

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2017

CORAM :

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

**C.R.P.(NPD)No.670 of 2007
and
M.P.No.1 of 2007**

Madhammal

.. Petitioner

Vs.

1.Sakkiammal

2.Madhu

3.Murugan

4.Chellappan

.. Respondents

PRAYER: Petition filed under Section 115 of the Code of Civil Procedure against the judgment and decree dated 30.10.2006 passed in I.A.No.124 of 2005 in unnumbered A.S.No. Of 2005, on the file of the Sub Court, Dharmapuri.

For Petitioner : M/s.M.Christella

For Respondents : Mr.R.Selvakumar (for R2 to R4)

R1 - (Died)

ORDER

Aggrieved by an order dated 30.10.2006 passed in I.A.No.124 of 2005 in an unnumbered Appeal on the file of the Sub Court, Dharmapuri, refusing to condone the delay of 986 days in preferring the appeal, this revision petition is filed.

2. Brief facts of the case are as under:

The petitioner herein filed suit in O.S.No.53 of 1998 for declaration. The said suit was dismissed *ex parte* by the trial Court. Assailing the said fair and decreetal order passed in the suit, the petitioner filed an appeal along with I.A.No.124 of 2005 seeking condonation of the delay of 986 days in preferring the said appeal. The learned Sub Judge, Dharmapuri, by judgment and decree dated 30.10.2006, refused to condone the delay of 986 days. Calling into question the said order, the present revision is filed.

3. The main contention of the learned counsel appearing on behalf of the petitioner is that the delay of 986 days occurred on account of lack of knowledge of the petitioner that the appeal should be filed within a stipulated time and that the delay was on account of the shock she suffered on account of the dismissal of the suit and, therefore, the same was neither wilful nor wanton.

4.It was also pleaded that the suit was dismissed by an *ex parte* order and, therefore, the learned Sub Judge, Dharmapuri, should have taken a liberal approach and condoned the delay, rather than rejecting the application on technical grounds. In any event, it is pleaded that an opportunity should be afforded to the petitioner to put forth her case and that denial of the same would cause irreparable loss to her.

5.On the contrary, the learned counsel appearing on behalf of the respondents reiterating the reasons that found favour with the trial Court while dismissing the application of the petitioner, submitted that each day's delay is to be explained by the petitioner and since the petitioner failed to do so, the order passed by the trial Court does not warrant interference.

6.I heard M/s.M.Christella, learned counsel appearing for the petitioner and Mr.R.Selvakumar, learned counsel appearing for the respondents 2 to 4 and perused the documents and gave my anxious consideration to the issue raised.

7.In the case on hand, admittedly, the delay in filing the appeal

is 986 days. The Hon'ble Supreme Court and this Hon'ble Court have time and again held that the power to condone delay is to enable the courts to do substantial justice to parties by disposing of matters on merits; that the expression "*sufficient cause*" employed by the Legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which serves the ends of justice which is the life purpose for the existence of the institution of courts; substantial justice deserves to be preferred as against technical considerations; and the courts should prefer to deliver justice on merits in preference to the approach which scuttles a decision on merits.

8. Let us now analyze the scope of revision under Section 115 of the Code of Civil Procedure. It is trite that the powers of a High Court to entertain a revision are circumscribed by Section 115 of the Code of Civil Procedure. Section 115 of the Code of Civil Procedure empowers the High Court to entertain a revision against the decision of the Subordinate Court, only where the Subordinate Court appears to have-

- i. exercised jurisdiction not vested in it by law;
- ii. failed to exercise jurisdiction so vested; or
- iii. acted in exercise of its jurisdiction illegally or with material irregularity.

9.The main ground urged by the petitioner is ignorance of the time limit for filing of the appeal and the shock she suffered on account of the ex parte dismissal of the suit, putting her to irreparable loss.

10.In this factual backdrop, let us analyse whether the petitioner has shown sufficient cause for condonation of delay. The Courts are empowered to allow the application for condonation of delay, on sufficient cause being shown or reject such an application in exercise of its judicious discretion. However, such judicious discretion to condone the delay by adopting a liberal approach has to be exercised only in deserving cases, and not in cases where the delay is on account of lethargic attitude and negligence on the part of the applicant. It is not as if each application for condonation of delay has to be allowed as a matter of right, no matter whether any "sufficient cause" for the delay is shown or not. Each case is to be decided on facts and circumstances. The length of delay is no matter. All that matters is the acceptability of explanation.

11.In *Mohammed Aslam and others v. C.N.A.Gowdhaman*, 2005 (2) CTC 766, the delay was of 1251 days. In the said judgment, the

Hon'ble Division Bench of this Court observed as under:

"12. In the impugned order, as said earlier, the learned Judge has not considered the explanation offered by the applicant for the delay of 1251 days. Though the learned Judge was conscious of the fact that by condoning the inordinate delay, the respondents therein (appellants herein) will be put to great hardship, instead of compensating them, directed for the payment of Rs. 10,000/- to the State Legal Services Authority, Chennai, admittedly, which is not a party in this proceedings. We are unable to share the above view. Having found that by condoning the inordinate delay only on the ground that the applicant should be given an opportunity and having found that the said act will cause great hardship to other side, viz., respondents therein, it is but proper to compensate them by awarding reasonable costs to them. The learned Judge has not resorted to such recourse. It is not in dispute that the Courts are here to render justice to both parties. We are unable to understand how the respondents will be compensated by payment of Rs. 10,000/- to the State Legal Services

Authority, Chennai. Equally, we are conscious of the fact that the length of delay is no matter, and acceptability of the explanation is the only criterion. Sometimes the delay of shortest range may be uncondonable due to want of acceptable explanation, whereas in certain other cases, delay of a very long range can be condoned as the explanation therefor is satisfactory. In every case of delay, there may be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and shut the door against him. If the explanation does not smack the 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 not lean towards acceptance of the explanation. We are also aware that refusal to condone the delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the Court is always deliberate. Now, even the higher court of this land have interpreted that the

words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice. Accordingly, in order to give one opportunity to the respondent/applicant and at the same time, to compensate the appellants/respondents, we intend to modify the order of the learned Judge dated 10.03.2005. Though it is stated that the applicant had paid a sum of Rs. 10,000/- to the State Legal Services Authority, Chennai as ordered, in addition to the said amount, the applicant/respondent is directed to pay a further sum of Rs. 20,000/- (Rupees twenty thousand only) to the appellants/respondents within 15 days from today, failing which the order of the learned Judge dated 10.03.2005 shall stand set aside. OSA. No. 44 of 2005 is disposed of accordingly."

(emphasis supplied)

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12. In yet another decision of this Hon'ble Court in *Pavayammal and another v. S.N.Chockalingam and others*, 2009 (5) CTC 414, a learned Single Judge of this Court held as under:

"7. The word 'sufficient cause' under Section 5 of the

Limitation Act will have to be interpreted in a purposeful and meaning way. As a matter of fact, the Court of law is not supposed to adopt a pedantic approach instead it has to take a liberal view while dealing with the Application of condonation of delay. Ordinarily a party does not stand to gain by lodging in Appeal belatedly. Refusing to condone a delay will result in meritorious matter being thrown out at the nascent stage and thereby the cause of justice being defeated. On the other hand, if a party is allowed to enter into the scene of main proceedings, then the matter can be decided on merits. Of course a Court of law providing due opportunities to the parties to prove their case. The judiciary is respected not on account of its power to legalise injustice on technical grounds but it is capable of removing injustice and is expected to do so. This Court is of the considered view that substantial justice will have to be delivered to the parties overriding technicalities."

(emphasis supplied)

13. In the instant case, an *ex parte* decree was passed against the petitioner in the suit. It is not the case of the respondents that the

petitioner has voluntarily delayed filing of the appeal. The petitioner, though has taken steps to set aside the *ex parte* decree, it was with a delay of 986 days. It is categorically pleaded that the delay was on account of lack of knowledge regarding the limitation in filing the appeal and that she was in shock on knowing about the dismissal of the suit. It is also her case that she would be put to irreparable loss, if she is not allowed to put forth her case on merits and contest the appeal.

14. For the foregoing reasons, I am of the firm view that, to do substantial justice to the parties and to deliver justice on merits in preference to the approach which scuttles a decision on merits, this is a fit case where the petitioner should be given an opportunity to put forth her case by way of appeal, rather than curtailing her rights by sticking on technicalities. Therefore, this Court warranting interference in the order of the learned Judge and the same is liable to be set aside.

15. In the result:

a) The Civil Revision Petition is allowed by setting aside the judgment and decree dated 30.10.2006 passed in I.A.No.124 of 2005 in unnumbered A.S. of 2005 on the file of

the Sub Court, Dharmapuri, on condition that the petitioner pays a sum of Rs.10,000/- (Rupees Ten Thousand only) as costs to the respondents within a period of four weeks from the date of receipt of a copy of this order;

b) On producing the payment receipt, the Appellate Court, namely the learned Sub Judge, Dharmapuri, is hereby directed to number the appeal, by giving notice to both parties and dispose of the same within a period of three months from the date of numbering of the appeal, without giving any adjournments to either side on unreasonable grounds. No costs. Consequently, connected Miscellaneous Petition is closed.

17.02.2017

Note: Issue order copy on 08.11.2017

vs

Index : Yes

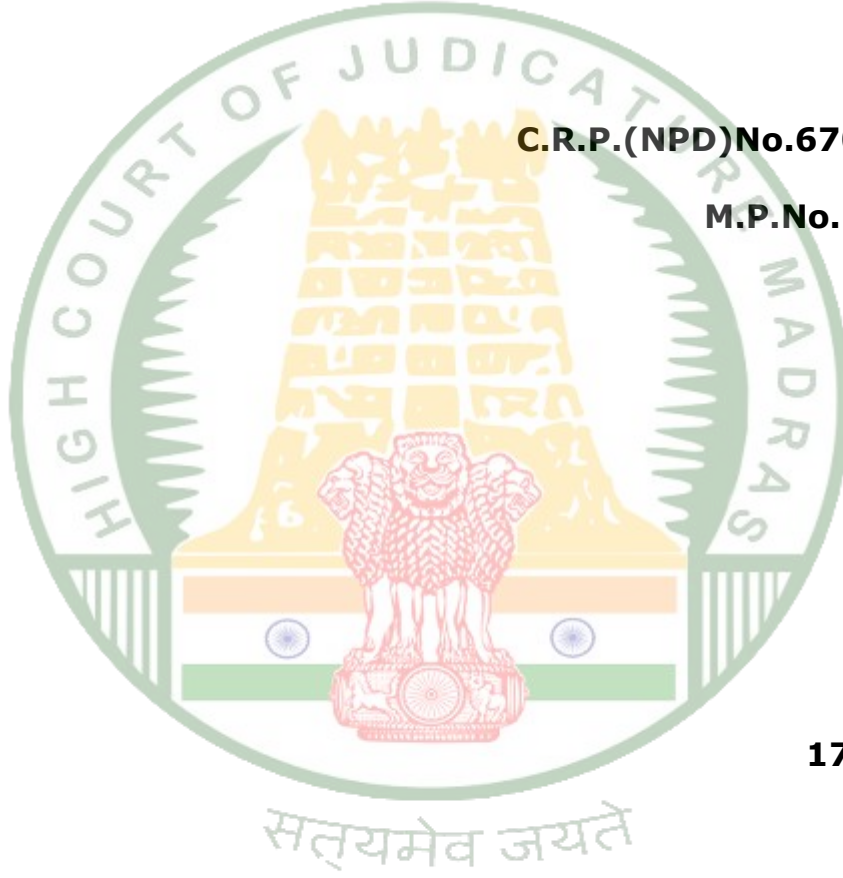
Internet : Yes

To

The Sub Court,
Dharmapuri.

M.V.MURALIDARAN,J.

VS



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