



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Thursday, the Twenty First day of June Two Thousand Eighteen

WEB COPY

PRESENT

The Hon`ble Mr.Justice S.S.SUNDAR

CMP(MD) No.3925 of 2018

IN

REV.APLC(MD) No.SR51775 of 2017

SUBANANDARAJ

... PETITIONER / PETITIONER

Vs

MANI

... RESPONDENT / RESPONDENT

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to condone the delay of 556 days in filing the above Review Petition in Rev.Appln(MD)SR.No.51775 of 2017 and thus render justice.

PRAYER IN REV.APLC(MD) No.SR51775 of 2017:-

to Review the Judgment and Decree passed by this Hon'ble Court in SA(MD)No.388 of 2013, dated 11.05.2016 and allow the present Review Application, and thus render justice.

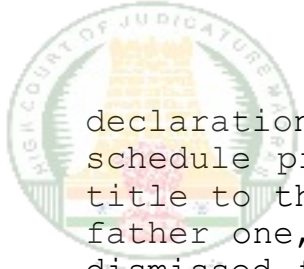
PRAYER IN SA(MD)No.388/2013:-

Second Appeal filed under Section 100 of C.P.C. To set aside the Judgment and Decree dated 28.01.2013 passed in A.S.No.34 of 2011 on the file of the Subordinate Judge, kuzhithurai, reversing the Judgment and Decree dated 14.12.2010 passed in O.S.No.527 of 2005 on the file of the II Additional District Munsif Court, Kuzhithurai, and allow the Second Appeal.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MRS.J.ANANDHAVALLI, Advocate for the petitioner and of Mr.R.KARTHIKEYAN, Advocate on behalf of the Respondent, the court made the following order:-

RESERVED ON : 13.06.2018
PRONOUNCED ON : 21.06.2018

This petition is filed to condone the delay of 556 days in filing the above review application in Rev.Apl.(MD)No.SR51775 of 2017.



declaration of title and recovery of possession in respect of "B" schedule property. It is not in dispute that the respondents claim title to the suit "B" schedule under settlement deed executed by his father one, Mr.G.Muthunayagam, on 05.06.1995. Though the trial Court dismissed the suit, the appellate Court decreed the suit as prayed for by the respondents herein. Aggrieved by the judgment and decree of the lower Appellate Court in A.S.No.34 of 2011, the petitioner filed second appeal in S.A.(MD)No.388 of 2013 before this Court.

3.This Court, by judgment and decree dated 11.05.2016 dismissed the second appeal, confirming the judgment and decree of the lower Appellate Court. To review the judgment of this Court in S.A.(MD) No.388 of 2013, dated 11.05.2016, the petitioner herein filed the above review application with a delay of 556 days.

4.In the affidavit filed in support of this petition, it is stated that the petitioner was advised to file a review petition, since the plan annexed in the second appeal has now become the basis for executing the decree in the suit. It is stated by the learned Counsel for the petitioner that the petitioner was not put on notice regarding the plan drawn by this Court and that the petitioner's Counsel was not aware of the posting of the matter during summer vacation. It was only, when the Counsel verified to ascertain whether the learned Judge has depart heard the case or pronounced the judgment. It is stated that his Counsel came to know of the judgment. It is further stated that the copy application was filed on 14.07.2016. It is further stated that the petitioner was under the impression that the respondent could not claim anything based on the plan as the plan that was not appended to the decree. It is further stated that the Counsel for the petitioner did not look into the plan attached to the second appeal in the judgment, as the same cannot be a different one than the plan relied upon by the respondent before the lower Court. However, it was stated that the petitioner was able to realise the legal implications of the plan appended to the judgment, much later and that in the process, there occurred a delay of 556 days in filing the review application. It is further stated that the delay is neither wilful nor wanton.

5.The learned Counsel for the respondent / decree holder, filed a counter instead of respondent himself, as this Court did not give much time in view of the urgency expressed by the learned Counsel for the petitioner. In the counter affidavit, it is stated that the respondent filed an execution petition in E.P.No.45 of 2016 and an order of delivery was passed on 20.11.2017 by the Executing Court. It is further stated that as against the order of delivery, the petitioner herein preferred a revision petition in C.R.P. (MD)No.2433 of 2017 challenging the fair and decreetal order on flimsy ground. It is further stated that the order of delivery in E.P.No.45 of 2016 was only in accordance with the order passed by the first appellate Court, which was confirmed by this Court in the second appeal. It is further stated that the petitioner, who is the defendant in the suit prevented the respondent from enjoying the fruits of the decree and



that it was because of the unruly act of the petitioner and his men preventing the Court bailiff from executing the decree in accordance with judgment in the second appeal in S.A.(MD)No.388 of 2013, the respondent is put to much hardship.

6.It is further stated that the petitioner herein already contested the execution petition in E.P.No.45 of 2016 by rising all the grounds, which are now raised in the review application filed by the petitioner. It was only to thwart the respondent from taking possession of the suit schedule property as per the decree of the lower appellate Court, which was confirmed by this Court in the second appeal, the petitioner has filed a review application without any merits or *bona fides*. The learned Counsel for the respondents further pointed out that the counter filed by the petitioner in the execution petition shows that the petitioner is aware of the legal implications of the plan appended with the judgment in the second appeal and that the petitioner could not plead lack of knowledge or ignorance regarding the scope of the decree and the respondents' right to execute a decree in accordance with the judgment of this Court in the second appeal. It is further stated that the review application itself is not maintainable, in view of the ground raised by the petitioner, which can be raised only by way of a Special Leave Petition before the Honourable Supreme court.

7.It is further stated by the learned Counsel for the respondent that the petitioner, after contesting the execution petition strenuously, has preferred the review application belatedly with ulterior motive. The learned Counsel for the respondents relied upon the specific contention of the petitioner in the counter affidavit filed before the Executing Court.

8.From the counter affidavit, it is seen that the petitioner has taken a specific stand that the plan appended to the judgment of the second appeal is not the plan recorded by the Advocate Commissioner, appointed by the Court and that the said plan is without any basis. It is also contended by the petitioner in the counter affidavit before lower Court that the property to be delivered cannot be carved out on the basis of plan appended to the judgment in the second appeal. Further the petitioner has also stated in the counter affidavit before the Executing Court that it is not possible to identify 'B' schedule property, as the property is not identified with reference to specific measurement of the area or boundaries. It is also contended by the petitioner in the counter affidavit that the plan appended to the judgment in the second appeal does not tally with the resurvey plan or lye of the land and that therefore the delivery on the basis of the plan appended to the judgment in the second appeal is impossible.

9.By referring to the specific averments in the counter affidavit filed by the petitioner before the Executing Court, the learned Counsel for the respondents submitted that the petitioner, has understood the plan and its implications for defending the



application filed by the respondents for delivery, could not now plead that the petitioner was not aware of the legal implications of the plan and that the delay was on account of lack of knowledge about the nature of plan appended to the judgment in the second appeal.

WEB COPY

10. The learned Counsel for the respondent also relied upon a judgment of Honourable Supreme Court in the case ***Easha Bhattacharjee vs Managing Committee of Raghunathpur Nafar Academy and others***, in Civil Appeal Nos. 8183 and 8184 of 2013, dated 13.09.2013. After referring to several judgments, the Honourable Supreme Court has held as follows:

"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 encapsule 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.

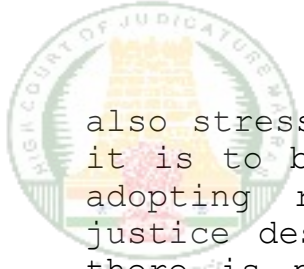
c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

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

11. The learned Counsel for petitioner, however, made an attempt to convince this Court that there was some confusion in the mind of the petitioner as to the probabilities of executing the decree of lower Appellate Court on the basis of a plan drawn by this Court. It was further contended that great prejudice will be caused to the petitioner, as the execution in terms of plan appended to the judgment of this Court in the second appeal will result in enforcement of a decree, beyond the pleadings of the parties before the Courts below.

12. This Court has to point out that the petition to condone the delay in filing the review application cannot be decided on the basis of merits in the review application. The learned Counsel for the petitioner submitted that the delay has been properly explained as it was due to misunderstanding of the plan appended to the judgment in the second appeal as it is not completely clear. It is therefore stated that the Executing Court without considering the same, allowed the petition directing delivery.

13. Considering the rival submissions of either party, this Court is inclined to adopt a liberal approach in view of the fact that the petitioner's *bona fides* cannot be doubted as he has been meticulously contesting the matter. The Honourable Supreme Court has

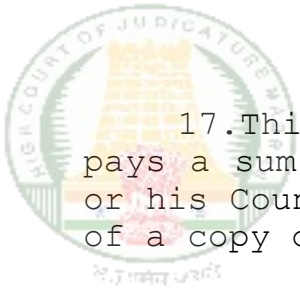


also stressed that there should not be a pedantic approach and that it is to be kept in mind that the matter has to be dealt with by adopting rational common law principles. Cause of substantial justice deserves to be preferred over technical considerations. If there is negligence, which is deliberate, such gross inaction or lack of *bona fide* on the part of litigant is established, the Court may not bend or show any lenience as the unexplained long delay is likely to cause great prejudice to the opposite party.

14. Since the long delay may result in failure of justice, the Court has to consider the case on its own facts and circumstances. Once a valid right is accrued in favour of one party, certainly, it will be unreasonable to deprive the party of the benefit by condoning the huge delay. Particularly, if the delay is on account of negligence or great gross inaction of the party concerned. Even from the judgment that was relied upon by the respondents, which was referred to above, where the delay was 2449 days, the Honourable Supreme Court has approved a liberal and non-pedantic approach, while dealing with the application to condone the delay. Though the delay is inordinate in this case, an explanation was offered by the petitioner.

15. It is only on account of the stand taken by the petitioner before the Executing Court, the respondent submits that there is no reasonable cause for the delay. This Court pronounced the judgment in S.A.(MD)No.338 of 2013, on 11.05.2016. It is of course true that the petitioner has filed the counter in E.P.No.45 of 2016 on 18.10.2016. While disposing of the second appeal, this Court has referred to a sketch (plan) to show the topography of S.No.293/10 and 292/1. Though a plan was appended to the judgment of the second appeal rendered by this Court, the purpose of attaching the plan to the judgment is not stated in the judgment. Hence, there is some justification on the part of the petitioner to approach the Courts about the legal implication of the plan appended to the judgment of this Court in the second appeal in S.A.(MD)No.388 of 2013. No doubt, this was not realised initially by the petitioner, even at the time of filing counter. This Court is not inclined to reject the application only on the ground that the petitioner has knowledge about the plan and its implications, even at the time, when he filed the counter in the execution petition filed by the respondent for delivery of property.

16. The respondent also obtained an order of delivery in Execution proceedings and it is now contended that the same is also the subject matter of another Civil Revision Petition in C.R.P.(MD) No.2433 of 2017. The suit was filed in the year 2005 and the judgment of this Court was pronounced in 2016. This is again the subject matter of review application. Considering the fact that the delay in filing the review application is likely to cause serious hardship, keeping in mind substantial justice, this Court is inclined to condone the delay on terms.



17. This petition is allowed on condition that the petitioner pays a sum of Rs.50,000/- (Rupees fifty thousand) to the respondent or his Counsel within a period of two weeks from the date of receipt of a copy of this order.

18. Registry is directed to number this review application, if the papers are otherwise in order immediately after the petitioner produce the proof of payment to the respondents.

sd/-
21/06/2018

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE SUBORDINATE JUDGE, KUZHITHURAI

2 THE II ADDITIONAL DISTRICT MUNSIF, KUZHITHURAI

COPY TO:-

THE SUB-ASSISTANT REGISTRAR
A.E. SECTION, MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI

+3. C.C. to Mr.R.KARTHIKEYAN, Advocate SR.No.10939

CMR
JAM/21/06/2018/PN/VK/ 7P-7C

ORDER
IN
CMP (MD) No.3925 of 2018
IN
REV.APLC (MD) No.SR51775 of 2017
Date :21/06/2018