

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.01.2017

Coram:

THE HONOURABLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

C.R.P.(PD) Nos.3892 and 3893 of 2016
and
C.M.P.No.19868 of 2016

Krishnan

... Petitioner in both the CRPs.

VS

1. R.Balu

2. R.Annamalai

3. R.Lakshmanan

... Respondents in both the
CRPs.

These two civil revision petitions are preferred under Article 227 of the Constitution of India as against the fair and decreetal orders dated 02.11.2016 passed by the learned District Munsif, Attur in I.A.Nos. 972 and 973 of 2015 in O.S.No.445 of 2010.

For Petitioner : Mr.V.Lakshminarayanan
in both CRPs.

For Respondents : Mr.A.Saravanan
in both CRPs.

COMMON ORDER

Heard both sides.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status and ranking in the suit.

3. Challenging the orders dated 02.11.2016 passed by the learned District Munsif, Attur in I.A.Nos. 972 and 973 of 2015 in O.S.No.445 of 2010, these two civil revision petitions have been preferred.

4. The brief facts of the case would run thus:

(i) The respondents/plaintiffs filed the suit seeking declaration, partition and also a permanent injunction against the defendant. Though the defendant filed the written statement, they did not appear before the Court. Hence, he was set exparte and an exparte preliminary decree was passed by the trial court.

(ii) Subsequently, I.A.No.150 of 2011 was filed by the plaintiffs for passing of final decree. Pending final decree proceedings, the defendant filed I.A.Nos.972 and 973 of 2015 to

condone the delay of 1431 days in filing the application to set aside the exparte decree and to set aside the exparte decree. Both the applications were dismissed by the court below.

5. Being aggrieved by the said orders, these two revisions have been focussed on various grounds.

6. It is contended by the learned counsel for the revision petitioner/defendant that the defendant and the plaintiffs are close relatives and as on the date of the filing of the suit, the defendant was in possession of the suit property having purchased the same for valuable consideration. It is further contended by the defendant that after the evidence of the plaintiffs side was over, the Taluk Tahsildar was summoned to mark the patta. Since he did not appear on the said date, the defendant was set exparte. It is also stated that though the defendant had advanced a clear case on merits, the court below erroneously dismissed the applications filed by him, which is against the principles of natural justice. Accordingly, he prayed for setting aside the orders passed by the court below.

7. The learned counsel for the respondents/plaintiffs would

vehemently oppose the revisions on the ground that the defendant has not come to court with clean hands and only to drag on the proceedings, he has filed such applications, belatedly, which were correctly dismissed by the court below, warranting no interference in these revisions.

8. Perused the records.

9. The points for consideration are as under:

1. Whether the delay of 1431 days could be condoned in view of the reasons found set out in the affidavit accompanying the I.A.No.972 of 2015?

2. Whether there is any perversity or illegality in the order passed in I.A.No.973 of 2015?

10. A plain reading of the affidavit filed by the defendant in support of the above said applications, would reveal that the defendant instead of taking steps to set aside the exparte decree, had approached the mediators for settling the matter between the parties

amicably for the past four years. However, the plaintiffs are not ready for settling the matter. Therefore, the delay has occurred. It is further stated that if the defendant is not given an opportunity to defend the case, he will be greatly prejudiced.

11. No doubt, it has been repeatedly highlighted by the Hon'ble Supreme Court that certain principles have to be adopted while dealing with the application for condonation of delay. The following judgments could be fruitfully referred in this regard.

(i) **2013(12) SCC 649 [Esha Bhattacharjee vs. Raghunathpur Nafar Academy]**, *certain excerpts would run thus:*

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.

(ii) 2012(4) Scale 152 [S.Ganesharaju (d) their Lrs and another vs. Narasamma (d) through their Lrs and others] and certain excerpts from it would run thus:

15. The expression "sufficient cause" as appearing in Section 5 of the Indian Limitation Act, 1963, has to be given a liberal construction so as to advance substantial justice.

16. Unless respondents are able to show malafide in not approaching the court within the period of limitation, generally as a normal rule, delay should be condoned. The trend of the courts while dealing with the matter with regard to condonation of delay has tilted more towards condoning delay and directing the parties to contest the matter on merits, meaning thereby that such technicalities have been given a go-by.

17. Rules of limitation are not meant to destroy or foreclose the right of parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly.

18. We are aware of the fact that refusal to condone delay would result in foreclosing the suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate.

19. In fact, it is always just, fair and appropriate that matters should be heard on merits rather than shutting the doors of justice at the threshold. Since sufficient cause has not been defined, thus, the courts are left to exercise a discretion to come to the conclusion whether circumstances exist establishing sufficient cause. The only guiding principle to be seen is whether a party has acted with reasonable diligence and had not been negligent and callous in the prosecution of the matter. In the instant case, we find that appellants have shown sufficient cause seeking condonation of delay and same has been explained satisfactorily.

(iii) **2010(2) Supreme 115 (Oriental Aroma Chemical Industries Ltd., vs. Gujarat Industrial Development Corporation and another)** and an excerpt from it would run thus:

8.The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the

legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and other similar statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate - Collector, Land Acquisition, Anantnag v. Mst.Katiji, (1987) 2 SCC 107, N.Balakrishnan v. M.Krishnamurthy, (1998) 7 SCC 123 and Vedabai v. Shantaram Baburao Patil, (2001) 9 SCC 106."

(iv) **AIR 2002 SC 1201 (Ram Nath Sao alias Ram Nath Sahu and aothers v. Gobardhan Sao and others)** and certain excerpts from it would run thus:

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of 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 lean against acceptance of the explanation. While

condoning the delay, the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses."

The Hon'ble Supreme Court has also time and again held that 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. It has also held that 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.

12. Following the aforesaid judgments and also taking into consideration the averments made in the affidavit filed in support of the said applications for the inordinate delay, this Court is of the considered view that one more opportunity could be given to the defendant to get the matter adjudicated on merits.

13. Be that as it may, now this Court is only concerned with

the condonation of delay and in the interest of *audi alteram partem*, the delay of 1431 days is condoned and the I.A.No.972 of 2015 is allowed subject to payment of cost of Rs.2,500/- (Rupees two thousand five hundred only) payable by the revision petitioner/defendant in favour of the respondents/plaintiffs within a period of two weeks from the date of receipt of a copy of this order. Accordingly, **CRP PD No.3892 of 2016 is allowed.**

14. In view of allowing the CRP PD No.3892 of 2016, the order passed in I.A.No.973 of 2015 is also set aside and consequently, **CRP PD No.3893 of 2016** is also allowed.

15. Accordingly, both these civil revision petitions are allowed. No costs. Consequently, the connected miscellaneous petition is closed.

02.01.2017

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Index : Yes

Internet: Yes

To

The District Munsif, Attur

PUSHPA SATHYANARAYANA,J.,

vj2

C.R.P.(NPD) Nos.3892 and
3893 of 2016

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