rectification of defects. Thereafter, the Revision Petitioner has not represented it for a long time. There was a delay of 477 days in representing the appeal. The contention of the Revision Petitioner that he had to travel to many places in connection with his business and that he could not contact his counsel is not substantiated by any material. No material had been produced showing that the Revision Petitioner was travelling several places.

9.Contending that condoning the delay in representation is between the Court and the Appellant, the

learned counsel for the Revision Petitioner submitted that the Respondent cannot have any objection for condoning the delay. It is further submitted that the Court should not proceed with the tendency of finding fault with the cause shown and negative the reasons for the delay in a casual manner. Though the condonation of delay in representation is between the Court and the Appellant, the Court should not lose sight of the fact that by not taking steps in representing the appeal within the prescribed time, valuable right has accrued to the Respondents, which should not be lightly be defeated by condoning the delay in a routine-like manner. By condoning the delay in representation, litigation cannot be allowed to be kept alive for a long time.

13. Though the above observations are made in the proceedings under Section 5 of the limitation Act, those principles are applicable while considering the delay in representation of the papers. The delay of 477 days appears to be due to deliberate inaction on the part of the Revision Petitioner.

14. The learned counsel for the Revision Petitioner has submitted that by declining to condone the delay in representation of the appeal, the Revision Petitioner would be deprived of the opportunity from filing the appeal in the first Appellate Court. Contentions of the parties in the suit does not merit acceptance. In the partition suit, after all what is the contention of the Revision Petitioner/Appellant. The mother and sisters are entitled to 4/5th share. In fact, there was also talks of settlement which did not fructify.

The Defendant cannot have any valid defence against the lawful share of the mother and sister. Hence the contention that the Revision Petitioner would be deprived of valuable right has no merits.”

25. In yet another case, the Honble Supreme Court in a case of Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and others reported in (2013) 12 SCC 649, the Honble Supreme Court has considered the case as follows:

“21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (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.

21.2. (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.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (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.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (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.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (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.

21.9. (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.

21.10. (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.

21.11. (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.

21.12. (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

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

22.1. (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard 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."

26. In yet another case of H.Dohil Constructions Company Private Limited v. Nahar Exports Limited and Another reported in (2015) 1 SCC 680, the Honble Supreme Court has passed the order as follows:

"20. In the case on hand, the delay in refilling was of 1727 days. As rightly pointed out by the learned Senior Counsel for the appellant(s), the respondents paid the scrutiny charges on 11-4-2008 as disclosed in Receipt

No.73 issued by the High Court of that date. When the appeal papers were filed on 6.9.2007 and the scrutiny charges were paid on 11.4.2008, it was quite apparent that the processing of papers of the appeals for its registration did commence in the month of April 2008. Thereafter, if rectification of whatever defects were not carried out by the respondents or its counsel between April 2008 and May 2012, it is the bounden duty of the respondents to have satisfactorily explained such a long delay in refilling. When we refer to the applications filed on behalf of the appellant(s), we find that there was no convincing explanation as to how the respondents were disabled from rectifying the defects pointed out by the Registry and refilling the appeal papers within time. The respondents only attempted to throw the blame on the previous counsel to whom appeal papers were entrusted for filing in September 2007. As pointed out by the learned Senior Counsel for the appellant(s), there were no details as to whom it was entrusted and what were the steps taken to ensure that the appeals filed were duly registered for pursuing further remedy as against the said judgment of the trial Court. As a matter of fact the appeal papers were filed without payment of any Court fee. This only affirms the stand of the appellant(s) that there was no bona fide in the respondents claim and that they were seriously interested in challenging the judgment of the trial Court as against the non-grant of relief of specific performance. We also fail to see as to how Respondent No.1 which is a

limited company involved in the business of exports, which would certainly have its own legal department, can plead that after entrusting the papers to some counsel whose name was not disclosed even before this Court did not even bother to take any follow-up action to ensure that its appeals were duly registered in the High Court. In this context the maxim *vigilantibus non dormientibus jura subveniunt* (law assists those who are vigilant and not those who sleep over their rights) aptly applies to the case on hand. The respondents simply by throwing the blame on the previous counsel whose identity was not disclosed claimed that irrespective of the enormous delay of 1727 days in refilling the same should be condoned as a matter of course as there was only 9 days delay involved in filing the appeals.

24. When we apply those principles of *Bhattacharjee* case 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 refilling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bone fides as displayed on the part of the respondents. Further, when the respondents have not come forward with paper details as regards the date when the papers were returned for refilling, the non-furnishing of satisfactory reasons for not refilling of papers in time and the failure to pay the Court fee at the time of the filing of appeal papers on 6-9-2007, 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 bona fides in its approach. It also requires to be stated that in the case on hand, not refilling 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 the parties and the same principle cannot be given a go-by under the guise of liberal approach even if it pertains to refilling. The filing of an application for condoning the delay of 1727 days in the matter of refilling 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."

27. One another case in *SCIEMED OVERSEAS INC. v. BOC INDIA LIMITED AND OTHERS* reported in (2016) 3 SCC 70, the Supreme Court has passed the order as follows:

"2. A global search of cases pertaining to the filing of a false affidavit indicates that the number of such cases that are reported has shown an alarming increase in the last fifteen years as compared to the number of such cases prior to that. This is illustrative of the malaise that is slowly but surely creeping in. This trend is certainly an unhealthy one that should be strongly discouraged, well before the filing of false affidavits gets to be treated as a routine and normal affair.

27. In the first instance, the work order was issued to Sciemed on 25-7-2007 but this was not disclosed to the High Court when it disposed of WP (C) No.4203 of 2007 on 31-7-2007. Had the factual position been disclosed to the High Court, perhaps the outcome of the writ petition filed by BOC would have been different and the issue might not have even travelled up to this Court. Furthermore, apparently to ensure that work order goes through, a false or misleading statement was made before this Court on affidavit when the matter was taken up on 14-3-2008 to the effect that the work was nearing completion. It is not possible to accept the view canvassed by the learned counsel that the false or misleading statement had no impact on the decision rendered by this Court on 14-3-2008. We cannot hypothesise on what transpired in the

proceedings before this Court nor can we imagine what could or could not have weighed with this Court when it rendered its decision on 14-3-2008. The fact of the matter is that a false or misleading statement was made before this Court and that by itself is enough to invite an adverse reaction."

28. In *Suo Motu Proceedings against R. Karuppan, Advocate*, in re this Court had observed that the sanctity of affidavits filed by parties has to be preserved and protected and at the same time the filing of irresponsible statements without any regard to accuracy has to be discouraged. It was observed by this Court as follows: (SCC p.293, para 13)

"13. Courts are entrusted with the powers of dispensation and adjudication of justice of the rival claims of the parties besides determining the criminal liability of the offenders for offences committed against the society. The Courts are further expected to do justice quickly and impartially not being biased by any extraneous considerations. Justice dispensation system would be wrecked if statutory restrictions are not imposed upon the litigants, who attempt to mislead the Court by filing and relying upon false evidence particularly in cases, the adjudication of which is dependent upon the statement of facts. If the result of the proceedings are to be respected, these issues before the Courts must be resolved to the extent possible in accordance with the truth. The purity of

proceedings of the Court cannot be permitted to be sullied by a party on frivolous, vexatious or insufficient grounds or relying upon false evidence inspired by extraneous considerations or revengeful desire to harass or spite is opponent. Sanctity of the affidavits has to be preserved and protected discouraging the filing of irresponsible statements, without any regard to accuracy."

29. Similarly, in *Muthu Karuppan v. Parithi Ilamvazhuthi* this Court expressed the view that the filing of a false affidavit should be effectively curbed with a strong hand. It is true that the observation was made in the context of contempt of Court proceedings, but the view expressed must be generally endorsed to preserve the purity of judicial proceedings. This is what was said: (SCC p. 501, para 15) "15. Giving false evidence by filing false affidavit is envil which must be effectively curbed with a strong hand. Prosecution should be ordered when it is considered expedient in the interest of justice to punish the delinquent, but there must be a prima facie case of deliberate falsehood on a matter of substance and the Court should be satisfied that there is a reasonable foundation for the charge."

28. On fair reading of the above judgments, the Hon'ble High Court and the Hon'ble Supreme Court has categorically held that filing of false/ misleading affidavit imposition of exemplary costs fully justified and such filing to be strongly discouraged and the Hon'ble Supreme Court

affirmed the order passed by the Hon'ble High Court by means of 10 lakhs on the petitioner for filing a false or misleading affidavit in Court.

29.The Hon'ble Supreme Court in the above referred cases, it is made clear that the Hon'ble Supreme Court hold that in this context the maxim, vigilantibus non dormientibus jura subveniunt (law assists those who are vigilant and not those who sleep over their rights) aptly applies to the case on hand, the petitioner/defendant had simply by throwing the blame on the previous counsel by stating that he was died before 2 years and therefore, the delay of 1114 days was occurred, for filing re-presenting the application is totally false."

11.It is needless to say that the above facts and circumstance involved in the above cases would demonstrate that filing false affidavit and playing fraud upon the Court of law is unacceptable and liable to be rejected.

12.Coming to the case on hand, the respondents herein have not assigned any valid, acceptable and sufficient reason to condone the long delay of 2240 days.

13.In the result, this revision civil revision petition is allowed by

setting aside the order passed in I.A.No.90 of 2009 in A.S.No.Nil of 2009, dated 07.04.2011, on the file of the learned Subordinate Judge, Ranipet. No costs. Consequently, connected miscellaneous petition is closed.

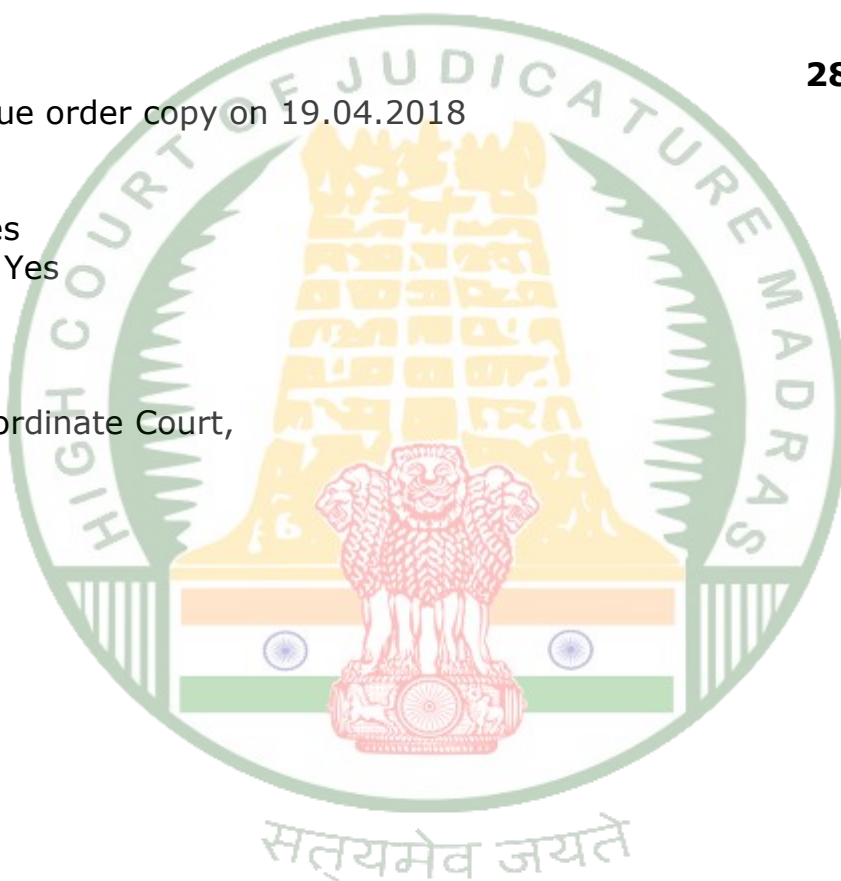
28.04.2017

Note:Issue order copy on 19.04.2018
vs

Index:Yes
Internet:Yes

To

The Subordinate Court,
Ranipet.



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M.V.MURALIDARAN, J.

VS



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