

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).No.4062 of 2016
and C.M.P.No.20503 of 2016

L.Arokiamary

...Petitioner

Vs

A.Manoharan

...Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 18.10.2016 made in I.A.No.793 of 2012 in O.S.No.82 of 2008 on the file of the District Munsif Court, Thiruvottriyur, in dismissing the application filed under Section 5 of the Limitation Act to condone the delay of 105 days in filing the set aside petition.

For Petitioner : Mr.R.Dhamodaran

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 18.10.2016 made in I.A.No.793 of 2012 in O.S.No.82 of 2008 on the file of the District Munsif Court, Thiruvottriyur, in dismissing the application filed under Section 5 of the Limitation Act to condone the delay of 105 days in filing the set aside petition.

2.The respondent as a plaintiff filed a suit for permanent injunction restraining the defendants from permitting the third parties to use the suit property in any manner, also delivery of possession and costs stating that the petitioner herein is the tenant and monthly rent is Rs.2,250/-. The petitioner/tenant has sublet the premises to some third party and she has not paid the rents. Therefore, the respondent has constrained to file the suit for the above stated relief. The petitioner herein has filed the written statement and contested the suit. When the matter was posted in the list, proof affidavit of P.W.1 was filed. When the matter was posted for cross-examination of P.W.1, the petitioner/defendant was unable to appear for cross-examination of witness. Hence, she was set exparte on 30.04.2012. The respondent has filed an

execution petition and the petitioner after receipt of notice in execution petition, has filed an application in I.A.No.793 of 2012 to set aside the exparte decree along with a petition to condone the delay of 105 days. That application was dismissed, against which, the present revision has been preferred by the petitioner/defendant.

3.Learned counsel for the petitioner would submit that due to oversight, the petitioner could not follow the case on 30.04.2012 and consequently, she was set exparte. He would further submit that non appearance on 23.02.2012 for cross-examination of the witness is neither wilful nor wanton. An opportunity must be given to the petitioner to putforth her case. Hence, he prays for allowing the revision.

4.At the time of admission, argument of the learned counsel for the petitioner is heard in length.

5.On perusal of the typed set of papers, it reveals that the suit has been filed by the respondent/landlord against the tenant for eviction, ejectment and also for injunction restraining her from

permitting the third party to use the premises. But admittedly, there was an arrears of rent. She has filed the written statement and contested the suit. When the case was posted in the list, proof affidavit of P.W.1 was filed and documents were marked. It was posted on 08.02.2012 for cross-examination and subsequently, it was periodically adjourned till 30.04.2012.

6.On 30.04.2012, no one appeared on behalf of the petitioner/defendant. Hence, exparte decree was passed. The respondent/plaintiff has filed the execution petition for delivery of possession and claiming rent arrears. After receipt of notice in the execution petition, the petitioner/defendant has filed an application for setting aside the exparte decree with the delay of 105 days.

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. "

As per the above decision, sufficient reason has to be assigned for condonation of delay.

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.In para-3 of the affidavit filed in support of the application, it is stated as follows:

“3.I state I was regularly following the case. I further state that due to oversight, I could not follow the case on 23.02.2012 hence consequently, it was set exparte.”

10.In the counter filed by the respondent, it was stated that after chief-examination of P.W.1, proof affidavit was filed. The suit was posted for cross-examination on 08.02.2012 and after that, the matter has been periodically adjourned. That factum was rightly considered by the trial Court in para-4 of its order. So it is clear that the petitioner is a tenant and he is squatting the property without paying the rent and the suit was adjourned periodically for two months, after the matter was posted for cross-examination of P.W.1. The petitioner/defendant was set exparte only on 30.04.2012 and that exparte decree was passed. But the petitioner kept quite all along and after filing Executing Petition by the respondent, she has come forward with the application to prevent the decree holder/landlord to enjoy the fruits of the decree.

Therefore, applying the dictum laid down in Balakrishnan and Lanka Venkateshwarlu cases, I am of the view that the delay of 105 days has not been properly explained by the petitioner 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.

11.In the result, this Civil Revision Petition shall stand dismissed by confirming the fair and decreetal order passed by the trial Court in I.A.No.793 of 2012 in O.S.No.82 of 2008. No costs. Consequently, connected Miscellaneous Petition is closed.

04.01.2017

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To

The District Munsif Court, Thiruvottriyur.

R.MALA,J.

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