

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.2968 of 2012
and
M.P.No.1 of 2012**

S.Janaki

.. Petitioner

Vs.

1.Tamil Nadu Housing Board,
Rep. by its Executive Engineer and
Administrative Officer,
J.J.Nagar Division, Mogapaire, Chennai.

2.Tamil Nadu Housing Board,
Rep. by its Executive Engineer,
Anna Nagar Division, Chennai.

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the order dated 03.07.2012 passed in C.M.P.No.2188 of 2009 in A.S.SR.No.37275 of 2011 allowing the Petition seeking to condone the delay of 4177 days in preferring the appeal as against the Judgment and Decree dated 01.02.2000 made in O.S.No.7073 of 1997 on the file of VI Assistant City Civil Court, Chennai.

For Petitioner : Mr.S.Thankasivan

For Respondents : Mr.R.Jayaseelan (for R1)

No Appearance (for R2)

ORDER

The petitioner has filed this Civil Revision Petition to set aside the order dated 03.07.2012 passed in C.M.P.No.2188 of 2011 in A.S.SR.No.37275 of 2011 on the file of the Principal Judge, City civil Court, Chennai and dismiss the above C.M.P.No.2188 of 2011.

2.The case of the revision petitioner is that she as a plaintiff filed a suit against respondents Housing Board in O.S.No.7073 of 1993 on the field of the VI Assistant Judge, City Civil Court, Chennai for permanent injunction restraining the defendants from disturbing the plaintiff's peaceful possession and enjoyment of the private path way in Survey No.360, Mogappair Village, Saithapet Taluk. The respondents herein filed written statement and contested the suit. After keen contest the suit was decreed on merits by judgment and decree dated 01.02.2000.

3.The further case of the revision petitioner is that thereafter, the respondent Housing Board filed appeal as against the above judgment and decree in the year 2011 before the learned Principal District Judge, Chennai along with an application in C.M.P.No.2188 of 2011 to condone the delay of 4177 days in filling the appeal. The reason stated in the affidavit to condone the delay is that after the suit was decreed on 01.02.2000, the case files relating to Anna Nagar division were transferred to J.J.Nagar Division in the year 2002. Thereafter due to change of government, new counsels for the TNHB were appointed and due to the said process of handing over the case bundles to the newly appointed counsels, the status of above suit was not able to be followed. Further, due to transit some of the case files were mixed with other file and therefore the delay of 4177 days was caused in filling the first appeal.

4.The revision petitioner filed detailed counter affidavit to the above said condone delay application and strongly opposed to condone the huge delay of 4177 days. In the counter affidavit it is stated that the suit was decreed as early as on 01.02.2000. There was absolutely no reason averred in the affidavit filed in the support of the condone delay petition to condone the huge delay. The respondent herein being

a statutory body is bound to follow up the cases properly through the Court clerk appointed by the Board by contacting with their standing counsel then and there. The respondents must explain each and every day delay properly with cogent and convincing reason. In the present case no sufficient reason and proper explain was given to condone the huge delays of 4177 days in preparing first appeal. Hence the above delay cannot be condoned mechanically.

5. Upon considering rival submission of the parties, the learned Principal District Judge was pleased to condone the delay by order dated 03.07.2012. Challenging the said order the petitioner has come up with the present Civil Revision Petition.

6. I heard Mr.S.Thankasivan, learned counsel appearing for the petitioner and Mr.R.Jayaseelan, learned counsel appearing for the 1st respondent and there was no representation on behalf of the 2nd respondent and the relevant records are perused.

7. I have carefully considered the rival submission on either side. It is seen from the records that the suit filed by the revision petitioner was decreed after contest on 01.02.2000. The suit is relating to

pathway right. According to the revision petitioner, the suit schedule property is her private pathway, whereas the Housing Board claimed that it is a public pathway. However, the trial Court held that the suit schedule property is a public pathway.

8.The respondent herein preferred first appeal after a long delay of 10 years from the date of Judgment. The person affected by any Judgment should be vigilant in filing appeal. In this case, the respondents Housing Board contented that due to transfer of case files relating to Anna Nagar Division to J.J. Nagar Division, the delay has been occurred. According to the respondent the case files were transferred in the year 2002 itself. Therefore even accepting the above said reason, the Housing Board should have filed the appeal either in the year 2002 or 2003. But the first appeal was filed in the year 2011. Hence the above said reason can't be accepted for the extraordinary delay of 4177 days.

9.Now this Court will have to consider the other reason assigned by the respondent that due to change of Government and appointment of New Standing Counsels for the Board, the above said delay has happened. The said reason also can't be considered as genuine, since

after the Judgment in the year 2000, twice the Government has changed in the year 2001 and 2006. But the respondents have not filed appeal either after 2001 or after 2006. As stated above, the appeal was filed in the year 2011 and therefore the said reason can't be a valid one.

10.As rightly contended by the learned counsel for the revision petitioner that the length of delay is immaterial, but sufficient reason should be assigned to condone the same. An opportunity to defend the case could be given to poor litigant. In this case, the respondents herein are Statutory Authority viz., Tamil Nadu Housing Board and they cannot be treated with other poor litigant. Merely because the respondents being the government, they should be treated liberally, can't be accepted. The Learned Principal District Judge has not considered the above said aspect while condoning the delay of 4177 days.

11.Further, as per the Judgment of the Hon'ble Apex Court relied on by the learned counsel for the revision petitioner reported in **2012 (3) SCC 563 (Postmaster General and others v. Living Media India Limited and others)** it is held as follows:

"27. It is not in dispute that the person (s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the department was possessed with competent persons familiar with Court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted

in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government”.

12.Per contra, the respondents/Tamil Nadu Housing Board has produced two judgments:

(1) ***Indira Nagar Residents' Benefit Society, rep. by its Secretary K.Arunachalam, 6 Arunachalam Road, Madras 600 093 v. The Government of Tamil Nadu rep. by the Chief Secretary, Madras-9 and nine others*** reported in **1995 (II) CTC 198**.

(2) The un-reported judgment passed by this Court in the case of ***S.Janaki and Cicilia Francis v. The Chairman and Managing Director, Tamil Nadu Housing Board, Chennai-35 and others***, in WP.Nos.14438 of 2013 and 6768 of 2016, dated 26.07.2016.

In respect of the judgments rendered by this Court in W.P.No.14438 of 2013 for the acquisition of the properties in respect of other parts of the property in the petitioner survival. The petitioner, who filed the

above writ petition for formation of street in residential road called Janaki Garden Arch in Mogappair. Both the judgments were rendered in respect of acquisition proceedings and amenities. But, this Court, the case on hand, the question arose in this Civil Revision Petition is that whether the huge delay of 4177 days in filing the set aside petition could be considered or not? and this Court has not gone into the merits of the case. Therefore, both the judgments are not applicable to the present case on hand.

13. The above said dictum laid down by the Hon'ble Apex Court would squarely applicable to the present case on hand. The "words" sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words 'sufficient cause' in Section 5 of Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the Appellant. But in this case, the delay is on account of gross negligence on the part of the Housing Board and therefore in this case, the above said principle of law will

have no application.

14. When there is a duty to act with expedition at all stages, and if the respondents herein are guilty of inordinate and unwarranted delay, coupled with failure to observe the time frame, then the liability to suffer the consequences of dismissal, is inevitable. For the negligence on the part of the respondents herein, the revision petitioner is unnecessarily dragged on to approach this Court. Hence it is a fit case to award cost to the petitioner.

15. As discussed above, absolutely there is no proper and sufficient reason assigned by the respondents herein to condone the huge delay of 4177 days and therefore the order of the lower appellate Court is liable to be set aside. The lower appellate Court's mechanical approach in condoning the delay for the reason that the respondents are government is warranting interference by this Court.

16. For the foregoing reason and in the light of the Judgment referred above, the present civil revision succeeds and the order of the lower appellate Court is liable to be set aside.

17.In the result:

a) this Civil Revision Petition is allowed by setting aside the order passed in CMP.No.2188 of 2009 in A.S.SR.No.37275 of 2011, dated 03.07.2012, on the file of the learned Principal Judge, City Civil Court, Chennai;

b) the respondents are directed to pay a sum of Rs.5,000/- as cost to the petitioner within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

27.04.2017

Note:Issue order copy on 30.08.2017

Index:Yes

Internet:Yes

vs

To

The Principal Judge,
City Civil Court, Chennai.

WEB COPY

M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
CRP(NPD)No.2968 of 2012
and
M.P.No.1 of 2012

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