

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P.(NPD) No.443 of 2003

Rajeswari

.. Petitioner/Appellant/Petitioner

vs.

1.S.Rajendran

2.S.Danalakshmi

3.Subramnia Reddiar

4.Kamalbatcha

.. Respondents /Respondents/Respondents

Revision filed under Section 115 of C.P.C., against the order and decree dated 14.2.2002 passed in I.A.No.35 of 1998 in un-numbered Appeal Suit on the file of the Sub-Court, Attur.

For Petitioner : Mr.S.T.Bharath Gowtham
for M/s.T.R.Rajaraman

For Respondents : Mr.K.Selvakumar
for respondents 1 & 2
Mr.S.Subbiah
Senior Counsel
for M/s.P.Raja
for 4th respondent
R3 - Died

ORDER

This Civil Revision Petition is directed against the order dated 14.02.2002 passed in I.A.No.35 of 1998 in an un-numbered Appeal Suit on the file of the Sub-Court, Attur, dismissing the petition filed under Section 5 of the Limitation Act to condone the delay of 152 days in filing the appeal. The petitioner is the appellant/plaintiff.

2. The petitioner has filed I.A.No.35 of 1998 alleging that due to typhoid fever, she was not able to attend the Court when the suit was posted on 13.11.1997 and her counsel had also

reported no instructions. After recovery from her ill-ness, the petitioner engaged another counsel and when she had verified the Court records through a new counsel, she came to know that the suit was dismissed on 25.11.1997. On 11.12.1997, the petitioner has filed petition to restore the suit, which was returned by the trial Court on the question of maintainability. Thereafter, through her new counsel, the petitioner obtained certified copy of the decree and judgment on 08.01.1998 and they were also mixed up with the other bundles in the advocate office. Therefore, a delay of 152 days occurred in filing the appeal and the delay is neither willful nor wanton.

3. Resisting the petition, the fourth respondent filed counter stating that only at the instance of the petitioner's father, the petitioner has filed the suit and the same was contested by the fourth respondent. The respondents 1 to 3 are brother, sister and father of the petitioner and the suit was filed collusively between the petitioner and the respondents 1 to 3. The trial Court had passed the judgment on merits, dismissing the suit. The petitioner was aware of the judgment passed in the suit and having come to know the judgment, she kept quiet without preferring appeal. It is stated that when the fourth respondent filed petition under Section 340 Cr.P.C. for prosecution of the petitioner, she had filed the appeal with delay of 152 days. The allegations contained in the affidavit filed in support of the petition were false and imaginary and prayed for dismissal of the petition.

4. Upon consideration of the rival submissions, the Court below dismissed I.A.No.35 of 1998. Aggrieved by the same, the petitioner has preferred this Civil Revision Petition.

5. I heard Mr.S.T.Bharath Gowtham for M/s.T.R.Rajaraman, learned counsel appearing for the petitioner, Mr.K.Selvakumar, learned counsel for the respondents 1 and 2 and Mr.S.Subbiah, learned senior counsel for M/s.P.Raja, learned counsel appearing for the 4th respondent. Perused the materials available on record.

6. The learned counsel for the petitioner submitted that the Court below erred in not accepting the fact that the petitioner's counsel misplaced the copies and the delay was bona fide. He submitted that the Court below also erred in dismissing the petition on the basis that the petitioner filed the appeal just to evade the criminal prosecution. He would submit that the Court below failed to see that the petitioner should not be victimised due to the mistake of the counsel.

7. Per contra, the learned counsel appearing for the contesting fourth respondent submitted that the explanation

given by the petitioner to condone the delay was not convincing and just to evade the criminal prosecution, the petitioner has filed the appeal with delay condonation petition. He would submit that each and every day delay has not been properly explained by the petitioner and the Court below has rightly dismissed the petition.

8. The Court below dismissed the petition filed by the petitioner seeking to condone the delay of 152 days in filing the appeal mainly on the ground that the petitioner has not explained each and every day delay with bonafide reasons.

9. According to the petitioner, due to typhoid fever, she was unable to present before the trial Court when the suit was listed, resultantly, her counsel has also reported no instructions and based on the available evidence, the trial Court proceeded the suit. When the petitioner engaged a new counsel and verified the Court records through him, she came to know that the suit was dismissed on 25.11.1997. After obtaining certified copies of judgment and decree, the petitioner had filed the appeal with a delay of 152 days.

10. On a perusal of the records, it is seen that the respondents 1 to 3 are blood relatives of the petitioner and the fourth respondent alone is the contesting defendant in the suit. The suit was taken up for trial and on 08.11.1997, P.W.1 was examined and subsequently, she was also cross-examined by the fourth respondent.

11. According to the fourth respondent, during cross-examination, the petitioner admitted forgery of document and thereafter, she failed to appear before the Court. In fact, the fourth respondent was examined in chief and the petitioner has failed to cross-examine the fourth respondent. In the aforesaid situation, the trial Court, based upon the oral and documentary evidence available on record, dismissed the suit.

12. It is the say of the fourth respondent that he had filed petition for criminal prosecution against the petitioner for forgery of document before the learned Judicial Magistrate No.I, Attur, wherein a notice was sent to her and after receipt of the notice in that petition, she had filed the appeal with delay condonation.

13. According to the petitioner since the certified copies of decree and judgment obtained were mixed up with other bundles in the advocate office, she could not file the appeal in time. Therefore, the delay is neither willful nor wanton. No affidavit of the counsel in whose office the copies were mixed up with other bundles has been filed. The petitioner has

also not taken steps to examine the counsel to prove the same.

14. Admittedly, the petitioner has failed to explain each and every day delay. The delay to be condoned is 152 days. The petitioner has also not let in any evidence before the Court below, nor filed any document to prove that the delay is not wanton and only in the circumstances alleged in the petition.

15. In the case of condonation of delay, what is to be decided is whether sufficient cause has been shown to condone the delay or not. Though the petitioner had simply stated that there was a delay in getting the certified copies of decree and judgment and after obtaining copies, the same were mixed up with the other bundles in the advocate office, she had failed to establish the sufficient cause for the delay in filing the appeal against the judgment and decree passed in O.S.No.262 of 1986.

16. In Collector, Land Acquisition and another v. Katiji and others, reported in 1987 SCR (2) 387, the Hon'ble Supreme Court held thus:

"..... Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore, set aside. Delay is condoned and the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides. Appeal is allowed accordingly. No costs."

17. In State of Haryana v. Chandra Mani and others, reported in 1996(II) CTC 109, the Hon'ble Supreme Court held thus:

"11. The expression "sufficient cause" should therefore, be considered with pragmatism in injustice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. it must be held that the delay of 109 days in this

case has been explained and that it is a fit case for condonation of the delay."

18. In N.Balakrishnan v. M.Krishnamurthy, reported in 1999-1-L.W. 739, the Hon'ble Supreme Court held 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 revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior Court 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."

19. Under Section 5 of the Limitation Act, it is only sufficiency of the cause that matters and not the length and breadth of the delay. While dealing with the petition filed under Section 5 of the Limitation Act, the question of diligence or bonafides are to be considered.

20. It is settled law that 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. In the case on hand, the explanation offered by the petitioner is not convincing.

21. In Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & others, reported in 2013 (5) CTC 547 (SC) : 2013 (5) LW 20, the Hon'ble Supreme Court held that there should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an Application for condonation of delay. The Hon'ble Supreme Court referred to its earlier judgments in G. Ramegowda, Major and others v.

Special Land Acquisition Officer, Bangalore, 1988 (2) SCC 142; O.P. Kathpallia v. Lakhmira Singh (dead) and others, 1984 (4) SCC 66; State of Nagaland v. Lipok AO and others, 2005 (3) SCC 752; New India Insurance Co. Ltd. v. Shanti Misra, 1975 (2) SCC 840; Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation and another, 2010 (5) SCC 459, which declared that the Court should be liberal in dealing with condone delay petition. In paragraphs 15 and 16, the Hon'ble Supreme Court held thus:

"15. From the aforesaid authorities the principles that can broadly be culled out are:

(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.

(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.

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

(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.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(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.

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

(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.

(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.

(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.

(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.

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

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

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

(a) An Application for condonation of delay should be drafted with careful concern and not in a half hazard 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.

(b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challan manner requires to be curbed, of course, within legal parameters."

22. In *Esha Bhattacharjee*, supra, the Hon'ble Supreme Court referred to some of its Judgments regarding Law of Limitation. It may be useful to extract paragraphs 10, 11 and 12, which read as follows:

"10. In this context, we may refer with profit to the authority in *Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation* and another, 2010 (5) SCC 459, where a Two-Judge Bench of this Court has observed that the law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the Law of Limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the Courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. Thereafter, the learned Judges proceeded to state that this Court has justifiably advocated adoption of liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate.

11. In *Improvement Trust, Ludhiana v. Ujagar Singh and others*, 2010 (6) SCC 786, it has been held that while considering an Application for condonation of delay no straitjacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not. It has been further stated therein that each case has to be weighed from its facts and

the circumstances in which the party acts and behaves.

12. A reference to the principle stated in Balwant Singh (dead) v. Jagdish Singh and others, 2010 (8) SCC 685 would be quite fruitful. In the said case the Court referred to the pronouncements in Union of India v. Ram Charan, AIR 1964 SC 215; P.K. Ramachandran v. State of Kerala, 1997 (2) CTC 663 (SC) : 1997 (7) SCC 556; and Katari Suryanarayana v. Koppiseti Subba Rao, 2009 (4) CTC 286 (SC): 2009 (11) SCC 183 and stated thus:

25. We may state that even if the term sufficient cause has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of reasonableness as it is understood in its general connotation.

26. The Law of Limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the Applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly."

23. In H. Dohil Constructions Co. Pvt. Ltd. vs Nahar Exports Ltd, reported in 2015(1) SCC 680, the Hon'ble Supreme Court held as follows:

"20. In the case on hand, the delay in refiling was 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 the 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 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 the Respondent No. 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 refiling the same should be condoned

as a matter of course as there was only 9 days delay involved in filing the appeals."

24. In *Maniben Devaraj Shah v. Municipal Corporation of Brihan Mumbai*, reported in 2012(5) SCC 157, the Hon'ble Supreme Court held thus:

"24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.

(emphasis supplied)

25. As per the above cases produced by both the parties, admittedly the reason given by the petitioner for the delay of 152 days is not acceptable one. Time and again, the Hon'ble Apex Court very categorically held that the liberal approach should be taken in the petition under Section 5 of the Limitation Act, but in this case, the Court below has not right in accepting the delay since it is only a meagre delay of 152 days and the Hon'ble Apex Court very categorically held that in all the number of cases particularly, in a civil case in C.A.No.3777 of 2015 was allowed, which was filed for condone the delay of 883 days, on condition that the Appellant should pay a sum of Rs.50,000/- to the respondent in that case as cost. Therefore, applying the said judgment, I am inclined to allow this petition by giving one more opportunity to the petitioner to put forth her case, but she has to compensate to the respondents. Hence, this Court warranting interference in the order passed in I.A.No.35 of 1998 in un-numbered Appeal Suit, dated 14.02.2002, on the file of the Sub-Court, Attur and the same is liable to be set aside by allowing the Civil Revision Petition.

26. In the result:

(a) this Civil Revision Petition is allowed by setting aside the order passed in I.A.No.35 of 1998 in un-numbered Appeal Suit, dated 14.02.2002, on the file of the Sub-Court, Attur, on condition that the petitioner should pay a sum of Rs.10,000/- to each respondents as cost, within a period of three weeks from the date of receipt of a copy of this order;

(b) on production of the payment receipt, the learned Sub-Judge, Attur, is directed to number the Appeal Suit within a period of two weeks thereafter, if it is otherwise in order;

(c) on numbering the Appeal Suit, the learned Sub-Judge, Attur, is directed to dispose of the Appeal Suit within a period of two months from the date of issuing summon/notice to the respondents and completing the proceedings on day-to-day basis without giving any adjournment to either parties, since the un-numbered Appeal Suit is for the year of 1998. Both the parties are directed to not to get any adjournment in the Appeal Suit and complete the same within the stipulated time fixed by this Court.

Sd/-

Assistant Registrar (CO) (MD bench)

Dated: 14/09/2018

Corrected as per ROC.No. 05/2021- Con- Estt.II

Sd/-Sub Assistant Registrar(CS III)

Dated: 18/03/2021

//True Copy//

Sub Assistant Registrar

vs

To

The Subordinate Judge, Attur.

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VR Section, Madurai Bench of Madras High Court,
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VR Section, High Court, Madras.

+1cc to Mr.P.Raja, Advocate, S.R.No. 47745

+1cc to Mr.T.R.Rajaraman, Advocate, S.R.No. 47846

C.R.P.(NPD) No.443 of 2003

VS

TE/JM/RSK/SAR-1 : 12/09/2018 : 11P/4C

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