



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.07.2018

CORAM

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

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C.R.P. (MD) (NPD) No.1389 of 2015

1.Jebasundari
2.Suseela Marry
3.Sharmeela Marry
4.Roger Kovil Pillai
5.Simpson Kovil Pillai .. Petitioners/Proposed Plaintiffs 13 to 17
vs

S.Tharmar .. Respondent/Defendant

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the order passed in I.A.No.141 of 2009 in O.S.No.34 of 1992, dated 02.12.2009 on the file of the District Munsif Court, Kovilpatti.

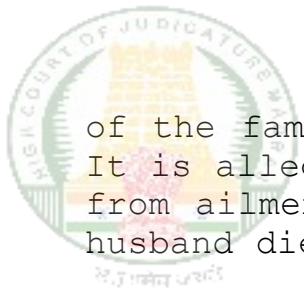
For Petitioners : Mr.AN.Ramanathan

For Respondent : M/s.P.Jessi Jeeva Priya

ORDER

This revision is directed against the order dated 02.12.2009 passed in I.A.No.141 of 2009 in O.S.No.34 of 1992 on the file of the learned District Munsif Court, Kovilpatti, dismissing the petition filed by the petitioners under Section 5 of the Limitation Act to condone the delay of 2170 days in filing the petition to restore the suit, which was dismissed for default on 12.03.2003.

2. The first petitioner, who is the wife of the third plaintiff, filed an affidavit in support of petition being I.A.No.141 of 2009 alleging that she is filing the affidavit for herself and other petitioners, who are her children. Her father-in-law had filed the suit in the capacity of Managing Director of A.K.Swarnam Theatre, a registered partnership firm. During the pendency of the suit, her father-in-law died and his legal heirs were added as plaintiffs in the suit. Her husband K.Antony Albin Gilton was arrayed third plaintiff in the suit. As eldest member



of the family, her husband was following up the suit proceedings. It is alleged that during the year 2003, her husband was suffering from ailment and was taking treatment. Suddenly on 19.4.2006 her husband died due to heart attack.

3. According to the first petitioner, during August, 2007, when she met the counsel for some other consultation, she was informed that the suit was dismissed for default on 12.03.2003 stating that despite letters written to them, they have not turned up to proceed with the suit. According to the petitioners, after her husband fell sick, they shifted their residence to Thoothukudi and letters written by the counsel were not received. Therefore, a delay of 2170 days occurred in filing the petition to restore the suit. The delay is neither wilful nor wanton. If the suit is not restored, they will be put to irreparable loss and hardship.

4. Refuting the averments in the affidavit filed in support of the petition, the respondent filed counter stating that only the second plaintiff was looking after the suit and the third plaintiff was never looking after the case alleged by the petitioners. In fact, during 2003, the third plaintiff faced the trial proceedings in C.C.No.326 of 2003 on the file of the learned Judicial Magistrate No.1, Kovilpatti, C.C.No.343 of 2005 on the file of the learned Judicial Magistrate No.2, Kovilpatti and C.C.No.46 of 2003 on the file of the Courts in Srivilliputtur and Tirunelveli. The allegation that since during 2003 the third plaintiff was bedridden and he was not able to attend Court is totally false.

5. According to the respondent, the first petitioner had also faced the trial in O.S.No.79 of 2010 on the file of Srivilliputtur Court during 2003 and the other plaintiffs have also conducted the case before the learned Judicial Magistrate No.1, Kovilpatti. Further, the 10th plaintiff had conducted the suit in O.S.No.32 of 2004 before this Court. While so, the other plaintiffs have not taken steps to restore the suit, which was dismissed for default. After the dismissal of the suit in question, the plaintiffs have attended the Court and conducted some other suits. The petitioners have filed the petition to drag on the proceedings. Hence, prayed for dismissal of the suit.

6. Before the trial Court, the first petitioner examined herself as P.W.1 and no documents were marked. On the side of the respondent, Exs.R1 to R6 were marked and no witnesses have been examined.

7. Upon consideration of the oral and documentary evidence, the trial Court dismissed the petition. Aggrieved by the same, the respondent has preferred this Civil Revision Petition.

8. I heard Mr.AN.Ramanathan, learned counsel appearing for



the petitioners and M/s.P.Jessi Jeeva Priya, learned counsel appearing for the respondent and also perused the materials available on record.

9. The learned counsel for the petitioners submitted that the trial Court ought to have seen that the husband of the first petitioner was a heart patient and died on 19.04.2006. Exs.R1 to R5 filed by the respondent have nothing to do with the present case. He argued that the reasons assigned by the petitioners for the delay in filing the restoration petition were bona fide. The learned counsel argued that the trial Court ought not to have dismissed the petition on the ground that other plaintiffs have not taken steps to implead the petitioners in the suit. He submitted that the suit property was originally allotted to the share of the petitioners and they are only interested in the suit proceeding. In support of his submission, the learned counsel relied upon the decision in *N.Balakrishnan v. M.Krishnamurthy*, reported in (1998) 7 SCC 123.

10. Per contra, the learned counsel for the respondent submitted that the petitioners have failed to prove each and every day's delay and the reason for the delay stated by the petitioners is not convincing. She submitted that only the second plaintiff was looking after the suit and the third plaintiff never followed up the suit proceedings as alleged by the petitioners. She argued that there is no proper explanation to condone the extraordinary delay and the trial Court has rightly dismissed the petition.

11. The point that arises for consideration is whether the trial Court was right in dismissing the petition seeking to condone the delay of 2170 days in filing the petition under Order 9, Rule 9 of C.P.C.

12. According to the petitioners, they are the legal heirs of the deceased third plaintiff, who died on 19.04.2006 after the suit was dismissed for default on 12.03.2003. Since the suit property fell into the share of the third plaintiff and since he died in the year 2006, the petitioners alone are interested in the suit proceedings and, therefore, they have filed the petition to restore the suit with delay condonation petition.

13. It appears that the petitioners are not parties to the suit and they have filed the petition seeking to condone the delay of 2170 days in filing the petition to restore the suit which was dismissed for default on 12.03.2003.

14. According to the petitioners, after the demise of the <https://india.gov.in/services/> they shifted their family to Thoothukudi and when the the first petitioner contacted their counsel, he informed the first petitioner that he wrote several letters to them for



appearance in the suit and since they have not turned up to proceed with the suit, the suit was dismissed for default on 12.03.2003.

15. On the other hand, the learned counsel for the respondent submitted that at the time when the suit was listed for trial during 2003, the third plaintiff was attending the trial proceedings in some other suits and wantonly, the plaintiffs allowed the suit to be dismissed for default.

16. It appears that apart from the suit in question, some other Court proceedings were also pending between the parties herein and the third plaintiff attended the said proceedings during 2003. It also appears that the suit was dismissed for default on 12.03.2003 and the third plaintiffs died on 19.04.2006 and the petitioners have filed the petition to restore the suit along with delay condonation petition in 2007. During the life time between 12.03.2003 and 19.04.2006, neither the third plaintiff nor the other plaintiffs have taken steps to restore the suit.

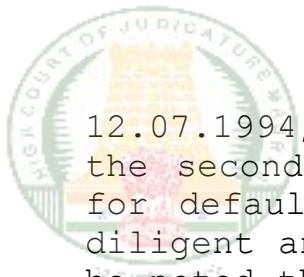
17. As stated supra, if really the third plaintiff was looking after the suit proceedings and he appeared before the Court in relation to some other proceedings, what prevented him from appearing in the present suit when it was listed for trial. The reason stated by the petitioners herein for not attending the Court by the third plaintiff was due to his heart ailment. The said reason canvassed by the petitioner was not acceptable for the reason that the respondent had established by way of Ex.R5 that a criminal proceeding was initiated against the third plaintiff on 11.02.2003 and when the said case came up before the concerned Judicial Magistrate Court, the third plaintiff appeared before the said Court. If really, the third plaintiff was not well, nothing prevented the other plaintiffs to appear and proceed with the suit.

18. Admittedly, the petitioners have not explained each and every day's delay. The delay to be condoned is 2170 days. Though the first petitioner let in evidence before the trial Court, no document was marked to substantiate that the towering delay is not wanton and was only due to circumstances pleaded in the petition.

19. In cases pertaining to condonation of delay, what is to be decided is whether sufficient cause has been shown to condone the delay or not. Admittedly, in the case on hand, the petitioners have not established by preponderance of evidence that there was sufficient cause for the delay in filing petition to restore the suit, which was dismissed for default on 12.03.2003.

<https://hcservices.ecourts.gov.in/hcservices/>

20. On a perusal of the typed set of papers, this Court finds that already the suit was dismissed for default on



12.07.1994, due to failure on the part of the plaintiffs and for the second time, the plaintiffs allowed the suit to be dismissed for default on 12.03.2003, which shows that the plaintiffs were diligent and/or not interested to proceed with the suit. It is to be noted that the suit is of the year 1992.

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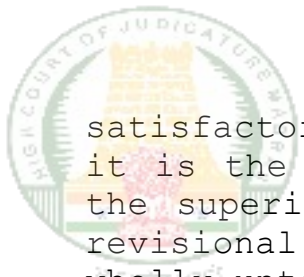
21. In *N.Balakrishnan v. M.Krishnamurthy*, supra, the Hon'ble Supreme Court held as under:

"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."

22. The decision in *N.Balakrishnan*, supra, cited by the learned counsel for the petitioners is, in the facts and circumstances, not applicable to the case on hand. In the decision *N.Balakrishnan*, supra, the delay was properly explained and only after having established the sufficient cause, the Hon'ble Supreme Court condoned the delay. In the case on hand, admittedly, there was no proper explanation for the inordinate delay.

23. 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 Section 5 application, the question of diligence or bonafides are to be considered.

24. It is settled law that length of delay is no matter and 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.

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25. 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 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.

<https://hcservices.ecourts.gov.in/hcsefiles/> 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 can be exhibited in a non-challan manner requires to be curbed, of course, within legal parameters."



26. 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 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."

27. 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)

28. In *Maniben Devaraj Shah*, supra, the Hon'ble Supreme Court upon perusal of the application for condonation of delay and the affidavit on record came to hold that certain necessary facts were conspicuously silent and, accordingly, reversed the decision of the High Court which had condoned the delay of more than seven years. In the present case, the delay is nearly seven years.

29. As stated supra, in the case on hand, the explanation for the delay given by the petitioners are not acceptable. Though ~~the delay is to be taken in petitions under Section 5 of the Limitation Act, the petitioners have not shown semblance of bonafide for the delay on their part.~~ is to be taken in petitions under Section 5 of the Limitation Act, the petitioners have not shown semblance of bonafide for the delay on their part. As rightly held by the



trial Court that the reasons for the delay stated by the petitioners does not have any bonafide in it.

30. This Court is in full agreement with the proposition that refusal to condone the delay would result foreclosing a suitor from putting forth his cause and there is no presumption that delay in approaching the Court is always deliberate. But at the same time the other side should not be suffered.

31. It is to be noted that if a litigant chooses to approach the Court long after the time prescribed under the relevant provisions of law, he/she cannot say that no prejudice would be caused to the other side by the delay being condoned. The other side would have in all probability destroyed the records thinking that the records would not be relevant as there was no further proceeding in the matter.

32. In the case on hand, the length of the delay is a relevant matter to be taken into account while considering whether the delay should be condoned or not. It is not open to any litigant to fix his own period of limitation for instituting proceedings for which law has prescribed periods of limitation.

33. From a reading of the averments, it is seen that petition seeking to condone the delay of 2170 days was filed in a casual manner without giving proper reasons, much less acceptable reasons, the same cannot be sustained and the trial Court was right in dismissing the petitions.

34. At the cost of repetition, it is reiterated that the petitioners have not shown sufficient cause to condone the delay as contemplated in the decisions of the Hon'ble Supreme Court supra. The petitioners are seriously lacking to apply the provision of Section 5 of Limitation Act, as the affidavit filed by the first petitioner before the trial Court is vague and bereft of particulars without any convincing explanation for the period commencing from the date of dismissal of the suit till the date of filing of the petition to restore the suit. In the case on hand, the inordinate delay of 2170 days in filing petition to restore the suit was not properly explained by the petitioners.

35. Applying the ratio laid down by the Hon'ble Supreme Court in the decisions, supra, to the facts and circumstances of the case on hand, I am of the view that the petitioners have failed to explain each and every day's delay and the trial Court was absolutely right in dismissing the petition. I do not find any reason to interfere with the order passed by the trial Court. Resultantly, the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.



36. In the result, the Civil Revision Petition is dismissed. No costs.

Sd/
Assistant Registrar (CS-II)

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/True copy/

Sub Assistant Registrar

To

The District Munsif,
Kovilpatti.

+1cc to Mr.A.N.RAMANATHAN, Advocate, SR.No. 71238

+1cc to Mr.P.JESSI JEEVA PRIYA, Advocate, SR.No.70817

C.R.P. (MD) (NPD) No.1389 of 2015
03.07.2018

VSV

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