



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Friday, the Twenty Sixth day of October  
Two Thousand Eighteen

PRESENT

THE HON`BLE MR.JUSTICE C.V.KARTHIKEYAN

CMP(MD) No.1720 of 2018

IN

REV.APLC(MD) No.SR44993 of 2017

TENKASI MUNICIPALITY  
THROUGH ITS COMMISSIONER TENKASI ... PETITIONER/PETITIONER

Vs

1 ELAVARASI

2 MINOR.KRISHNAVENI

3 MINOR.SUDALAYANDI SELVAM

4 MINOR.ARUL MARIAPPAN

(MINORS 2 TO 4 REP BY THEIR MOTHER AND GUARDIAN THE 1ST RESPONDENT)

5 THE JUNIOR ENGINEER,  
TAMIL NADU ELECTRICITY BOARD (DISTRIBUTION)  
TENKASI

6 THE SUPERINTENDENT ENGINEER,  
TAMIL NADU ELECTRICITY BOARD, TIRUNELVELI  
(RESPONDENTS 5 TO 6 ARE GIVEN UP) ... RESPONDENTS/RESPONDENTS

Civil Miscellaneous petition filed Under Section 5 of Limitation Act Praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to condone the delay of 425 days in filing the review petition.

Prayer in Rev.Aplc(MD).SR.No.44993/2017:

To Review the Judgment and decree made in SA(MD) No.393 of 2006 and Cross Obj(MD)No.1/2007 dated 11.08.2016.

Prayer in SA(MD). 393/ 2006 :

Second Appeal filed Under Section 100 of Civil Procedure Code, against the Judgment and decree dated 06.07.2004 in OS.No.442/2003 on the file of the Principal District Munsif, Tenkasi, which was confirmed by the Judgment and decree dated 24.06.2005 in A.S.No.118/2004 on the file of the Principal Subordinate Judge, Tenkasi.



Prayer in Cross Obj.(MD).No.1 of 2007:

Cross Objection filed Under order 41 Rule 22 & 33 of Civil Procedure Code, against the Judgment and decree of Principal Sub Judge, Tenkasi dated 24.06.2005 in AS.No.118 of 2004 confirming the judgment and decree of the Principal District Munsif, Tenkasi dated 06.06.2004 in OS. No.442/2003.

ORDER : This petition coming on for hearing on this day upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.P.ATHIMOOLAPANDIAN, Advocate for the petitioner and of MR.T.S.R.VENKATARAMANA, Advocate for the 1<sup>st</sup> Respondent, and the 5<sup>th</sup> and 6<sup>th</sup> Respondent having been given up, this court made the following order:-

This petition had been filed seeking to condone the delay of 425 days in filing the review application.

2.The petitioner herein is the 1<sup>st</sup> defendant in O.S.No.442 of 2003. O.S.No.442 of 2003 had been filed before the District Munsif Court, Tenkasi by four plaintiffs against three defendants. The 1<sup>st</sup> defendant was Tenkasi Municipality and the second defendant was Tamil Nadu Electricity Board and the 3<sup>rd</sup> defendant was the Tamil Nadu Electricity Board representing by Superintendent Engineer. The suit had been originally filed for declaration of title and for permanent injunction. There was a building put up by the plaintiffs. The building was in Natham lands. The assessment of property tax was cancelled by the Municipality. The Municipality objected the building stating that the plaintiffs have no right over the land and demolished the building. Thereafter, the prayer was amended to include the relief of Mandatory Injunction. This suit came up for consideration on 6.7.2004 and the suit was dismissed with respect to the reliefs of declaration and injunction. But the relief of Mandatory Injunction was granted only on the ground that the building was demolished on the date of filing of the suit.

3.Challenging this judgment to the extent that Mandatory Injunction was granted, the 1<sup>st</sup> defendant, namely, Tenkasi Municipality filed A.S.No.118 of 2004 which came up for consideration before the learned Principal Subordinate Judge, Tenkasi. It must be mentioned that the plaintiffs did not file any appeal against the judgment dismissing their reliefs of declaration of title and injunction. By judgment dated 25.06.2005, the appeal was dismissed. On the date of dismissal of the 1<sup>st</sup> appeal, the plaintiffs did not have any declaratory right and did not have any injunction in their favour and the defendants similarly also did not have any right to demolish the building. Thereafter, the 1<sup>st</sup> defendant namely, Tenkasi Municipality filed second appeal in S.A. (MD).No.393 of 2006. The plaintiffs then woke up and joined in the second appeal proceedings by filing cross objection. The plaintiffs filed cross objection in Cros.Obj.(MD)No.1 of 2007. This was filed with delay and the delay was condoned and they were permitted to



participate in the second appeal proceedings. The judgment in the second appeal was delivered on 11.08.2016. The second appeal was dismissed and the Cross Objection (MD)No.1 of 2007 was allowed. The copy application in the second appeal was applied for by the Municipality on 12.10.2017. Thereafter, they filed the review application on 14.02.2018, with a delay of 425 days.

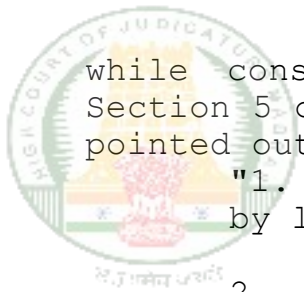
**WEB COPY** 4. The delay is explained in the affidavit filed by the Commissioner, Tenkasi Municipality, by stating that after receipt of the order copy, opinion was sought from the panel Counsel for the Municipality during the 1<sup>st</sup> week of October, 2016. The Standing Counsel gave his opinion during the last week of October, 2016. The file was forwarded to the Commissioner, Municipality Administration for getting approval during the 2<sup>nd</sup> week of January, 2017. After getting approval the file was forwarded to the Standing Counsel during the 1<sup>st</sup> week of November, 2017. The Counsel prepared the appeal on 09.11.2017.

5. A reading of the affidavit shows that evidently there are delays at each stage, atleast definitely between the date of grant of approval by the Commissioner, Municipality Administration and forwarding the file to the Standing Counsel which was only in November, 2017. Quite apart from the delay in filing the copy application, the subsequent delays only multiplied the delay to 445 days.

6. A counter has been filed by the 1<sup>st</sup> respondent/ plaintiff. It has been stated that they had filed copy application on 11.08.2016 on the date of the judgment of the second appeal itself and they have received copies on 08.03.2017. It was stated that there is a huge delay even in filing the copy application and thereafter, when the copies were made ready, for 12 days no action has been taken by the Municipality to collect the certified copies. The copies were made ready on 12.10.2017 and collected only on 24.10.2017. The administrative delay explained in the affidavit has also been challenged.

7. Heard arguments advanced by Mr.P.Athimoolapandian, learned Counsel appearing for the petitioner and Mr.T.S.R.Venkataramana, learned Counsel appearing for the 1<sup>st</sup> respondent.

8. It is seen that the petitioner is Tenkasi Municipality and they had issued a notice to the 1<sup>st</sup> respondent / plaintiff cancelling assessment order and seeking to demolish the building put up by the plaintiff in Government poromboke land. This notice was the cause of action for filing the suit. The trial Court had negatived the plaintiff's claim for declaration of title and injunction. The plaintiff did not file first appeal but filed cross objection in the second appeal filed by the Municipality challenging the direction given in the nature of Mandatory Injunction with respect to the demolition of the building.



while considering the term "sufficient cause" in the light of Section 5 of the Limitation Act, 1964, the Hon'ble Supreme Court has pointed out the following principles :

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. 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.

5. 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.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

10. In 1988 - 2 SCC - 142 - in the case of G. Ramegowda, Major and others Vs. Special Land Acquisition Officer, Bangalore, wherein, the Hon'ble Supreme Court has held as follows in Paragraph Nos. 15 & 17 :

"15. 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.

17. Therefore, in assessing what, in a particular case, constitutes "sufficient cause" for purposes of



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Section 5, it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the government. Governmental decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making."

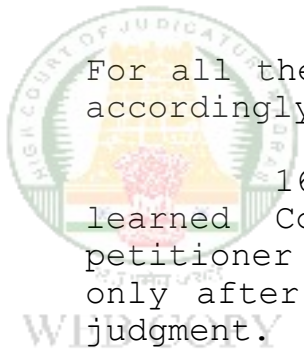
11.The learned Counsel for the 1<sup>st</sup> respondent relied on the judgment reported in AIR - 1923 - Lahore - 96 in the case of Madan Gopal Vs. Malawa Ram, in which, a learned single judge had held that when the copy application of the judgment was made with delay, the said period cannot be excluded. That judgment relate to a case between a decree holder and a judgment debtor and where exclusion of time in obtaining copy application was sought. It had been observed that the judgment debtor should not be shown leniency. But in the present case, we are dealing with condonation of delay sought by a Municipality seeking possession of Government poromboke land. It is a fact that copy application was filed with delay. The reasoning given in AIR - 1923 - Lahore - 96, would not be of much help to the 1<sup>st</sup> respondent.

12.The learned Counsel for the respondents also relied on the judgment reported in AIR - 1992 Allahabad - 275 (DB) in the case of Krishi Utpadan Mandi Samiti, Amroha Vs. Ganga Ram and others, in which, it was stated that the plea of public interest is not a ground to place the Government authorities on a different footing. With much respects, I must state that public interest is a necessary aspect to be considered and on that aspect each case has to be seen on its merits. In the present case as stated above the 1<sup>st</sup> respondent / plaintiff is in occupation of a building put up in Government poromboke land and certainly public interest is involved.

13.The learned Counsel for the 1<sup>st</sup> respondent relied on the judgment reported in 2012 3 - SCC - 563 - in the case of Office of the Chief Post Master General and others /Vs/ Living Media India Limited and another. It was a case where the Office of the Chief Post Master General had sought condonation of delay of 427 day in filing the Special Leave Petition. That was a case which dealt with availing benefits of concessional rate of postage. In the present case, the issue is construction of building in Government poromboke land and right to demolish the building by the Municipality. In the present case public interest is largely invoked.

14.The interest of the State has to be secured viz-a-viz, the interest of a private individual particularly when blatant encroachment is completed.

15.It must also be stated that the plaintiffs did not file any first appeal, but filed cross objection in the second appeal. That is a fact required to be examined in the review petition, whether law has been settled that a litigant who has not filed first appeal can join in the second appeal, by filing cross objection.



For all these reasons, I hold that the delay has to be condoned and accordingly, this petition is allowed.

16. During the course of arguments, very unfortunately the learned Counsel for the 1<sup>st</sup> respondent also stated that the petitioner had not filed this review immediately and that they filed only after the retirement of the learned Judge, who delivered the judgment. It is unfortunate that such argument was advanced, since the Government has given their own reason for the delay and the reason was not based on the retirement or continuance in service of the learned Judge of this Court. This fact is mentioned since I felt that line of argument was uncalled for.

17. For the reasons stated above the delay is condoned and the Registry is directed to number the review petition, if the papers are otherwise in order.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS-II)

TO

+1. C.C. to MR.SHEMA DANIEL, Advocate SR.No.20533

Date :26/10/2018

CD PURPOSE

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IN

REV.APLC (MD) No.SR44993 of 2017

TR/SKN/SAR-II (20.11.2018) 6P 2C