

## IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.02.2018

Coram

THE HONOURABLE **Mr. JUSTICE M.VENUGOPAL**  
ANDTHE HONOURABLE **Mr. JUSTICE S.VAIDYANATHAN**C.M.P.Nos.21784 and 21785 of 2017  
in OSA No.SR79476 of 2017

M/s Ruskim sea Foods Limited,  
Stafford Park 15,  
Teleford Shropshire TF33BB  
United Kingdom  
rep. By their Power of Attorney Agent  
Mr.Abdur Rahman  
No.42, Sindur Plaza  
Montieth Lane, Egmore,  
Chenna – 600 008

.. Petitioner in both the Petitions

Vs.

1.M/s Evergreen Sea Foods Pvt.,Ltd.,  
rep. By its Managing Director,  
Mr.T.Loganathan,  
No.29, Kummalammarkoil Street,  
Tondiarpet, Chennai – 600 081

2. Mr.Aslam  
Sole Proprietor,  
M/s Oceans  
P.B.No.283, Kochangadi,  
Cochin – 682 002

3. Gelpixe S.A.  
Sete Casa Apariada 42  
Portugal

4. Vee Tee Jay Exports Pvt., Ltd.,  
Palluruthy, Cochin – 682 005 ..Respondents in both the Petitions

Prayer: Civil Miscellaneous Petitions filed under Order XIV Rule 8 of O.S.Rules r/w Section 151 of CPC to Condone the Delay of 765 days in filing the affidavit to allow the appeal and to stay the operation of Judgment and Decree in C.S.No.9 of 1999 dated 13.07.2015.

For Petitioner : Mr.C.T.Mohan  
in both the Petitions for Mr.R.Venugopal

For Respondents : Mr.S.Vasudevan for R1  
in both the Petitions Mr.A.Abdul Rahman for R2

### COMMON ORDER

[Common Order of the Court was made by **M.VENUGOPAL, J.**]

The Petitioner / Appellant has focused the instant Civil Miscellaneous Petition Nos.21784 and 21785 of 2017 praying for passing an order by this Court to condone the delay of 765 days in preferring the Appeal in O.S.A.Sr.No.79476 of 2017 and C.M.P.No.21785 of 2017 praying to stay the operation of the Judgment and Decree dated 13.07.2015 passed in C.S.No.9 of 1999.

2. According to the Petitioner / Appellant, he is the Power Agent of the Petitioner's Company and the Petitioner used to place orders

through the 2<sup>nd</sup> Respondent for the requirement of the Petitioner for exporting the Sea Foods from India. During the course of business, the Petitioner had informed the 2<sup>nd</sup> Respondent that they are requiring 475 Cases of Whole Clean Squid Fish and further 736 Cases of Whole Clean Squid. Pursuant to the requirement expressed by the Petitioner, the 2<sup>nd</sup> Respondent had placed the Orders for purchasing of Frozen Whole Cleaned Squid Fish and with a packing of 1150 Cases, containing 20 Kgs. each as per Purchase Order dated 13.06.2007 for the value of US \$2.50 per Kilogram with the 4<sup>th</sup> Respondent. As a matter of fact, the condition for shipment was on the basis of Letter of Credit payable in 85 days from the date of Bill of Lading.

3. The stand of the Petitioner is that he placed the order for Frozen Whole clean Cuttle Fish weighing 20 Kgs, each in 772 Cases with the value of US \$ 0.90 per Kilogram and the consignment to be exported to the 3<sup>rd</sup> Respondent at Lisbon. He had originally placed purchase order with the 4<sup>th</sup> Respondent, who in turn transferred the Purchase Order to the 1<sup>st</sup> Respondent/Plaintiff. The terms of the Purchase order is payment by Letter of Credit payable within 85 days from the date of Bill of Lading. The 1<sup>st</sup> Respondent had exported the

goods in pursuance to the order placed by the 2<sup>nd</sup> Respondent to the 3<sup>rd</sup> Respondent, who is the client of the Petitioner.

4. In this connection, the Learned Counsel for the Petitioner / Appellant contends that in terms of the Contract, the Petitioner had not opened the Letter of Credit and although the Letter of Credit was not opened by the Petitioner, the 1<sup>st</sup> Respondent by deviating from the original terms of the Contract, at the time of purchase order, exported the goods to be delivered at the Port at Lisbon to the 3<sup>rd</sup> Respondent on 'Document Against Payment Basis'.

5. It is represented on behalf of the Petitioner that the 2<sup>nd</sup> Respondent had sent numerous communications beginning from 08.10.1997 to 20.10.1997 to the 1<sup>st</sup> Respondent, informing that either they should make arrangements to take back the goods or the goods shall be destroyed at the Port at Lisbon at the estimate cost of US \$ 2,000/-. In fact, the 1<sup>st</sup> Respondent had sent a fax on 08.11.1997 informing that they can take decision about the infected Cargo after mutual discussions. Later, the Petitioner had clearly expressed the facts through their Fax dated 14.11.1997 that the container should be

returned back to the Madras Port and after deducting the container charges they will be paying US \$ 7,961.52, after deducting the expenses for redirecting the shipment. Indeed, the said Fax message sent by the Petitioner was, according to the Petitioner, unattended by the 1<sup>st</sup> Respondent and there was no response at all by the 1<sup>st</sup> Respondent. The 1<sup>st</sup> Respondent remained silent in regard to the various communications and ultimately saw that the goods were destroyed by the Port Authorities at Lisbon and the Port Authorities had issued a Certificate that the goods infected with Cholera are destroyed.

6. The Learned Counsel for the Petitioner takes a plea that the 1<sup>st</sup> Respondent had pleaded ignorance about all these events and sent a notice of demand prior to the filing of the suit, claiming that the entire liability of US \$ 75399 is to be paid by Respondents 1 to 4, for which a detailed reply was furnished by 2<sup>nd</sup> Respondent stating that they are not liable for payment of said consignment, in view of the fact that the 2<sup>nd</sup> Respondent only an agent of the Petitioner / Appellant. Further, it is exported at the risk of the 1<sup>st</sup> Respondent and that the 1<sup>st</sup> Respondent has not taken any possible steps to take back the consignment, after the Port Authorities at Lisbon detected the consignment infected with

cholera and as such, the entire stocks were destroyed only due to the negligent attitude of the 1<sup>st</sup> Respondent.

7. The Learned Counsel for the Petitioner brings it to the notice of this Court that the 2<sup>nd</sup> Respondent on behalf of the Petitioner had placed a Second P.O. for exporting 772 Cases of Whole Clean Frozen Cuttle Fish weighing about 20 Kgs in each Case for the approximate cost of US \$ 0.90 per Kilogram. For the said P.O., Export was made in CFR basis and as per the terms of the P.O. Payment made by Opening Letter of Credit, payable within 85 days from the date of receipt of Bill of Lading. Moreover, the said consignment originally was placed with the 4<sup>th</sup> Respondent and without the knowledge of the Appellant, had transferred the order to the 1<sup>st</sup> Respondent. In any event, the 1<sup>st</sup> Respondent had executed the Purchase Order and consignment was delivered to the Port authorities and the said consignment was also delivered to the consignee.

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8. It is to be noted that according to the Petitioner, the contract is not made on 'Free On Board' basis and only Cost & Freight method. Apart from that, it is quite evident from Ex.A-1 & Ex.A-2, being the

purchase order placed by the 2<sup>nd</sup> Respondent and as well as Ex.A-6 & Ex.A-7, which is the Bill of Lading delivered by the 1<sup>st</sup> Respondent. At this juncture, the Learned Counsel for the Petitioner / Appellant pertinently points out that as against the document filed before the Court, the Learned Single Judge came to an erroneous conclusion in the main Suit that Export was made in FOB basis and as such, the liability of the Seller viz., the 1<sup>st</sup> Respondent ceases once the consignment is loaded on Board of the Vessel Viz., the Port at Chennai, as the 1<sup>st</sup> Respondent obtained a certificate from the Marine Authorities, Tamil Nadu, about the quality of the goods, before boarding the consignment in the Vessel at Chennai Port, the liability of the 1<sup>st</sup> Respondent ceases and fasten the liability on the Petitioner is against Law.

9. The Learned Counsel for the Petitioner / Appellant contends that the Petitioner is filing the present Appeal and in fact, the Petitioner is liable to pay only US \$ 7962 and not liable to pay anything more than that. However, in the main suit in C.S.No. 9 of 1999, the Learned Single Judge had passed a Decree for the entire payment and hence the

Petitioner / Appellant is assailing the correctness of the Judgment in the Present Appeal in O.S.A Sr.No.79476 of 2017.

10. The Learned Counsel for the Petitioner / Appellant submits that in the month of July 2015, his principal was informed by his agent that there is a Decree and Judgment passed in the main suit, but, the information sent by the agent was bereft of particulars and that the Agent has not sent any copies of the Judgment and Decree to his Principal, and therefore, he is not aware of the text of the Judgement and Decree passed by this Court in C.S.No.9 of 1999 dated 13.07.2015. Furthermore, he was not conversant with the Procedure of this Court and that the Appeal could not be filed in time.

11. Besides these, the Petitioner's Principal came to know about the entire contents of the Decree only after the notice was served from the Queen's Court and as such, only after knowing the full contents of the Decree, his Principal was constrained to file the present Appeal, accordingly, appointed him as their Power of Attorney Agent and filed the above appeal, along with an application to condone the delay in filing the above Appeal.

12. In pith and substance, the Learned Counsel for the Petitioner / Appellant submits that only after the notice was issued to the Petitioner's Principal by the Respondents, his Principal enquired about the matter with the agent in India and came to know that there is a Decree passed by this Court in C.S.No.9 of 1999 and only after the 1<sup>st</sup> Respondent issued notice claiming the decree amount and at that point of time only, he came to know about the exact details of the decree passed by this Court. Furthermore, if the delay of 765 days in preferring the present Appeal in OSA Sr.No.79476 of 2017 is not condoned, the Petitioner/Appellant will be put to serious and irreparable hardship. Also that, the delay in preferring the present Appeal in OSA Sr.No.79476 of 2017 is neither willful nor wanton, but due to the bonafide facts, as aforestated supra.

13. At this stage, the Learned Counsel for the Petitioner / Appellant cites the decision of **Hon'ble Supreme Court in N.Balakrishnan V. M.Krishnamurthy reported in (1998) 7 SCC at Page 124 at Special Pages 127 and 128**, wherein at Paragraphs Nos.9 to 11, it is observed as under :

*“9. It is axiomatic that condonation of delay is a matter*

*of discretion of the court Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first cut refuses to condone the delay. In such cases, the superior cut would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.*

*10. The reason for such a different stance is thus:*

*The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.*

*11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. the*

*object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be putt to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.”*

14. Continuing further, in the aforesaid decision at Special Page 128 in Paragraph Nos. 12 and 13, it is observed as follows:

*“12. A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance*

*substantial justice vide Shakuntala Devi Jain Vs. Kuntal Kumari [AIR 1969 SC 575] and State of West Bengal Vs. The Administrator, Howrah Municipality [AIR 1972 SC 749].*

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of 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 lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quiet a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss.”

15. The Learned Counsel for the Petitioner / Appellant seeks in aid of the decision of this Court between **Sarpudeen V. Pitchai and others reported in 2011 (1) TLNJ at Page 516 (Civil)**, wherein it is held at Special Page 521 at paragraph No.16 it is held as under:

*“16. In the present case on hand, this Court is of the*

*considered view that the attitude of a Court of law must be one informed with utmost awareness for deliverance of substantial justice overriding technicalities. One cannot deny that a Court of law refusing to condone the delay may result in a meritorious matter being ejected out at the early stage, thereby defeating the cause of justice. By allowing a party to take part in the main stream of legal proceedings by condoning the delay, then the cause of the parties will be decided on merits, of course, after hearing the parties.”*

16. Per contra, it is the submission of the Learned Counsel for the 1<sup>st</sup> Respondent / Plaintiff that the 1<sup>st</sup> Respondent / Plaintiff filed C.S.No.9 of 1999 for recovery of Rs.38,53,798.49 together with interest at 24% per annum and for costs against the Appellant/1<sup>st</sup> Defendant and the other Respondents/Defendants jointly and severally. In fact, the amount was due on goods, namely Squid and Cuttlefish sold by way of export on orders placed by the Petitioner / Appellant through its agent, the 2<sup>nd</sup> Respondent / 2<sup>nd</sup> Defendant. The goods were delivered at Lisbon, Portugal, as directed by the Petitioner / Appellant, to the 3<sup>rd</sup> Respondent / 3<sup>rd</sup> Defendant. In reality, the 4<sup>th</sup> Respondent / 4<sup>th</sup> Defendant was also liable, since it had transferred the purchase order to the 1<sup>st</sup> Respondent/Plaintiff.

17. The Learned Counsel for the 1<sup>st</sup> Respondent / Plaintiff had also accepted the Bills of Exchange and as such, he is liable to pay the amounts due. Moreover, the main suit in C.S.No. 9 of 1999 on the file of this Court was contested on merits and ultimately, the suit was decreed against all the Defendants jointly and severally as prayed for, with costs, on 13.07.2015.

18. The Learned Counsel for the 1<sup>st</sup> Respondent / Plaintiff takes a stand that the Petitioner / Appellant was represented by its Counsel and contested the main suit C.S.No.9 of 1999 and in fact, the Petitioner / Appellant through its Learned Counsel had applied for a certified copy of the Judgment and Decree in C.S.No.9 of 1999, on 13.07.2015. The said Certified Copy of the Judgment and Decree in C.S.No.9 of 1999 was made ready and received by the Petitioner / Appellant on 14.10.2015. As such, the Appellant was represented through its counsel and had requisite knowledge of the passing of the Judgment and Decree on 13.07.2015 itself.

19. The Learned Counsel for the 1<sup>st</sup> Respondent proceeds to take a plea that the 1<sup>st</sup> Respondent/Plaintiff later issued two notices

demanding payment from the Petitioner / Appellant and the other Respondents in respect of the Judgment and Decree dated 13.07.2015, dated 23.10.2015 and 20.12.2016 respectively both sent by E-mail, which was duly received by the Appellant. However, Notice on 3<sup>rd</sup> Respondent got returned un-served. In this connection, the Learned Counsel for the 1<sup>st</sup> Respondent / Plaintiff takes a genuine plea that the Petitioner / Appellant having received the information that the suit was decreed in July 2015 and also obtained the certified copy of the Judgment and Decree passed in C.S.No.9 of 1999 on the file of this Court on 14.10.2015 ought to have paid the amount due or filed the Appeal within the statutory period of 30 days. In fact, the 2<sup>nd</sup> Respondent, who is the agent of the Appellant had meanwhile filed an independent Appeal OSA No.252 of 2015, in which no order of stay has been granted.

20. Apart from that, after issuance of notice, through Mail to the Petitioner / Appellant on 23.10.2015 and 20.12.2016, the 1<sup>st</sup> Respondent / Plaintiff proceeded to seek to enforce the Judgment of the Decree passed by this Court in C.S.No.9 of 1999 dated 13.07.2015 in United Kingdom against the assets of the Petitioner / Appellant. A

legal notice from the 1<sup>st</sup> Respondent / Plaintiff with the U.K. Solicitors was issued on 01.08.2017 to the Appellant and Enforcement Proceedings were filed, since no payment was forthcoming.

21. Besides these, during the pendency of the Enforcement Proceedings in United Kingdom Court, the Appellant through its United Kingdom Counsel, filed an Application to adjourn the proceedings on the ground that the Applications to condone the delay in filing the Appeal was filed before this Court and in fact, the Application filed in the Court in United Kingdom was supported by a witness statement of Mr. William Sydney Mooney, the Managing Director of the Appellant.

22. The Learned Counsel for the 1<sup>st</sup> Respondent / Plaintiff draws the attention of this Court to the witness statement of Mr. William Sydney Mooney. Also before the English Court's at Paragraph No.2(e), of the witness statement of Mr. William Sydney Mooney states as follows:

*"My Agent advised me of the Judgment at some point in or around July/August, 2015 although I have no record of such Notification. In discussion with my Agent, I instructed him to appeal the Judgment and I understood that the Appeal was proceeding. I was advised by my Agent that the Legal Proceedings in India are*

*quite slow and I could see that was the case given the time it took for the actual Judgment to come through,”*

23. Also that at Paragraph Nos.2(f) and 2(g) of the Witness Statement of the aforesaid mentions as under:

*“2(f) In any event I heard nothing further from my agent in relation to this matter up until receipt of a letter from Tyrer Roxborough dated 1<sup>st</sup> August 2017.*

*2(g) Upon receipt of that letter I contacted my agent and his Solicitors to ascertain what the position was. I understand from my agent and his Solicitors that no actual appeal had been lodged. I confirmed instructions to them to lodge an appeal and on 10<sup>th</sup> October 2017 I received the attached letter from Indian Solicitors, Mr.Venugopal confirming that he had commenced the Appeal process in the Indian Courts”.*

24. The Learned Counsel for the 1<sup>st</sup> Respondent submits that the Managing Director of the Appellant, Mr.William Sydney Mooney has stated that the Appellant came to know about the Judgment of this Court passed in C.S.No.9 of 1999 dated 13.07.2015 only in July/August, 2015 from the Agent. Furthermore, the 2<sup>nd</sup> Respondent is an Agent of the Petitioner / Appellant. In fact, the said witness, Mr.William Sydney Mooney (Managing Director of the Appellant) also stated that he had

instructed the Agent to prefer an Appeal and the Appeal should have been filed, as instructed by the Managing Director of the Petitioner / Appellant. The witness statement, according to the Learned Counsel for the 1<sup>st</sup> Respondent, further discloses that Mr. Mooney discovered that the appeal was not filed by the agent, as instructed by him, hence he has directed the appeal to be filed after receipt of the notice of the 1<sup>st</sup> Respondent dated 01.08.2017, based on which, the present Original Side Appeal is filed with a delay of 765 days before this Court.

25. The prime stand taken on behalf of the 1<sup>st</sup> Respondent / Plaintiff is that the Petitioner / Appellant had full knowledge of the Judgment of this Court in C.S.No.9 of 1999 dated 13.07.2015, in August 2015 itself and instructed the agent to prefer an appeal and that the said certified copy of the Judgment and Decree was received on 14.10.2015 by the Appellant who is now placing the blame on its agent for not having preferred the appeal in time, before this Court. In short, the contention of the Learned Counsel for the 1<sup>st</sup> Respondent / Plaintiff is that failure or omission on the part of Agent to comply with the instruction of the Appellant to prefer an appeal cannot constitute as a ground to condone the delay of 765 days.

26. Added further, the Learned Counsel for the 1<sup>st</sup> Respondent / Plaintiff points out that the Petitioner / Appellant has not spoken the truth before this Court in the affidavit filed in support of C.M.P.No.21784 of 2017 in OSA SR.No.79476 of 2017. The deponent to the affidavit in C.M.P.No.21784 of 2017 in OSA Sr.No.79476 of 2017 on the file of this Court, is the Power of Attorney agent appointed by the Appellant and he would state at Paragraph No. 15 that the agent having informed the Appellant of the Judgment dated 13.07.2015 in July 2015 itself did not send a copy of the Judgment and Decree to the Principal. Also, the Appellant had alleged that he was not aware about the text of the Judgment and did not preferred the appeal, as he was not conversant with the procedure of this Court and these allegations are totally false because of the reason that the Petitioner / Appellant / 1<sup>st</sup> Defendant was represented by a Legal Counsel and ignorance cannot be pleaded in regard to the procedures of this Court, especially the Appellant / 1<sup>st</sup> Defendant filed a separate written statement and the agent of the 2<sup>nd</sup> Defendant filed a separate written statement. The Appellant was represented by Learned Counsel Mr.R.Rajaramani as seen from the Decree dated 13.07.2015 in C.S.No.9 of 1999, while the Agent, namely,

2<sup>nd</sup> Respondent / 2<sup>nd</sup> Defendant was represented by Mr.M.Muthappan, Learned Counsel.

27. The candid fact of the matter is that the Petitioner / Appellant and its agent separately applied for certified copies of the Judgment and Decree passed in C.S.No.9 of 1999 dated 13.07.2015 and they were also obtained separately by the Learned Counsel for the Appellant and the 2<sup>nd</sup> Respondent. Therefore, the reasons assigned on behalf of the Petitioner / Appellant to condone the delay of 765 days in preferring the Appeal by placing blame on his agent is an unacceptable one .

28. The Learned Counsel for the 1<sup>st</sup> Respondent brings it to the notice of this Court that on 21.11.2017, this Court, allowed the application to accept the cause title by passing an order to the effect on 21.11.2017 and reserved the rights of the 1<sup>st</sup> Respondent / Plaintiff to raise this issue subsequently and in short, the Appellant had improved upon the reasons for the delay in present C.M.P.21784 of 2017 in OSA Sr.No.79476 of 2017. Suffice it to point out that the 1<sup>st</sup> Respondent / Plaintiff in the counter had categorically averred that the affidavit in C.M.P.No.21784 of 2017 filed by the Petitioner is contrary to the Exhibit

MW1, which is marked in the Courts at United Kingdom, wherein a different affidavit to condone the delay has been filed, therefore, an application i.e., CMP No.21785 of 2017, to stay the operation of the Judgment and Decree in C.S.No.9 of 1999 dated 13.07.2015 is not maintainable. Furthermore, no stay could be granted pending 'Condonation of Delay Petition' in preferring the Appeal.

29. The Learned Counsel for the 1<sup>st</sup> Respondent contends that the Petitioner / Appellant in his affidavit in C.M.P.No.21784 of 2017 has not explained each and every day delay in preferring the Appeal and in short, the Petitioner / Appellant is taking a prevaricating stand and has not explained the delay, in a satisfactory manner and as such, the delay does not required to be condoned.

30. The Learned Counsel for the 1<sup>st</sup> Respondent to lend support to the contention that the delay of 765 days need not be condoned, since the Petitioner / Appellant had not assigned satisfactory reasons in C.M.P. No.21784 of 2017 cites the decision of **Hon'ble Supreme Court H.Dohil Constructions Company Private Limited V. Nahar Exports Limited and Another** reported in **(2015) 1 Supreme Court Cases at**

**Page 680 wherein at Special Page 690**, Paragraph No.20 and at Special Page 692, Paragraph No.24, it is observed as under:

*20. In the case on hand, the delay in refiling was of 1727 days. As rightly pointed out by the learned Senior Counsel for the appellant(s), the respondents paid the scrutiny charges on 11.04.2008 as disclosed in Receipt No.73 issued by the High Court of that date. When the appeal papers were filed on 06.09.2007 and the scrutiny charges were paid on 11-04-2008, 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 refiling. 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 refiling 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 bonafide 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 who 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 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 refiling 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 refiling can only be construed, in the absence of any valid explanation,

*as gross negligence and lacks in bona fides as displayed on the part of the respondents. Further, when the respondents have not come forward with proper details as regards the date when the papers were returned for refiling, the non-furnishing of satisfactory reasons for not refiling of papers in time and the failure to pay the Court fee at the time of the filing of appeal papers on 06.09.2007, 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 required to be stated that in the case on hand, not refiling 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 principal cannot be given a go-by under the guise of liberal approach even if it pertains to refiling. The filing of an application for condoning the delay of 1727 days in the matter of refiling 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 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.”*

31. The Learned Counsel for the 1<sup>st</sup> Respondent seeks in aid of the decision of Division Bench of this Court between **P.R.Ravichandran and others V. K.Ashwani kumar reported in 2015 SCC Online** at Page 935 whereby and whereunder at Paragraph No.24 at inner para 10, it is observed as under:

24. “10. *Similarly, the judgment of this Court reported in 2002(3) CTC 13 in between Sankaralingam and Anr.V. V.Rahuraman would also enlighten this Court regarding the points to be pondered in a case of condonation of delay. The relevant portion would run as under:*

*This Court is inclined to point out the following facts and circumstances which would speak volume against the petitioners (i.e.)*

*(a) Negligence and inaction, that too wilful, has to be inferred from the facts and circumstances,*

- (b) Vagueness of the affidavit and contradiction between the affidavit and deposition before Court,*
- (c) Failure to place any materials before Court to substantiate the case, and*
- (d) Absence of arguable points and law in the defence.*

32. Ordinarily, the 'Condonation of Delay' is a matter of discretion to be exercised by the Concerned Court. Also, it is true that the length and breadth of delay is not relevant, but the acceptance of explanation can only be a relevant criterion for the concerned Court to deal with / condone the aspect of 'Condonation of Delay'. However, in this regard, the Petitioner / concerned litigant is to offer / ascribe sufficient reasons or project sufficient cause or good cause to condone the delay with a view to enable the Concerned Court to take a liberal view with a view to secure the ends of justice.

33. It is to be borne in mind that the term 'Sufficient Cause' under Section 5 of the Limitation Act, 1963 is an elastic one to enable the Court to apply the Law in a meaningful fashion, with a view to secure the ends of justice. However, 'Sufficient Cause' / 'Good Cause' is a condition precedent for exercise of discretion by the Concerned Court in

regard to the 'Condonation of Delay'. If the delay in question is not either properly or satisfactorily and convincingly explained, the Court of Law cannot condone the delay on sympathetic ground alone, as per decision of Hon'ble supreme Court **BrijeshKumar V. State of Haryana reported in AIR 2014 SCC at Page 1612.**

34. In considering a Petition for 'Condonation of Delay', no straight jacket cast iron formula is enunciated to arrive at a conclusion if sufficient / good grounds are made out or not. In short, each case is to be looked into based on the facts and circumstances, in which a litigant acts / conduct himself, in the considered opinion of this Court. 'Where a sufficient cause' or 'good cause' is not shown, then, no question of 'Condonation of Delay' arises, as opined by this Court.

35. The Judgment in C.S.No.9 of 1999 was passed on 13.07.2015 and the copies were made ready on 14.10.2015. Even assuming for the sake of argument that the Petitioner is not aware of the Judgment and Decree in the main suit, the Petitioner herein was informed by a communication through E-Mail on 23.10.2015, which had received by the Petitioner herein on the same day. Thereafter, yet

another mail was sent on 20.10.2016, that was also received by the Petitioner on the same day, but, there is no explanation as to why the Petitioner has not averred to these two E-mails that were received and kept quiet for more than two years in approaching this Court and thereafter, praying the Court to condone the delay. Even assuming the Petitioner is not aware of the Judgment and Decree, which was passed on 13.07.2015 even after the same was made ready on 14.10.2015, there is no justification on the part of the Petitioner to say that he had no knowledge at all after the communication was received by the Petitioner from the 1<sup>st</sup> Respondent herein.

36. The Petitioner has come with unclean hands and the Hon'ble Supreme Court in the decisions, which were cited by the Petitioner, had categorically held that the 'length of delay is not a matter, but the acceptance of explanation is only criteria and length of delay may be long, but if there is justification, long delay can also condoned'. If there is a short delay and the explanation is not satisfactory and if it is on account of smack or malafide or on account of dilatory strategy, this Court cannot help the persons, who come before this Court to condone the delay and protract the proceedings.

37. Insofar as the present case is concerned, the Petitioner / Appellant although had filed a detailed affidavit in C.M.P.No.21784 of 2017, yet relevant averments are only seen at Paragraph Nos.14 and 15, namely to the effect that his Principal had adduced evidence and contested the suit in India, he was not aware about the further course of action and he left the matter as it is and only after the notice was served from the Counsel for the 1<sup>st</sup> Respondent that a Decree is passed against the Appellant Company etc., Further, in Paragraph No.15 of the affidavit it was mentioned that the information about the passing of the Decree in C.S.No.9 of 1999 was sent by the Agent, which according to the Petitioner, was bereft of particulars and that the Agent had not sent the copies of the Judgment and Decree and therefore, he was not aware of the facts and Judgment and Decree passed by this Court. Moreover, he was not conversant with the procedures of this Court and as such, he could not prefer an Appeal in time before this Court.

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38. It is to be relevantly pointed out that pursuant to the Interim order dated 17.01.2018 passed by this Court , the Petitioner / Appellant had remitted a sum of 7962 US Dollars through NEFT and this Court on

17.01.2018 had directed the payment of the said amount without prejudice to the rights and contentions of the respective parties.

39. This Court, on a careful consideration of the respective contentions and also after going through contents and affidavit filed by the Petitioner / Appellant in C.M.P.No.21784 of 2017 and also taking note of the detailed counter filed on behalf of the 1<sup>st</sup> Respondent / Plaintiff, is of the considered view that the Petitioner / Appellant has taken a prevaricating and an inconsistent stand and also projecting one set of plea before the Courts in United Kingdom and another type of stand before this Court in C.M.P.No.21784 of 2017, which by any stretch of imagination cannot be countenanced by this Court. Also that, this Court is of the earnest opinion after going through the contents of the affidavit in C.M.P.No.21784 of 2017 that the Petitioner / Appellant has not come to Court with clean hands. Apart from that, it cannot be gainsaid that the 1<sup>st</sup> Respondent / Plaintiff had obtained a Decree in C.S.No.9 of 1999 after full trial / contest, in which the parties took part. Hence the valuable right accrued to the 1<sup>st</sup> Respondent / Plaintiff by virtue of the Judgment passed in C.S.No.9 of 1999 dated 13.07.2015 by this Court, cannot be so easily displaced in a casual, cavalier, whimsical

manner. Moreover, the reasons assigned on behalf of the Petitioner / Appellant in C.M.P. 21784 of 2017 are bereft of necessary qualitative and quantitative details and indeed they lack bonafide. Therefore, this Court is not inclined to extend its arms of 'Judicial Generosity' in regard to the 'Condonation of Delay Petition' in C.M.P.No.21784 of 2017. Consequently, the said Civil Miscellaneous Petition fails.

40. In fine, the C.M.P.No.21784 of 2017 is dismissed. Consequently, the C.M.P.No.21785 of 2017 is also dismissed. Resultantly, O.S.A.Sr.No.79476 of 2017 is rejected.

(M.V.J.)

(S.V.N.J.)

15.02.2018

Speaking order / Non speaking order

Index :Yes / No

Internet :Yes / No

ssd

सत्यमेव जयते

To

1.M/s Evergreen Sea Foods Pvt.,Ltd.,  
rep. By its Managing Director,  
MR.T.Loganathan,  
No.29, Kummalamankoil Street,  
Tondiarpet, Chennai – 600 081

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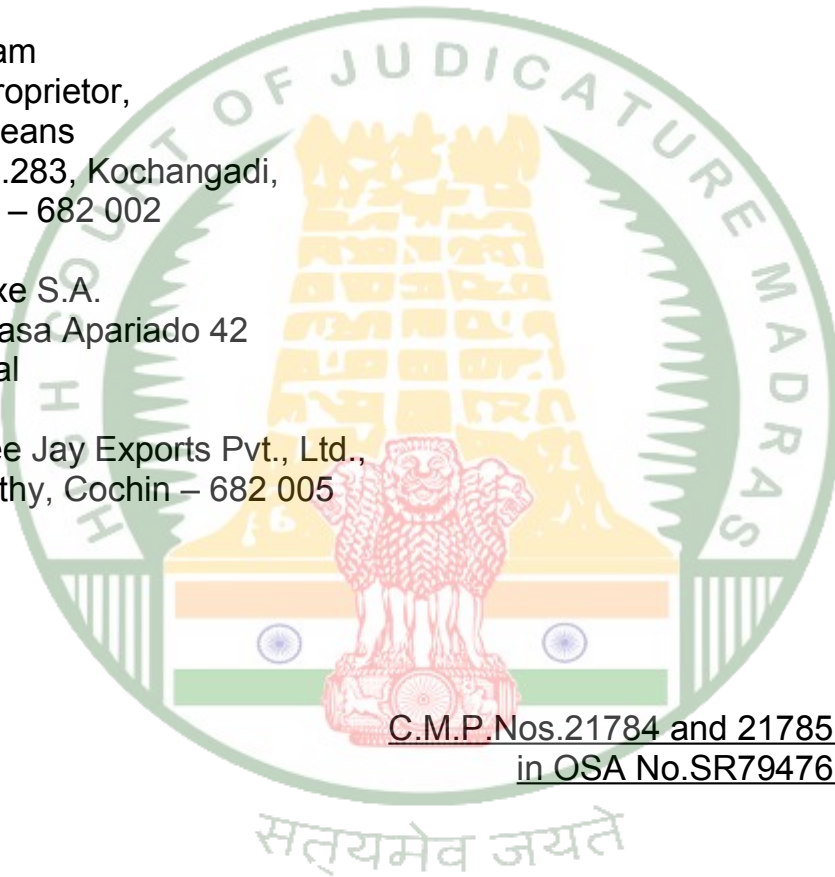
M.VENUGOPAL, J.  
and  
S.VAIDYANATHAN, J.

ssd

2. Mr.Aslam  
Sole Proprietor,  
M/s Oceans  
P.B.No.283, Kochangadi,  
Cochin – 682 002

3. Gelpixe S.A.  
Sete Casa Apariada 42  
Portugal

4. Vee Tee Jay Exports Pvt., Ltd.,  
Palluruthy, Cochin – 682 005



C.M.P.Nos.21784 and 21785 of 2017  
in OSA No.SR79476 of 2017

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15.02.2018