

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.06.2018

Coram:

THE HONOURABLE **MR.JUSTICE P.VELMURUGAN**

**C.R.P.(NPD)No.1463 of 2018 and
C.M.P.No.7802 of 2018**

1. Chennai Metropolitan Water Supply
and Sewerage Board
Rep. By its Chairman and Managing Director,
No.1, Pumping Station Road,
Chintadripet, Chennai 600 002.
 2. The Area Engineer-IX
No.15, V.V.Koil Street,
Chennai Metropolitan Water Supply
and Sewerage Board,
Saidapet, Chennai-15.
 3. The Depot Manager,
Chennai Metropolitan Water Supply
and Sewerage Board,
No.11, Balaji Nagar, 3rd Cross Street,
Ekkattuthangal, Chennai-600 032.
- ... Petitioners

Vs.

1. U.Gopal
 2. Corporation of Chennai
Rep. By its Commissioner,
Ripon Building, Chennai-3.
- ... Respondents

Civil Revision Petition has been filed under Article 227 of the Constitution of India seeking to set aside the order and decretal order dated 04.01.2018 in I.A.No.10651 of 2017 in O.S.No.10680 of 2010 of the learned V Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr.N.Ramesh

For Respondents : Mr.G.Jayachandran for R1
No Appearance - R2

ORDER

This civil revision petition has been filed seeking to set aside the order dated 04.01.2018 made in I.A.No.10651 of 2017 in O.S.No.10680 of 2010 by the learned V Assistant Judge, City Civil Court, Chennai.

2 The first respondent filed a suit in O.S.No.10680 of 2010 for declaration and mandatory injunction, which was dismissed by order dated 28.03.2011 for default and subsequently restored on 10.04.2015 and in the application filed for restoring the above suit, the respondents who are the petitioners herein were set exparte. Thereafter, after completion of pleadings and framing of issues, the above suit was decreed in favour of the first respondent/plaintiff by setting the revision petitioners as exparte by judgment and decree dated 01.03.2016 and the first respondent/plaintiff initiated execution proceedings to execute the above said decree. At that time the revision petitioners filed interlocutory application in I.A.No.10651 of 2017 seeking to condone the delay of 477 days in filing petition to set aside the exparte decree dated 01.03.2016. The trial Court after hearing the arguments on either side, dismissed the application by an order dated 04.01.2018.

3 Aggrieved against the above said order dated 04.01.2018,

the revision petitioners are before this Court with the present civil revision petition.

4 The learned counsel appearing for the petitioners would submit that the revision petitioners are not aware of the exparte decree dated 01.03.2016, since the official who dealt with the matter had transferred to some other place. Hence the delay of 477 days in filing petition to set aside the exparte decree dated 01.03.2016 has occurred. The trial court failed to consider the above fact and dismissed the application in I.A.No.10651 of 2017 by order dated 04.01.2018, which warrants interference of this Court.

5 Heard the learned counsel for the petitioners and perused the materials available on record.

6 On a perusal of the records it reveal that the petitioners had filed application seeking to condone the delay of 477 days in filing petition to set aside the exparte decree dated 01.03.2016, which was passed in the suit in O.S.No.10680 of 2010 in favour of the first respondent/plaintiff. As per the decision of the Hon'ble Apex Court, the expression of sufficient cause must receive a liberal approach, so as to advance substantial justice. In litigations to which Government is party, there is yet another aspects which, perhaps, cannot be ignored. If applications filed by Government are lost for such default, no person is individually affected, but what is the ultimate analysis suffers is public interest. It would perhaps, unfair and unrealistic to put

Government and Private parties on the same footing in all aspects in such matters. In this regard, it is pertinent to refer the decision reported in **2005 AIR SCW 1748 (State of Nagaland vs. Lipok Ao and others):**

“10.The proof by sufficient cause is a condition precedent for exercise of the extraordinary restriction vested in the court. What counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. In N. Balakrishnan v. M. Krishnamurthy (AIR 1998 SC 3222) it was held by this Court that Section 5 is to be construed liberally so as to do substantial justice to the parties. The provision contemplates that the Court has to go in the position of the person concerned and to find out if the delay can be said to have been resulted from the cause which he had adduced and whether the cause can be recorded in the peculiar circumstances of the case is sufficient. Although no special indulgence can be shown to the Government which, in similar circumstances, is not shown to an individual suitor, one cannot but take a practical view of the working of the Government without being unduly indulgent to the slow motion of its wheels.

11.What constitutes sufficient cause cannot be laid down by hard and fast rules. In New India Insurance Co. Ltd. v. Shanti Misra (1975 (2) SCC 840) this Court held that discretion given by Section 5 should not be defined or crystallised so as to convert a discretionary matter into a rigid rule of law. The expression "sufficient cause" should receive a liberal construction. In Brij Indar Singh v. Kanshi Ram (ILR (1918) 45 Cal 94 (PC) it was observed that true guide for a court to exercise the discretion under Section 5 is whether the appellant acted with reasonable diligence in prosecuting the appeal. In Shakuntala Devi Jain v. Kuntal Kumari (AIR 1969 SC 575) a Bench of three Judges had held that unless want of bona fides of such inaction or negligence as would deprive a party of the protection of Section 5 is proved, the application must not be thrown out or any delay cannot be refused to be condoned.

12.In Concord of India Insurance Co. Ltd. v. Nirmala Devi (1979 (4) SCC 365) which is a case of negligence of the counsel which misled a litigant into delayed pursuit of his remedy, the default in delay was condoned. In Lala Matu Din v. A. Narayanan (1969 (2) SCC 770), this Court had held that there is no general proposition that mistake of counsel by itself is always sufficient cause for

condonation of delay. It is always a question whether the mistake was bona fide or was merely a device to cover an ulterior purpose. In that case it was held that the mistake committed by the counsel was bona fide and it was not tainted by any mala fide motive.

13. In State of Kerala v. E. K. Kuriyipe (1981 Supp SCC 72), it was held that whether or not there is sufficient cause for condonation of delay is a question of fact dependant upon the facts and circumstances of the particular case. In Milavi Devi v. Dina Nath (1982 (3) SCC 366), it was held that the appellant had sufficient cause for not filing the appeal within the period of limitation. This Court under Article 136 can reassess the ground and in appropriate case set aside the order made by the High Court or the Tribunal and remit the matter for hearing on merits. It was accordingly allowed, delay was condoned and the case was remitted for decision on merits.

14. In O. P. Kathpalia v. Lakhmir Singh (1984 (4) SCC 66), a Bench of three Judges had held that if the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay. Delay was accordingly condoned. In Collector Land Acquisition v. Katiji (1987 (2) SCC 107), a Bench of two Judges considered the question of the limitation in an appeal filed by the State and held that Section 5 was enacted in order to enable the court to do substantial justice to the parties by disposing of matters on merits. The expression "sufficient cause" is adequately elastic to enable the court to apply the law in a meaningful manner which subserves the ends of justice - that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. This Court reiterated that the expression "every day's delay must be explained" does not mean that a pedantic approach should be made. The doctrine must be applied in a rational common sense pragmatic manner. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. Judiciary is not respected on account of its power to legalise injustice on technical grounds but because it is capable of

removing injustice and is expected to do so. Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the State which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the State is the applicant. The delay was accordingly condoned.

15. Experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. The State which represents collective cause of the community, does not deserve a litigant-non-grata status. The courts, therefore, have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression of sufficient cause. Merit is preferred to scuttle a decision on merits in turning down the case on technicalities of delay in presenting the appeal. Delay as accordingly condoned, the order was set aside and the matter was remitted to the High Court for disposal on merits after affording opportunity of hearing to the parties. In *Prabha v. Ram Parkash Kalra* (1987 Supp SCC 339), this Court had held that the court should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. The appeal was allowed, the delay was condoned and the matter was remitted for expeditious disposal in accordance with law.

16. In *G. Ramegowda, Major v. Spl. Land Acquisition Officer* (1988 (2) SCC 142), it was held that no general principle saving the party from all mistakes of its counsel could be laid. The expression "sufficient cause" must receive a liberal construction so as to advance substantial justice and generally delays in preferring the appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of delay. In litigations to which Government is a party, there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected, but what, in the ultimate analysis, suffers is public interest. The decisions of Government are collective and institutional decisions and do not share the characteristics of

decisions of private individuals. The law of limitation is, no doubt, the same for a private citizen as for governmental authorities. Government, like any other litigant must take responsibility for the acts, omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it. It was, therefore, held that in assessing what constitutes sufficient cause for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the consideration that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the Government. Government decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red-tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have "a little play at the joints". Due recognition of these limitations on governmental functioning - of course, within reasonable limits - is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters. Implicit in the very nature of Governmental functioning is procedural delay incidental to the decision-making process. The delay of over one year was accordingly condoned."

7 Though length of delay is not the matter, when Government is a party, the Government like any other litigant must take responsibility for the acts, omissions of its officials. The inconvenience caused to the first respondent/plaintiff, who has got decree in the year of 2016 itself, has to be compensated by way of cost. Accordingly the civil revision petition is allowed on payment of cost of Rs.50,000/- to be deposited to the credit of O.S.No.10680 of

first respondent/plaintiff is at liberty to withdraw the same, without filing any formal application before the trial Court.

8 In the result the order dated 04.01.2018 made in I.A.No.10651 of 2017 is hereby set aside and the trial Court on deposit of the cost of Rs.50,000/- by the revision petitioners herein, is directed to proceed with the matter in accordance with law and dispose of the suit in O.S.No.10680 of 2010 within a period of four months from the date of receipt of a copy of this order. The parties are directed to cooperate for speedy disposal of the suit. Consequently connected miscellaneous petition is closed. No costs.

14.06.2018

Internet: Yes/No

Internet: Yes/No

Speaking order/Non Speaking order

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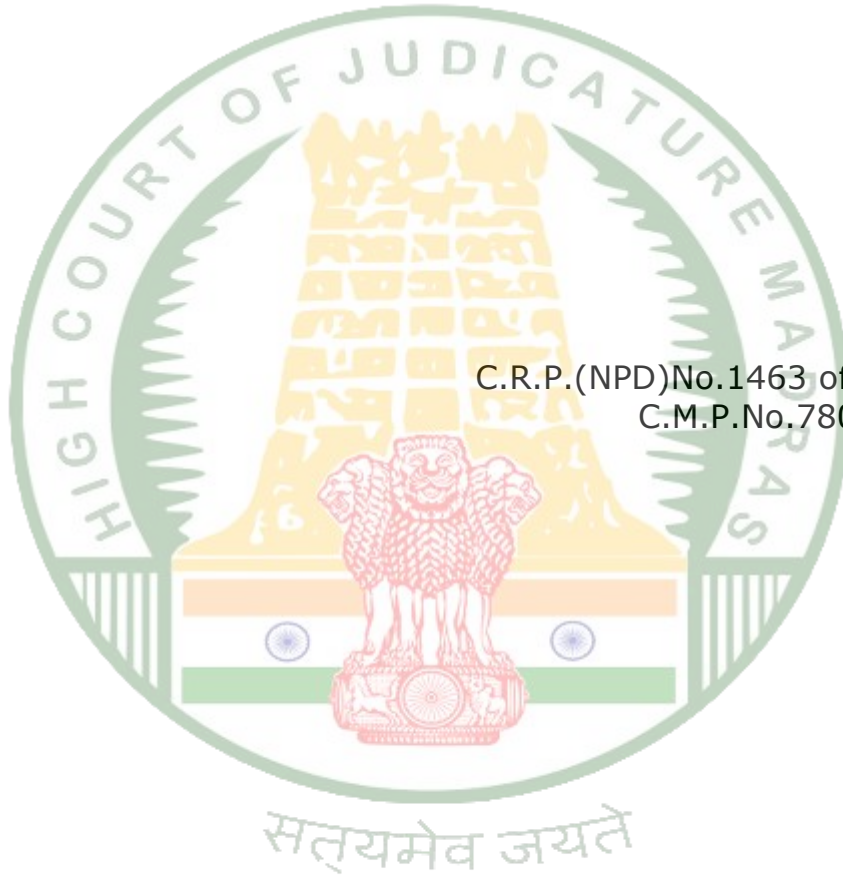
To

The V Assistant Judge, City Civil Court,
Chennai.

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P.VELMURUGAN, J.,

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