

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 04.01.2017

Pronounced on 23.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.4663 of 2013
and
M.P.No.1 of 2013**

Sathyanarayana

.. Petitioner

Vs.

T.J.Dhanakoti @ Koti

..Respondent

Prayer: Civil Revision Petition filed under Section 115 of the Constitution of India, against the Fair and Decreetal order dated 09.07.2013 made in I.A.No.167 of 2012 in O.S.No.167 of 2000, on the file of the District Munsif Court, Ambattur.

For Petitioner : Mr.R.Bharath Kumar

For Respondent : Mr.B.Vijay

ORDER

The defendant in O.S.No.167 of 2000 is the civil revision petitioner before this Court, challenging the order of dismissal in I.A.No.167 of 2012 in O.S.No.167 of 2000, dated 09.07.2012, on the file of the District Munsif Court, Ambattur.

2.The case of the respondent/plaintiff is that he has filed the suit in O.S.No.167 of 2000 before the learned District Munsif Court, Ambattur for a permanent injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the suit schedule of property.

3.The plaintiff has come forward by saying that he is in absolute possession and enjoyment of the suit property for the past 35 years by constructing a house and he has residing there with his wife and children and the documents filed along with the plaint would clearly revealed that the plaintiff is absolute possession and enjoyment of the suit property for over 35 years.

4.The respondent/plaintiff further states that the respondent/plaintiff without any right, title or interest in the suit schedule of

property, the defendant, who is residing in the said locality has giving trouble continuously to the plaintiff and he had attempted to enter into the suit schedule of property and the said attempt was prevented by the plaintiff with the help of the neighbours of the plaintiff.

5. She has also states that he was a retired Central Government Servant and his three sons are also employed in the Central Government. Therefore, the plaintiff has not interested to have any kind of quarrel or street fight with anyone and taking advantage of this soft and timid nature of the plaintiff. The petitioner/defendant is giving trouble to the respondent/plaintiff excepting that the respondent/plaintiff would keep quiet. Therefore, he has filed the above suit for the above prayer.

6. On receipt of the summons, the petitioner/defendant has filed his written statement denying the entire allegations made in the plaint and the petitioner/defendant states that the plaintiff has not in possession of 12 cents of land in S.No.518/1 alleged to the plaintiff in the plaint. Therefore, the description of the suit schedule of property is vague.

7. The petitioner/defendant also states that he was in possession

of the 6 cents of land in S.No.518/1 of Thirumullaivoyal village and the petitioner/defendant was also issued 'B' memo for the said extent. When the Tamil Nadu Slum Clearance Board has taken over the entire survey of land to the extent of 5.26 acres for improvement under the TNUDP Scheme and after layout the said land, allotted 2 cents of land each allottee and the Slum Clearance Board also agreed to sell the land to the allottees on payment of the land cost fixed by the Board to be paid in instalments. The land in possession of the petitioner/defendant has been made into 3 plots and the Plot No.57 was allotted to the petitioner/defendant, Plot No.56 was allotted to one Rajeswari, sister of the defendant and Plot No.74 was allotted to one Subburaju, the defendant's cousin, after the allotment of the above 3 plots, they were residing in the respective plots. Though the plaintiff was allotted 2 cents of land in Plot No.58 and he has filed the suit for 6 cents, which is not in proper.

8.The petitioner/defendant also states that he has already filed the suit in O.S.No.99 of 1997 before the District Munsif Court, Poonamallee, for a permanent injunction and initially an order of interim injunction was granted by the said Court, later on the said suit was transferred to the District Munsif Court, Ambattur, which was re-

numbered and pending for trial. Knowing fully well about the suit filed by the defendant, this respondent/plaintiff has filed the present suit in O.S.No.167 of 2000, which is barred by Order 2 Rule 2 of C.P.C.

9.The defendant also denied the possession and enjoyment of the suit property for the last 35 years by the plaintiff and the respondent/ plaintiff is entitled to only to the extent of land comprised in Plot No.58 to an extent of 2 cents only, but not 12 cents. Therefore, he sought for the dismissal of the suit.

10.When the matter has been posted on 28.07.2005, this petitioner/defendant was not appeared, hence exparte decree was passed on the said date. The petitioner/defendant also states that for the period of 2005 to 2007, he was residing at Andhra Pradesh, therefore, he could not able to meet his Advocate. But, later on the petitioner/defendant came to know that his Advocate Mr.Anandakrishnan was died 2 years back. Therefore, on 15.11.2007, he came to Poonamallee and verified that his Advocate is no more. But, the suit was decreed on 28.07.2005 for the non appearance of the petitioner/defendant as well as his Advocate by namely Mr.Anandakrishnan. In the said circumstances, this petitioner/defendant has filed the petition for setting aside the exparte

decree along with the condonation delay petition for condoning the delay in filing the setting aside application.

11.The said applications were returned for some corrections by the learned District Munsif Court, Ambattur. But, the said applications were misplaced in the Advocate office along with the other bundles. Therefore, they could not be traced out the said applications immediately and on tracing the said bundles, when the said applications are re-presented before the said Court, there was a delay occurred to an excuse of 1112 days in re-presenting the said applications.

12.In the said circumstances, on advice of his counsel, he has filed the application in I.A.No.167 of 2012 seeking condone the delay of 1112 days in re-presenting the petitions filed for setting aside the exparte decree along with the condone delay petition. Therefore, he prayed the said Court namely the District Munsif Court, Ambattur to condone the delay of 1112 days in re-presenting the petitions.

13.On receipt of the notice in the applications, this respondent/ plaintiff has filed his counter denying the entire allegations and stated that the petition is no merit and filed only with the aim to harass the

respondent/plaintiff and drag on the proceedings, for condoning the delay of 1112 days for re-presenting the said applications.

14.The respondent/plaintiff also states that at the outset, this petitioner/defendant has filed a false affidavit and misrepresenting by suppressing the real facts before the District Munsif Court, Ambattur. Since in the affidavit, the petitioner/defendant states that his Advocate Mr.G.Anandakrishnan was died 2 years before 2007, but on his verification from the locality occurred place of Mr.G.Anandakrishnan, Advocate, this respondent/plaintiff came to know that the said Mr.G.Anandakrishnan, Advocate died on 03.06.2006 and the respondent/ plaintiff also noted that while the said G.Anandakrishnan, Advocate, alive, this defendant has filed a change of vakalath from him in the year 2001 itself and engaged one Mrs.Gajalakshmi Rajendran, as an Advocate and she also filed the change of vakalath in the year 2001 itself.

15.The respondent/plaintiff also states in the counter, after that, without obtaining any consent from the previous counsel, Mrs.Gajalakshmi Rajendran, the present counsel Mr.K.Balaraman Naidu has filed the change of vakalath on behalf of the petitioner/defendant. Therefore, it is made clear that this

petitioner/defendant has filed a false affidavit before the Court concerned.

16.The respondent/plaintiff also states that it is the duty of the defendant should vigilant in his case and the petitioner/defendant is supposed to give proper explanation for each and every day's delay for the huge delay of 1112 days in re-presenting the petitions. Apart from this, in the allegation that the written bundle was mixed with the other case bundles in his Advocate's office is totally false and it is a lame excuse and this is not sufficient for the long delay of 1112 days in re-presenting the application. Therefore, the respondent/plaintiff sought for the Court for dismissal of the petition.

17.Considering both side arguments, the learned District Munsif Court, Ambattur by order dated 09.07.2012 was pleased to dismissed the application in I.A.No.167 of 2012 in O.S.No.167 of 2000, on the ground that the petitioner/defendant has filed a false affidavit stating that his Advocate Mr.G.Anandakrishnan was died only 2 years before 2007. Admittedly, this petitioner/defendant has obtained change of vakalath from Mr.G.Anandakrishnan in the year 2001 itself and filed the change of vakalath through by engaging one Mrs.Gajalakshmi Rajendran and she also filed change of vakalath. But, now without

obtaining any consent from Mrs.Gajalakshmi Rajendran, this petitioner engaged new counsel by namely Mr.Balaraman Naidu and filed change of vakalath along with the petition.

18.The petitioner/defendant has not approach this Court with clean hands with justice, equity, good conscious. Therefore, the learned District Munsif Court was pleased to dismiss the application. Challenging the said order, the present Civil Revision Petition has been filed before this Court.

19.I have heard Mr.R.Bharath Kumar, learned counsel for the petitioner and Mr.B.Vijay, learned counsel for the respondent.

Whether this huge delay of 1112 days can be condoned in re-presentation of the application can be condoned or not?

20.It is an admitted fact that the respondent/plaintiff has filed the suit for bare injunction and the said suit was decreed an exparte on 28.07.2005, but this petitioner/defendant has filed the application for setting aside the exparte decree along with the condone delay petition. But, after 2 years before 2007 only, it was re-presented with the delay of 1112 days in filing the re-presentation petition.

21.The case of the petitioner/defendant is that though he raised

various allegations in the written statement, but he failed to appear before the Court concerned on 28.07.2005 and the said suit was decreed ex parte. But, the delay petition was re-presented after the huge delay of 1112 days.

22. For the above huge delay, the petitioner/defendant has given a reason stating that his Advocate namely G. Anandakrishnan was died only 2 years before 2007 and hence he was not appeared before the Court concerned. But counter affidavit filed by the respondent/plaintiff will clearly shows that the said Advocate was died only on 03.06.2006. But, even otherwise on seeing the record, it clearly shows that it is an admitted fact that this petitioner/defendant obtained change of vakalath from his Advocate Mr. G. Anandakrishnan in the year 2001 itself and one Mrs. Gajalakshmi Rajendran has filed change of vakalath in the year 2001 itself. Thus being the case, then the affidavit sworn by the petitioner/ defendant is totally false and played fraud on the Court. In fact, the learned counsel for the respondent has produced several judgments before this Court about the false affidavit filed by the petitioner/defendant particularly in a case of ***Dhananjaya Sharma v. State of Haryana*** reported in ***1995 3 SCC 757***, it is made clear that filing of the false affidavit in Court constitutes contempt. The Hon'ble Supreme Court has passed the orders as

follows:

“38. Section 2(c) of the Contempt of Courts Act, 1971 (for short the Act) defines criminal contempt as “ the publication (whether by words, spoken or written or by signs or visible representation or otherwise) of any matter or the doing of any other act whatsoever to (1) scandalise or tend to scandalise or lower or tend to lower the authority of any court; (2) prejudice or interfere or tend to interfere with the due course of judicial proceedings or (3) interfere or tend to interfere with, or obstruct or tend to obstruct the administration of justice in any other manner. Thus, any conduct which has the tendency to interfere with the administration of justice or the due course of judicial proceedings amounts to the commission of criminal contempt. The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice. The filing of false affidavits in judicial proceedings in any court of law exposes the intention of the party concerned in perverting

the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery of by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence, commits criminal contempt of the court and renders himself liable to be dealt with in accordance with the Act. Filing of false affidavits or making false statement on oath in courts aims at striking a blow at the rule of law and no court can ignore such conduct which has the tendency to shake public confidence in the judicial institutions because the very structure of an ordered life is put at stake. It would be a great public disaster if the fountain of justice is allowed to be poisoned by anyone resorting to filing of false affidavits or giving of false statements and fabricating false evidence in a court of law. The stream of justice has to be kept clear and pure and anyone soiling its purity must be dealt with sternly so that the message percolates loud and clear that no one can be permitted to undermine the

dignity of the court and interfere with the due course of judicial proceedings or the administration of justice. In *Chandra Shashi v. Anil Kmar Verma* the respondents produced a false and fabricated certificate to defeat the claim of the respondent for transfer of a case. This action was found to be an act amounting to interference with the administration of justice. Brother Hansaria, J. speaking for the Bench observed: (SCC pp.423-24, paras 1 and 2)

“The stream of administration of justice has to remain unpolluted so that purity of court’s atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are, therefore, required to be well taken care of to maintain the sublimit of court’s environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned.

Anyone who takes recourse to fraud deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake

the faith of people in the system of administration of justice.”

23. In yet another case in *Suo motu* proceedings against R. Karuppan, Advocate reported in **(2001) 5 SCC 289** the Hon’ble Supreme Court has passed orders as follows:

“13. Courts are entrusted with the powers of dispensation and adjudication of justice of the rival claims of the parties besides determining the criminal liability of the offenders for offences committed against the society. The courts are further expected to do justice quickly and impartially not being biased by any extraneous considerations. Justice dispensation system would be wrecked if statutory restrictions are not imposed upon the litigants, who attempt to mislead the court by filing and relying upon false evidence particularly in cases, the adjudication of which is dependent upon the statement of facts. If the result of the proceedings are to be respected, these issues before the courts must be resolved to the extent possible in accordance with the truth. The purity of proceedings of the court cannot be permitted to be sullied by a party on frivolous, vexatious or insufficient grounds or

relying upon false evidence inspired by extraneous considerations or revengeful desire to harass or spite his opponent. Sanctity of the affidavits has to be preserved and protected discouraging the filing of irresponsible statements, without any regard to accuracy."

24. In yet another case of ***A. Muthusamy v. Muniammal and others*** reported in ***2006 (1) CTC 187***, this Court while considering the delay of 477 days in re-presentation of bundle, which was dismissed by the trial Court, in a revision filed before this Court in CRP(NPD)No.1205 of 2005, this Court has dismissed the said Civil Revision Petition on 06.12.2005 and pass orders as follows:-

"7. The appeal was filed on 11.4.2003; subsequently returned on 21.4.2003 for rectification of defects. Thereafter, the Revision Petitioner has not represented it for a long time. There was a delay of 477 days in representing the appeal. The contention of the Revision Petitioner that he had to travel to many places in connection with his business and that he could not contact his counsel is not substantiated by any material. No material had been produced showing that the Revision Petitioner was travelling several places.

9. Contending that condoning the delay in representation is between the Court and the Appellant, the learned counsel for the Revision Petitioner submitted that the Respondent cannot have any objection for condoning the delay. It is further submitted that the Court should not proceed with the tendency of finding fault with the cause shown and negative the reasons for the delay in a casual manner. Though the condonation of delay in representation is between the Court and the Appellant, the Court should not lose sight of the fact that by not taking steps in representing the appeal within the prescribed time, valuable right has accrued to the Respondents, which should not be lightly be defeated by condoning the delay in a routine-like manner. By condoning the delay in representation, litigation cannot be allowed to be kept alive for a long time.

13. Though the above observations are made in the proceedings under Section 5 of the limitation Act, those principles are applicable while considering the delay in representation of the papers. The delay of 477 days appears to be due to deliberate in action on the part of the

Revision Petitioner.

14.The learned counsel for the Revision Petitioner has submitted that by declining to condone the delay in representation of the appeal, the Revision Petitioner would be deprived of the opportunity from filing the appeal in the first Appellate Court. Contentions of the parties in the suit does not merit acceptance. In the partition suit, after all what is the contention of the Revision Petitioner/Appellant. The mother and sisters are entitled to 4/5th share. In fact, there was also talks of settlement which did not fructify. The Defendant cannot have any valid defence against the lawful share of the mother and sister. Hence the contention that the Revision Petitioner would be deprived of valuable right has no merits.”

25.In yet another case, the Hon’ble Supreme Court in a case of ***Esha Bhattachrjee v. Managing Committee of Raghunathpur Nafar Academy and others*** reported in ***(2013) 12 SCC 649***, the Hon’ble Supreme Court has consider the case as follows:

“21.From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) 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.

21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

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 condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so

that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

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.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12. (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

22.1. (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard 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."

26. In yet another case of ***H.Dohil Constructions Company***

Private Limited v. Nahar Exports Limited and Another reported in **(2015) 1 SCC 680**, the Hon'ble Supreme Court has passed the order as follows:

“20. In the case on hand, the delay in refilling was of 1727 days. As rightly pointed out by the learned Senior Counsel for the appellant(s), the respondents paid the scrutiny charges on 11-4-2008 as disclosed in Receipt No.73 issued by the High Court of that date. When the appeal papers were filed on 6-9-2007 and the scrutiny charges were paid on 11-4-2008, it was quite apparent that the processing of papers of the appeals for its registration did commence in the month of April 2008. Thereafter, if rectification of whatever defects were not carried out by the respondents or its counsel between April 2008 and May 2012, it is the bounden duty of the respondents to have satisfactorily explained such a long delay in refilling. When we refer to the applications filed on behalf of the appellant(s), we find that there was no convincing explanation as to how the respondents were disabled from rectifying the defects pointed out by the Registry and refilling the appeal papers within time. The

respondents only attempted to throw the blame on the previous counsel to whom appeal papers were entrusted for filing in September 2007. As pointed out by the learned Senior Counsel for the appellant(s), there were no details as to whom it was entrusted and what were the steps taken to ensure that the appeals filed were duly registered for pursuing further remedy as against the said judgment of the trial court. As a matter of fact the appeal papers were filed without payment of any court fee. This only affirms the stand of the appellant(s) that there was no bona fide in the respondents' claim and that they were seriously interested in challenging the judgment of the trial court as against the non-grant of relief of specific performance. We also fail to see as to how Respondent 1 which is a limited company involved in the business of exports, which would certainly have its own legal department, can plead that after entrusting the papers to some counsel whose name was not disclosed even before this Court did not even bother to take any follow-up action to ensure that its appeals were duly registered in the High Court. In this context the maxim *vigilantibus non*

dormientibus jura subveniunt (law assists those who are vigilant and not those who sleep over their rights) aptly applies to the case on hand. The respondents simply by throwing the blame on the previous counsel whose identity was not disclosed claimed that irrespective of the enormous delay of 1727 days in refilling the same should be condoned as a matter of course as there was only 9 days' delay involved in filing the appeals.

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

27. One another case in **SCIEMED OVERSEAS INC. v. BOC INDIA LIMITED AND OTHERS** reported in **(2016) 3 SCC 70**, the Supreme Court has passed the order as follows:

“2. A global search of cases pertaining to the filing of a false affidavit indicates that the number of such cases that are reported has shown an alarming increase in the last fifteen years as compared to the number of such cases prior to that. This is illustrative of the malaise that is slowly but surely creeping in. This “trend” is certainly an unhealthy one that should be strongly discouraged, well before the filing of false affidavits gets to be treated as a routine and normal affair.

27. In the first instance, the work order was issued to Sciemed on 25-7-2007 but this was not disclosed to the High

Court when it disposed of WP (C) No.4203 of 2007 on 31-7-2007. Had the factual position been disclosed to the High Court, perhaps the outcome of the writ petition filed by BOC would have been different and the issue might not have even travelled up to this Court. Furthermore, apparently to ensure that work order goes through, a false or misleading statement was made before this Court on affidavit when the matter was taken up on 14-3-2008 to the effect that the work was nearing completion. It is not possible to accept the view canvassed by the learned counsel that the false or misleading statement had no impact on the decision rendered by this Court on 14-3-2008. We cannot hypothesise on what transpired in the proceedings before this Court nor can we imagine what could or could not have weighed with this Court when it rendered its decision on 14-3-2008. The fact of the matter is that a false or misleading statement was made before this Court and that by itself is enough to invite an adverse reaction.

28. In *Suo Motu Proceedings against R. Karuppan, Advocate*, in re this Court had observed that the sanctity of

affidavits filed by parties has to be preserved and protected and at the same time the filing of irresponsible statements without any regard to accuracy has to be discouraged. It was observed by this Court as follows: (SCC p.293, para 13)

“13. Courts are entrusted with the powers of dispensation and adjudication of justice of the rival claims of the parties besides determining the criminal liability of the offenders for offences committed against the society. The courts are further expected to do justice quickly and impartially not being biased by any extraneous considerations. Justice dispensation system would be wrecked if statutory restrictions are not imposed upon the litigants, who attempt to mislead the court by filing and relying upon false evidence particularly in cases, the adjudication of which is dependent upon the statement of facts. If the result of the proceedings are to be respected, these issues before the courts must be resolved to the extent possible in accordance with the truth. The purity of proceedings of the court cannot be permitted to be sullied by a party on frivolous, vexatious or insufficient

grounds or relying upon false evidence inspired by extraneous considerations or revengeful desire to harass or spite is opponent. Sanctity of the affidavits has to be preserved and protected discouraging the filing of irresponsible statements, without any regard to accuracy."

29. Similarly, in *Muthu Karuppan v. Parithi Ilamvazhuthi* this Court expressed the view that the filing of a false affidavit should be effectively curbed with a strong hand. It is true that the observation was made in the context of contempt of court proceedings, but the view expressed must be generally endorsed to preserve the purity of judicial proceedings. This is what was said: (SCC p. 501, para 15)

"15. Giving false evidence by filing false affidavit is evil which must be effectively curbed with a strong hand. Prosecution should be ordered when it is considered expedient in the interest of justice to punish the delinquent, but there must be a prima facie case of 'deliberate falsehood' on a matter of substance

and the court should be satisfied that there is a reasonable foundation for the charge.”

28. On fair reading of the above judgments, the Hon'ble High Court and the Hon'ble Supreme Court has categorically held that filing of false/ misleading affidavit imposition of exemplary costs fully justified and such filing to be strongly discouraged and the Hon'ble Supreme Court affirmed the order passed by the Hon'ble High Court by means of 10 lakhs on the petitioner for filing a false or misleading affidavit in Court.

29. The Hon'ble Supreme Court in the above referred cases, it is made clear that the Hon'ble Supreme Court hold that in this context the maxim, *vigilantibus non dormientibus jura subveniunt* (law assists those who are vigilant and not those who sleep over their rights) aptly applies to the case on hand, the petitioner/defendant had simply by throwing the blame on the previous counsel by stating that he was died before 2 years and therefore, the delay of 1114 days was occurred, for filing re-presenting the application is totally false.

30. 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 proceedings. 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. 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.

31. Therefore, the length delay of 1112 days in re-presenting the petitions which was filed in a casual manner without giving any reason, much less acceptable reasons, cannot through be sustained. The petitioner/defendant should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of 1112 days was involved in getting re-presenting the said petitions. Therefore, the learned District Munsif Court, Ambattur has right and rejected the

order, which is not required for interference by this Court. Accordingly, it is liable to be dismissed.

32. In the result, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

23.01.2017

Note: Issue order copy on 25.01.2017.

Index: Yes
Internet: Yes

vs

To

The District Munsif Court,
Ambattur.

M.V.MURALIDARAN, J.

VS

Pre-Delivery order made in
CRP(NPD)No.4663 of 2013
and
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