

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 13.04.2017	Date of Pronouncing Judgment 27.04.2017
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Coram

The Honourable Mr. Justice D. Krishnakumar

C.R.P. (N.P.D.) No. 776 of 2017 and
C.M.P. No. 3835 of 2017

Zainab Bee Shariff (deceased)

1. Y. Mohamad Mushtaq
2. Sahida Begum
3. Y. Sahim Kausar
4. Y. Md. Ashfaq
5. Y. Sakira Begum
6. Y. Safia Begum
7. Y. Md. Mushaffer

(Petitioners 1 to 7 are the legal heirs of the deceased and they are impleaded as per the order of the court below in I.A. No 10866/04, dated 05-07-2005) ...Petitioners

Vs.

1. Ameerunnissa Begum Sahiba Endowment rep. by its President. No. 76/2. Barathi Salai, Pycrofts road Triplicane, Chennai-5
2. The Tamilnadu Wakf Board, rep. by Chief Executive Officer, 1, Jaffer Sarang Street, Chennai - 1 ...Respondents

This Civil Revision Petition is filed under section 115 of C.P.C to set aside the order and decretal order made in C.M.P. No. 1376/2013 in A.S.S.R. No: 51777/2013 dated 09.12.2016 on the file of the Principal City Civil Judge, Chennai and allow this revision with costs.

For Petitioners : Mr. K. Sakthivel
for M/s. G. Appavu
For Respondent-1 : Mr. Lakshminarayanan
for M/s. Asif Ali

O R D E R

This Civil Revision Petition is filed against the order dated 09.12.2016 made in C.M.P.No.1376/2013 on the file of the Principal City Civil Judge, Chennai.

2. According to the petitioners, the suit schedule property belongs to the first respondent Endowment. The first respondent endowment is a charity Endowment Board. From the Income derived from the schedule property, the first respondent endowment is performing the charitable works. The petitioner's mother Zainab Bee Shariff and petitioners are the tenants in first respondent endowment. Ordinarily the aforesaid property was taken on lease by one Zainab Bee Shariff. The aforesaid Zainab Bee Shariff was a tenant under the first respondent endowment in respect of land measuring an extent of 1950 sq.ft. The monthly rent was a sum of Rs.158/- as per plaint.

3. The aforesaid lease was signed by the Zainab bee Shariff, and the petitioners 1 to 7 defer the payment of rent from April 2000 onwards. The first respondent filed a suit in O.S.No.3878/2003 against the first petitioner Zainab Bee Shariff before the City Civil Court, Chennai for eviction and recovery of arrears of rent and for damages for use and occupation. During the pendency of the suit, the aforesaid Mr. Zainab Bee Shariff died and the petitioners 1 to 7 were brought on record as legal heirs of the aforesaid Zainab Bee Shariff. The petitioners 2 to 8 have contested the suit and filed a written statement. The dispute in the aforesaid suit is only the rent payable per month. Thereafter, the petitioners 1 to 7 were not appeared and therefore, exparte decree was passed by the court below. The aforesaid exparte decree passed in the suit has become final.

4. The learned counsel for the petitioners would submit that the petitioners, after came to know about the exparte judgment, filed an appeal before the City Civil Court, Chennai in A.S.S.R.No.51777/2013 along with an application in C.M.P.No. 1376/2013 to condone the delay of 2110 days in filing the aforesaid appeal. The application filed by the petitioners was dismissed by the court below and hence they have filed the present Civil Revision Petition before this court. The learned counsel for the petitioners would also submit that taking advantage of the ignorance of the petitioners and improper guidance the suit has been filed mischievously and decree was obtained. He would further submit that the petitioners revoked the Vakalat given to the earlier counsel and engaged the present counsel and the petitioners have a good case on merits and sufficient reasons have been stated to condone the delay,

however, the appellate court has erroneously dismissed the application and hence the order passed in the C.M.P.No. 1376/2013 is liable to be set aside.

5. In support of his contention the learned counsel for the petitioners would rely upon the following decisions and prays this court to set aside the order of the court below.

(i) (1987) 2 Supreme Court Cases 107 (Collector, Land Acquisition, Anantnag and Another Vs Msn. Katiji and Others).

(ii) (2016) (1) CLT 389 (The Special commissioner Hindu Religious and Charitable Endowments Department, Chennai Vs P.Velusamy and Others).

(iii) (2010) 8 Supreme Court Cases 726 (Ramesh Gobindram (Dead) Through LRS VS Sugra Humayun Mirza wakf).

6. Per Contra, the learned counsel for the first respondent would submit that the petitioners have not given any sufficient reason to condone the delay of 2110 days in filing the appeal. Except the allegation against the previous counsel, who were appeared in the trial court, the petitioners have stated no other reasons in the affidavit for condoning the delay. The petitioners have merely made an allegation in the affidavit that they were ignorant and had improper guidance and the suit has been filed mischievously and decree was obtained. The learned counsel for the first respondent would further submit that the trial court has decreed the suit in the year 2008. After a lapse of nearly 7 years the petitioners have stated in the affidavit that the petitioners were ignorant and had improper guidance. According to the respondents, the respondents have filed Execution Petition in the year 2009 and summons have also been issued, and the counsel also appeared for the petitioners and filed the aforesaid appeal in the year 2013, with inordinate delay of 2110 days and no reason or explanation was given in the affidavit filed in support of the condone delay petition was given by the petitioners, and therefore the petitioners have knowledge about the exparte decree passed by the trial court. Despite the same, the petitioners had defaulted in payment of rent, and to condone the inordinate and huge delay. The learned counsel for the first respondent would also submit that even on the facts of this case, the petitioners are in possession of measuring an extent of 1950 sq.ft at monthly rent of Rs.158/- and there is huge arrears of rent and damages to be paid by the petitioners. Therefore the petitioners are not entitled to the relief.

7. The respondents counsel, would rely upon the following decisions in support of his contention:-

(i) 2016 SSC Online Mad 4703 : AIR 2016 (NOC 475) 240, (The Management of Tamil Nadu State Transport Corporation Rep. By its Managing Director Vs. The Presiding Officer, Labour court, Madurai).

(ii) (2015) 1 Supreme Court Cases 680, (H.Dohil construction company private limited Vs. Nahar Exports Limited and Another).

(iii) (2014) 4 Supreme Court Cases 108, (Chennai Metropolitan Water Supply and Sewerage Board and Others Vs. T.T.Murali Babu)

(iv) (2008) 6 MLJ 534, (S.Panchatcharam Vs. S.Sambandha Mudhaliar and Another).

(v) C.R.P (NPD) No.1216 of 2011, (Ammerunnisa Begum Sahiba Endowments).

The learned counsel for the respondents would submit that in the light of the aforesaid decisions, no interference is warranted against the order passed by the court below.

8. Heard the counsel for the petitioners as well as the respondents. Perused the materials available on record.

9. The first respondent endowment is the owner of the schedule mentioned property. The deceased Zainab Bee Shariff, mother of the petitioners 1 to 7 was a tenant on a monthly rent of Rs.158/-. Since the aforesaid Zainab Bee Shariff was chronic and in willful default of payment of land rent, the first respondent herein filed the suit in O.S.No.3878 of 2003 for eviction delivery of vacant possession of suit schedule property, and for arrears of rent and also for future damages. The aforesaid Zainab Bee Shariff died pending suit. Therefore, the petitioners 1 to 7 were impleaded as legal-heirs of the deceased petitioner. The second petitioner namely Y. Mohamad Mushtaq has filed a written statement in the aforesaid suit denying the statement in the plaint and disputing the rent stating that the respondents/plaintiffs are not the owners of the land and that necessary parties were not impleaded. The trial court, after hearing the counsel for the plaintiff and counsel for defendants, passed the Judgment on merits. Aggrieved against the aforesaid Judgment and decree passed in O.S.No.3878 of 2003, the petitioners have filed an appeal before the City Civil Court, Chennai, along with an application to condone the delay of 2110 days in filing the appeal stating that the entire suit is non-est in the eye of law and decree has been obtained

by fraud. The petitioners also made bald allegations against the earlier counsel. However, the first appellate court dismissed the application to condone the delay in filing the appeal observing that the petitioners have not shown any diligence in filing the appeal and the petitioners have not come forward with proper details in the affidavit and no details have been stated in the affidavit regarding the particulars of date of knowledge of exparte decree and the date of contacting the earlier counsel as well as the present counsel. The court below further observed that even though the petitioners have made allegation against the counsel, no evidence had been produced by way of oral and documentary and in the absence of any bonafide reasons to show inordinate delay, the court cannot accept the reasons stated in the application to condone the delay.

10. The learned counsel for the petitioners placed reliance on the decision of the Honorable Supreme Court reported in (1987) 2 Supreme Court Cases 107, in the case of [Collector, Land Acquisition, Anantnag and Msn. Katiji and Others] wherein the Honorable Supreme Court has held as follows:-

(i) "Limitation act, 1963 - Section 5 - Applicability - Existence of 'sufficient cause' - Determination of - Courts should adopt a liberal and justice-oriented approach - No discrimination should be made merely because State seeking condonation of delay - Delay of only four days on the part of the State in filing appeal against enhancement of amount of compensation for acquisition of land for public purpose to the extent of Rs 14 lakhs by making upward revision of 800%, held, condonable under Section 5 - High Court error in dismissing the appeal on hyper technical ground of bar of limitation - Land acquisition Act, 1894, Section 23

(ii) Limitation Act, 1963 - Section 5 - State seeking condonation of delay must be accorded same treatment as a private party.

11. The court making liberal, pragmatic, justice-oriented, non-pedantic approach, condoned the delay of 4 days on the part of the State in filing the appeal against the enhancement of amount of compensation for acquisition of land for public purpose. The Honorable Supreme court has held that there shall be a justice-oriented approach for condoning the delay in filing the appeal.

12. The learned counsel for the petitioner also relied on the decision of this court reported in 2016 (1) CLT 389 in the case of "The Special Commissioner, Hindu Religious and

Charitable Endowment Department Vs P.Velusamy and others", wherein the application under section 5 of the Limitation Act filed by the Department of Special Commissioner Hindu Religious and Charitable Endowment was allowed on payment of cost, on the basis of the principles that there shall be a pragmatic approach rather than a pedantic approach.

13. The learned counsel for the respondents relied upon the decision of this court reported in (2008) 6 MLJ 534 in the case of (S.Panchatcharam Vs. S.Sambandha Mudhaliar and Another), where in paragraph 5 and 6, It was held as follows:-

(5) According to the learned counsel for the revision petitioner, the inordinate delay of 1657 days was caused only due to the default of the lower Court Counsel, for which he cited the following decisions:

- (i) Muthammal v. Gurunathan, (1998) 2 MLJ419:1999(1)CTC 73
- (ii) Balakrishnan v. Krishnamurthy, (1999)1MLJ114 (SC)

(6) Admittedly, no complaint was lodged by the revision petitioner against the lower Court counsel before the State Bar Council. As per Section 5 of the Limitation Act, it is the duty of the revision petitioner to explain satisfactory reason, for each day of delay before the Court to condone the same. In the instant case, except the bald allegation against the trial Court counsel, there is no satisfactory explanation for the delay of 1657 days in filing the petition to set aside the order of dismissal and to restore the suit. Hence, I confirm the finding of the trial Court that the revision petitioner has not given satisfactory explanation for the inordinate delay of 1657 days for filing the application, seeking restoration of the suit and further, the suit for partition filed by the revision petitioner herein is also pending before the trial Court. Therefore, the petitioner will not be prejudiced in any way, on account of the dismissal of the petition. As the inordinate delay of 1657 days has not been satisfactorily explained. I could find no error or infirmity in the impugned order passed by the Court below to be interfered with and accordingly, the Civil Revision Petition fails.

14. The learned counsel also relied on the decision of the Honorable Apex court in the case of Chennai Metropolitan Water Supply and Sewerage Board and Others Vs T.T.Murali Babu reported in (2014) 4 Supreme Court Cases 108, wherein, the Division Bench

of this Honorable Supreme Court has held as follows.

17. "In the case at hand, though there has been four years delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinise whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons - who compete with "Kumbhakarna" or for that matter "Rip Van Winkle". In our considered opinion, such delay does not deserve and indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.

15. In the case of 2015 (1) SCC 680, H. Dohil Constructions Company Private Limited Vs Nahar Exports Limited and Another, the Honorable Supreme court has held that in an application for condonation of the delay, without discussing the reasons which results satisfactorily in the results not deserving any negligence in the court in the matter of con-donation of delay the relevant paragraph of the Honorable Supreme Court, is extracted as follows:-

22. In this context a Division Bench decision of the Madras High Court in T.N. Mercantile Bank Ltd. v. Appellate Authority can be usefully referred to paras 14 and 17 are relevant for our purpose, which read as under: (LLN pp. 462-64)

"14. We are unable to agree with the reasoning of the learned Judge that no litigant ordinarily stands to benefit by instituting a proceeding beyond time. It is common knowledge that by delaying a matter, evidence relating to the matter in dispute may disappear and very often the party concerned may think that preserving the relevant records would be unnecessary in

view of the fact that there was no further proceeding. If a litigant chooses to approach the Court long after the time prescribed under the relevant provisions of the law, he cannot say that no prejudice would be caused to the other side by the delay being condoned. The other side would have in all probability destroyed the records thinking that the records would not be relevant as there was no further proceeding in the matter. Hence to view a matter of con-donation of delay with a presupposition that no prejudice will be caused by the con-donation of delay to the respondent in that application will be fallacious. In our view each case has to be decided on the facts and circumstances of the case. Length of the delay is a relevant matter to be taken into account while considering whether the delay should be condoned or not. It is not open to any litigant to fix his own period of limitation for instituting proceedings for which law has prescribed periods of limitation.

"17. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long time, it cannot be presumed to be non-deliberate delay, and in such circumstances of the case, he cannot be heard to plead that substantial justice deserved to be preferred as against technical considerations. We are of the view that the question of limitation is not merely a technical consideration. Rules of limitation are based on principles of sound public policy and principles of equity. Is a litigant liable to have a Damocles' sword hanging over his head indefinitely for a period to be determined at the whims and fancies of the opponent?"

23. We may also usefully refer to the recent decision of this Court in *Esha Bhattacharjee* where several principles were culled out to be kept in mind while dealing with such applications for con donation of delay. Principles (iv), (v), (viii), (ix) of para 21 can be usefully referred to, which read as under: (SCC pp. 658-59)

"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 con donation of delay is a significant and

relevant fact.

"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."

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 refiling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bona fides as displayed on the part of the respondents. Further, when the respondents have not come forward with proper details as regards the date when the papers were returned for refiling, the non-furnishing of satisfactory reasons for not refiling 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 refiling 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 refiling. The filing of an application for condoning the delay of 1727 days in the matter of refiling 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 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.

16. In the light of the aforesaid judgment of this Court as well as the Honorable Supreme Court, there is no sufficient reasons shown by the petitioners to condone the inordinate delay of 2110 days in filing the appeal. On the facts of the case the petitioners have not furnished any particulars regarding the date of knowledge of ex parte decree and the evidence to prove the allegation made in the affidavit by way of oral and documentary evidence.

17. The petitioners also relied upon the judgments of this Court in C.R.P.(NPD)No.1216 of 2011 in the case of "Ammerunnisa Begum Sahiba Endowment rep. By its president Mr. Jalal Ameenur Rahaman Vs Mrs.Godavari Bai and another". The aforesaid case is similar to the present case. The petitioners therein has filed the suit against one of the tenants for similar prayer in the present suit. The petitioners filed an Execution Petition. On the said Execution Petition 2064 of 2008 while seeking delivery, the petitioner also seeks delivery of the superstructure on the property by filing EA.SR.No.1222 of 2011. The aforesaid application was dismissed and therefore, the petitioners therein has filed the aforesaid C.R.P.(NPD)No.1216 of 2011, this court has followed the earlier decisions reported in AIR 1980 Patna 197 (Ramrup Rai Vs. Mst. Gheodari Kuer and other), and 1994 (1) ALT 618 (D.Rajamme (died) per LRs Vs. B. Tirupathamme and others) directed the Executing Court to proceed further giving liberty to the judgment debtor to remove the superstructure and upon failure to do so, treat it as an obstruction and proceed further in accordance with law.

18. In the present case, the second petitioner has stated that the said decree passed by the trial court is without jurisdiction. The said contention of the petitioner cannot be accepted and the same is liable to be rejected. The learned counsel for the petitioner also relying upon the decision of the Honorable Supreme court in the reported in (2010) 8 Supreme Court Cases 726 cited supra wherein the Honorable Supreme court has held that the appeal filed by tenants of wakf properties against decree passed by wakf tribunal in eviction suit was allowed on the ground of lack of jurisdiction and liberty was granted to the wakf board to approach the competent civil court. The aforesaid decision has been relied on by the learned counsel for the petitioners to convince the court that the court below has passed the judgment and decree, without jurisdiction. The other decision relied on by the learned counsel for the respondent in the present case wherein the first respondent herein filed a suit before the first Assistant City Civil Court Chennai, and the suit was decreed, against which an appeal has been filed before the City Civil Court, Chennai by the tenants. Therefore the aforesaid decision relied on by the counsel for the petitioners would not apply to the present case. In such circumstances, the contention of the petitioners that the decree has been passed by the City Civil Court Chennai, without jurisdiction, is liable to be rejected.

19. In the present case the petitioners have not shown any sufficient reasons for the inordinate delay in filing the appeal. The petitioners have not furnished satisfactory reasons before the court. Therefore, the petitioners are not entitled to get the relief for condoning the delay.

20. In view of the above facts and circumstances of the case and in the light of the decision of the Honorable Supreme court reported in (2015) 1 Supreme Court Cases 680, (H. Dohil Constructions Company Private Limited Vs Nahar Exports Limited and Another), there is no error or illegality in the orders passed by the appellate court. The petitioners have not made out any case to interfere with the order passed by the appellate court. Hence, this Civil Revision Petition is dismissed. No order as to costs. Consequently connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

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raja

Sub Assistant Registrar

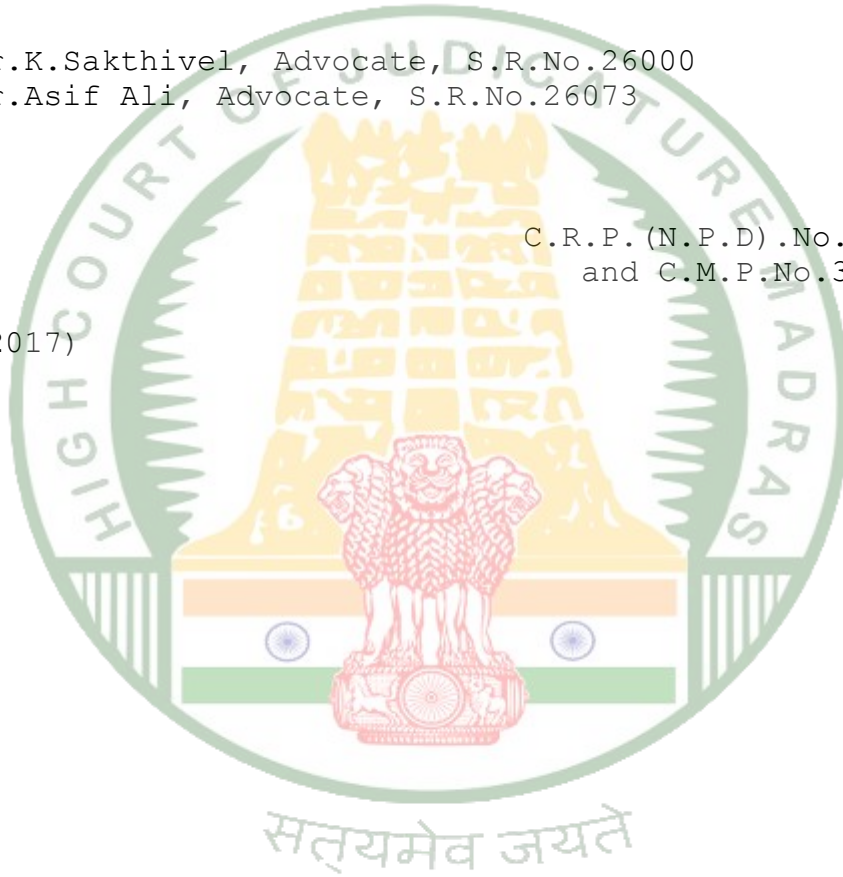
To

1. Principal City Civil Judge, Chennai
2. The Chief Executive Officer
The Tamilnadu Wakf. Board,
Jaffer Sarang Street, Chennai - 1.

+1cc to Mr.K.Sakthivel, Advocate, S.R.No.26000
+3cc to Mr.Asif Ali, Advocate, S.R.No.26073

C.R.P.(N.P.D).No.776 of 2017
and C.M.P.No.3835 of 2017

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