

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).No.467 of 2017

1.Dhanachandradoss
2.Jansi Rani
3.S.Raju
4.D.Prakash

...Petitioners

Vs

R.Ravinder Kumar

...Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 16.12.2015 in I.A.No.10762 of 2013 in O.S.No.3320 of 2003 on the file of the III Assistant City Civil Court, Chennai.

For Petitioners : Mr.K.Kumar

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 16.12.2015 in I.A.No.10762 of 2013 in O.S.No.3320 of

2003 on the file of the III Assistant City Civil Court, Chennai.

2.At the time of admission, argument of the learned counsel for the petitioners is heard in length.

3.The respondent as a plaintiff filed a suit in O.S.No.3320 of 2003 for recovery of money. The petitioners/defendants have filed a written statement and contested the suit. The suit has been decreed exparte on 14.03.2006. Therefore, the petitioners/defendants have come forward with an application in I.A.No.10762 of 2013 under Section 5 of the Limitation Act to condone the delay of 2496 days in filing the petition to set aside the exparte decree dated 14.03.2006. The trial Court, after hearing both sides, dismissed the application. Challenging the same, the present revision is preferred by the petitioners/defendants.

4.Learned counsel for the petitioners would submit that the first petitioner was undergoing treatment for heart ailment for a long time and for that purpose, he was travelling from Kanchipuram to Chennai and Vellore regularly and hence, he could not attend the Court and give necessary instruction to his counsel. Hence, there was a delay. But the trial Court without considering the above aspect has erroneously dismissed the application. Therefore, he

prays for allowing the revision.

5.The respondent as a plaintiff filed the suit for recovery of money in the year 2003. The petitioners/defendants have filed a written statement and contested the suit. The suit has been decreed exparte on 14.03.2006. So the petitioners/defendants have filed I.A.No.10762 of 2013 to condone the delay of 2496 days in filing the petition to set aside the exparte decree stating that the first petitioner was under continues treatment for heart and certain other ailments. He was also underwent heart surgery and that he could not able to file a petition to set aside the exparte decree in time.

6.A perusal of discharge summary, which finds place in page No.29, shows that the first petitioner was affected by heart disease on 28.08.2008. The exparte decree was passed on 14.03.2006. But there is no evidence to show that the first petitioner has suffered some ailment on 14.03.2006. Furthermore, the petitioners had not assigned any reason as to why the other petitioners 2 to 4 were also unable to appear before the Court.

7.As per the dictum of the Apex Court reported in **AIR 1998 SC 3222 (N.Balakrishnan v. M.Krishnamurthy)**, it was

specifically held that if the length of delay is immaterial, sufficient cause for condonation of delay has to be explained. It is appropriate to extract para-9 to 11, which read as follows:

"9. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior Court would be free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammelled by the conclusion of the lower Court.

10. The reason for such a different stance is thus: The primary function of a Court is to adjudicate the dispute between the parties and to

advance substantial justice. Time limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. "

8. In the judgment of the Apex Court reported in **2011 (4) SCC 363 (Lanka Venkateswarlu (Dead), rep. by legal heirs) Vs. State of Andhra Pradesh and others**), in para-19, 23, 28 and 29, it was held as follows:

"19. We have considered the submissions made by the learned counsel. At the outset, it needs to be stated that generally speaking, the courts in this country, including this Court, adopt a liberal approach in considering the application for condonation of delay on the ground of sufficient cause under Section 5 of the Limitation Act. This principle is well settled and has been set out succinctly in *Collector, Land Acquisition v. Katiji*

(1987) 2 SCC 107.

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23. The concepts of liberal approach and reasonableness in exercise of the discretion by the Courts in condoning delay, have been again stated by this Court in *Balwant Singh v. Jagdish Singh* (2010) 8 SCC 685 as follows:- (SCC p.696, paras 25-26)

"25. We may state that even if the term 'sufficient cause' has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of 'reasonableness' as it is understood in its general connotation.

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise (*sic a lis*). These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result

of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly"

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28. We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as "liberal approach", "justice oriented approach", "substantial justice" can not be employed to jettison the substantial law of limitation. Especially, in cases where the Court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which

a Judge is required to maintain whilst adjudicating any lis between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms.

29. The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. Whilst considering applications for condonation of delay under Section 5 of the Limitation Act, the Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers."

It is well settled dictum of the Apex Court that for condonation of delay, the discretion has to be exercised in a systematic manner informed by reason and justice must be done to both parties. Further, the condonation of delay is only a discretion that too judicial

discretion and while exercising the judicial discretion, the Court should consider the loss caused to the opposite party.

9. Now it would be appropriate to consider para-3 of the affidavit filed by the petitioners, in which, it is stated that the first petitioner was undergoing treatment for heart ailment for a longtime. But I am unable to understand as to why the other petitioners 2 to 4, who are majors, are silent. In such circumstances, I am of the view that the petitioners only with a view to drag on the proceedings have preferred the application to prevent the respondent/plaintiff to enjoy the fruits of the decree. Therefore, applying the dictum laid down in Balakrishnan and Lanka Venkateshwarlu cases, I am of the considered opinion that the delay of 2496 days has not been properly explained by the petitioners and hence, I am not inclined to condone the delay. So I do not find any illegality or irregularity in the fair and decreetal order passed by the trial Court and therefore, it is hereby confirmed. Consequently, the Civil Revision Petition stands dismissed.

10. In the result, this Civil Revision Petition shall stand dismissed. No costs. Consequently, connected Miscellaneous

Petition is closed.

13.02.2017

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R.MALA,J.

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To

III Assistant City Civil Court, Chennai.

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