



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) No.2409 of 2016 (NPD)

and

C.M.P. (MD) No.11345 of 2016

1.State of Tamil Nadu,
Rep. by the Collector of
Kanyakumari District,
Collectorate,
Collectorate Post,
Nagercoil - 629 001,
Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District.

2.The District Forest Officer,
Kanyakumari Forest Divisional,
Nagercoil,
Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District.

.. Petitioners

Vs.

1.A.Raju
2.Solomon Rajan
3.Sadasivan

.. Respondents

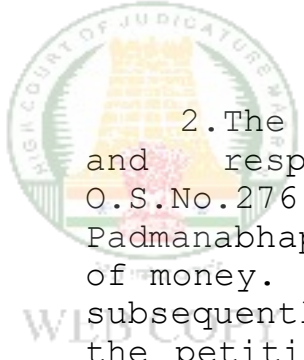
Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order dated 18.10.2016, passed in I.A.No.245 of 2016 in O.S.No.276 of 2002, on the file of the Subordinate Court, Padmanabhapuram.

For Petitioners : Mr.B.Pugalendhi
Additional Advocate General

For R1 : Mr.G.Gomathi Sankar

ORDER

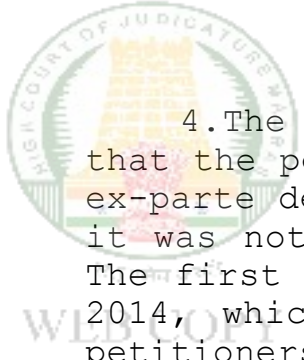
This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 18.10.2016, passed in I.A.No.245 of 2016 in O.S.No.276 of 2002, by the learned Subordinate Judge, Padmanabhapuram.



2.The first respondent is the plaintiff and the petitioners and respondents 2 and 3 are the defendants in the suit in O.S.No.276 of 2002 on the file of the Subordinate Court, Padmanabhapuram. The first respondent filed the suit for recovery of money. The petitioners entered appearance in the said suit and subsequently, they did not file written statement and therefore, the petitioners and respondents 2 and 3 were set ex-parte and an ex-parte decree was passed on 11.08.2003. The first respondent filed E.P.No.92 of 2014. After receiving notice in the said E.P., the petitioners entered appearance and filed counter affidavit and subsequently, filed I.A.No.245 of 2016, to condone the delay of 4506 days in filing the petition to set aside the ex-parte decree, dated 11.08.2003.

3.According to the petitioners, the original suit was filed by the first respondent for recovery of money against them and respondents 2 and 3. The previous Government Pleader's Clerk was not able to maintain the diary in proper form. As per the said diary, the date of filing of written statement fell on 20.06.2004, which fell on Sunday, and growing suspicion, the counsel made personal enquiry on 21.06.2004 itself and came to know about the ex-parte decree, dated 11.08.2003. The suit had been actually posted for the written statement to be filed by the petitioners only on 04.08.2003. Due to the reason stated above, the petitioners and respondents 2 and 3, were unable to file their written statement on 04.08.2003. Thereafter, written statement along with a petition to set aside the ex-parte decree was prepared on their side. But, that petition was not filed in Court by the Clerk. All these facts are known to the petitioners only after receiving notice in E.P. The petitioners have received the Court notice on 17.11.2014. On that date, the petitioners came to know that the said suit was decreed because of non-filing of the written statement in the above case. But, in the petitioners' office, there is no record available with regard to the abovesaid O.S. The said file was misplaced because of the reason that the old office building had shifted to the present office building. The failure to file the written statement is neither willful nor wanton. The first respondent had already filed another suit in O.S.No.236 of 2001 before the District Munsif Court, Padmanabhapuram. As the first respondent had abandoned his claim of damages in O.S.No.236 of 2001, the same can be claimed in separate suit only after seeking permission of the Court. The second petitioner has joined as the District Forest Officer at Kanniyakumari Division only on 31.07.2014 and he came to know about the ex-parte decree only on 17.11.2014 and also took several steps to find out the files of the above case and was able to collect very few papers of the above case till 12.03.2016. Therefore, he could not file a petition under Order IX Rule 13

<https://hcservicescourts.gov.in/hcservices/> the reasons stated above, the delay of 4506 days have occurred in filing the petition.



4.The first respondent filed counter affidavit and submitted that the petitioners have not properly explained the delay and the ex-parte decree passed in O.S.No.276 of 2002 is a valid decree and it was not at all set aside within statutory period of 12 years. The first respondent decree-holder has already filed E.P.No.92 of 2014, which is pending from August 2014 for counter. But, the petitioners herein and the respondent therein kept quiet till February 2016. Finally, the learned I Additional Subordinate Judge at Nagercoil, passed an order of attachment of second respondent's vehicle bearing Registration No.TN-74-G-298. Though the first respondent has obtained the decree in the year 2003 and waited till 2014 with an intention that the judgment debtor, the petitioners herein would deposit the decretal amount, as they have not done so, the first respondent filed E.P. in the year 2014 and therefore, prayed for dismissal of the application.

5.The learned Subordinate Judge, Padmanabhapuram, considering the averments made in the affidavit, counter affidavit and also considering the materials available on record, dismissed the application.

6.Against the said order of dismissal dated 18.10.2016, the petitioners have come out with the present Civil Revision Petition.

7.When the matter was taken up for hearing on 29.11.2016, this Court granted an order of interim stay on condition that the petitioners should deposit the entire decree amount to the credit of E.P.No.92 of 2014 on the file of the Principal Subordinate Court, Nagercoil, within a period of 12 weeks from the date of receipt of a copy of that order.

8.The learned Additional Advocate General appearing for the petitioners reiterating the grounds raised in the Civil Revision Petition, submitted that the learned Subordinate Judge, Padmanabhapuram, ought to have considered the application for condoning the delay liberally and should have given an opportunity to the petitioners to put forth their case on merits. The learned Additional Advocate General further submitted that the order passed by this Court, dated 29.11.2016, is complied with.

9.In support of his submissions, the learned Additional Advocate General relied on the judgment of the Hon'ble Apex Court reported in **2009 (13) SCC 192 [State of Karnataka Vs. Y.Moideen Kunhi (Dead) by LRs. and others]**, wherein at paragraphs 18 to 20, it has been held as follows:-

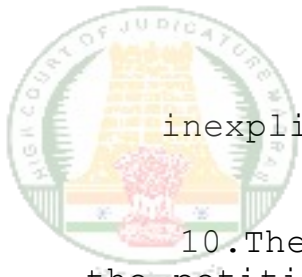
"18. This Court has in appropriate cases even condoned delays of over 30 years in filing of SLPs. In *Nand Kishore Punjab* [1995 (6) SCC 614], this Court held: (SCC p. 620, para 13)



"13. The step of the three-member Bench so taken reveals its mind as reflected in the above proceedings. Their Lordships wanted to do substantial justice. It was thought better to advise the petitioner to file a special leave petition. As we view this order, having invited the petitioner to file the special leave petition, it is no longer advisable or appropriate for us to retrace back the step put forward by the three-member Bench. It is significant to recall that the writ application was dismissed on 5-2-1962 and the moment *Moti Ram Deka case* [AIR 1964 SC 600] appeared on the scene, the appellant on 24-2-1964, within limitation, brought forward his suit which got strengthened by *Gurdev Singh case* [AIR 1964 SC 1585] appearing within a couple of months of its filing. The appellant-special leave petitioner was thus bona fide pursuing an appropriate remedy for all these years. In these circumstances, we think that an appropriate case for condonation of delay of the intervening period has been made out. We, therefore, allow CC No. 11644 of 1991 and condone the long durated delay in these exceptional circumstances. On doing so, we grant leave to appeal. The appeal thus arising and Civil Appeal No. 632 of 1975 may now be disposed of together."

19. On perusal of the explanation offered it is clear that the officials who were dealing with the matter have either deliberately or without understanding the implications dealt with the matter in a very casual and lethargic manner. It is a matter of concern that in very serious matters action is not taken as required under law and the appeals/petitions are filed after a long lapse of time. It is a common grievance that it is so done to protect unscrupulous litigants at the cost of public interest or public exchequer. This stand is more noticeable where vast tracts of lands or large sums of revenue are involved.

20. Even though the courts are liberal in dealing with the belated presentation of appeals/applications, yet there is a limit up to which such liberal attitude can be extended. Many matters concerning the State Government and the Central Government are delayed either by the nature of bureaucratic process or by deliberate manipulation of the same by taking advantage of loopholes in the conduct of litigation. Several instances have come to the notice of this Court whereas as noted above appeals have been filed where the revenue involved runs to several crores of rupees. It is true that occasionally delay occurs which is



inexplicable in normal circumstances."

10. The learned counsel for the first respondent submitted that the petitioners have not given any reason for condoning the delay of 4506 days and prayed for dismissal of the Civil Revision Petition.

11. I have considered the submissions of the learned Additional Advocate General appearing for the petitioners as well as the learned counsel for the first respondent and perused the materials available on record.

12. The Hon'ble Apex Court as well as this Court and the various High Courts have held that the length of delay is not the criteria and the reason given for condonation of delay must be *bona fide* and sufficient to condone the delay. The condonation of delay is the discretion of the Court and the said discretion must be exercised judicially. The Court must be liberal in considering the application to condone the delay and should not shut down the parties at the threshold itself preventing from putting forth their case. At the same time, the Courts must consider whether the reason given by the parties are *bona fide* or *mala fide* with a view to drag on the proceedings. The Courts must also take into consideration any right that would have accrued to the opposite party.

13. Taking into consideration the submission of the learned Additional Advocate General that conditional interim order passed by this Court on 29.11.2016, in this Civil Revision Petition, has been complied with, the fair and decreetal order, dated 18.10.2016, passed in I.A.No.245 of 2016 in O.S.No.276 of 2002, by the learned Subordinate Judge, Padmanabhapuram, is set aside and the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To

The Subordinate Judge, Padmanabhapuram.

+1 cc to The Special Government Pleader in SR.No.8382

+1 cc to M/s.G.Gomathi Shankar, Advocate in SR.No.8187

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