



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (NPD) (MD) No.2221 of 2015

Sivasubramaniam

... Petitioner/Plaintiff/Petitioner

-vs-

Kandasamy Gounder (Dead)

Selvammal (Dead)

Gurusamy (Dead)

1. Angammal

2. Ramasamy

3. Suresh Kumar

4. P.K.Subramanian

5. Mariammal

6. Raja Chandrasekar

7. Muruganandam

8. Sivaparvathy

... Respondents/Defendants/Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India praying to prefer this memorandum of Grounds of Civil Revision Petition, invoking the extraordinary jurisdiction of this Honourable Court under Article 115 of the Constitution of India, aggrieved by the Order and Decreeal Order dated 05.09.2014 made in I.A.No.165 of 2014 in O.S.No.392 of 2007 on the file of District Munsif Court at Oddanchatiram.

For Petitioner : Mr.R.Devaraj

For R1 : Mr.D.Venkatesh

For R2 to R8 : No Appearance

Orders Reserved on:	19.04.2018
Orders Pronounced on:	11.06.2018

ORDER

The revision petitioner is the plaintiff in the suit in O.S.No.392 of 2007 on the file of District Munsif Court at Oddanchatiram and the suit was filed for declaring the sale deed dated 17.06.1974 executed by the 1st defendant as null and void among various other reliefs. The suit was dismissed for default by the Trial Court on account of non appearance of the plaintiff before it. Since there was a delay of 1385 for restoration of the suit, the



plaintiff filed I.A.No.164 of 2014 for condoning the delay and the said application was dismissed by the Trial Court on the ground that the reasons adduced by the plaintiff for condonation are far from satisfactory. Aggrieved by same, the present revision petition has been filed.

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2. It is the case of the revision petitioner that the suit schedule property was an ancestral property and after the demise of the plaintiff's grandfather, the plaintiff's father and his brother had divided the property among themselves and were in peaceful possession of the property. It is the further case of the petitioners that his father was a spendthrift and obtained loans from various persons for leading luxurious life, when the plaintiff was a minor, which do not in any way control the plaintiff now. The plaintiff, on coming to know of the fact that his father had executed sale deed in favour of defendants so as to settle the entire loan, had rushed to the Court by way of filing a suit in O.S.No.392 of 2007.

3. The revision petitioner states that the suit was originally filed before the learned District Munsif, Palani in O.S.No.711 of 1996 and subsequently, pursuant to the constitution of new Court at Oddanchatram, the same was transferred to the file of District Munsif Court, Oddanchatram and the suit was renumbered as O.S.No.392 of 2007 and the said transfer was intimated neither to the petitioner / plaintiff nor to his counsel. Since no communication had been received from his counsel for appearance on 17.08.2010, he did not appear before the Court and his counsel also did not cast his appearance on the said date, which resulted in dismissal of the suit. The factum of dismissal of the suit was known to him after a long gap, when he visited the office of his counsel and thereafter, he had engaged a new counsel and filed I.A.No.165 of 2014 seeking to condone the delay. The Trial Court, on the false presumption of wilful non appearance, has erroneously dismissed the application, which needs interference by this Court.

4. Learned counsel for the 1st respondent has contended that already the suit was filed after a lapse of 22 years and the suit itself is not maintainable. The plaintiff, having permitted the suit to attain finality and having not taken steps to restore it within the stipulated period, had filed the application before the Trial Court for condonation of delay of 1385 days, which is nothing, but an abuse of process of law and is also an adoption of dilatory tactics. The petitioner has not given strong reasons for the delay and he has been attempting to create sympathy, by blaming his Advocate as the cause for dismissal of the suit for default. In support of his contention that the grounds urged did not justify condonation of such enormous delay and the plea of prejudice was not at all tenable, he has relied upon the judgment of the Hon'ble Supreme Court in the case of Esha Bhattacharjee vs. Managing Committee of Raghunathpur, Nafar Academy and others, reported in 2013 (5) CTC 547, wherein it has been observed as follows:



14. In B. Madhuri Goud v. B. Damodar Reddy[21], the Court referring to earlier decisions reversed the decision of the learned single Judge who had condoned delay of 1236 days as the explanation given in the application for condonation of delay was absolutely fanciful.

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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."

5. Finally, it was contended by the learned counsel for the 1st respondent that if delay is condoned, there will be great miscarriage of public justice, resulting in public mischief and cause of justice would be defeated

6. Heard the learned counsel for the petitioner and the learned counsel for R1. There is no representation on behalf of the respondents 2 to 4. This Court has perused the entire records available.

7. It is no doubt true that the Court must be liberal in considering the petition for condonation of delay, but at the same time, it is to be noted that the Hon'ble Supreme Court in the case of Improvement Trust, Ludhiana v. Ujagar Singh and others, reported in 2010 (6) SCC 786, has 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.

8. A two-Judge Bench of the Hon'ble Supreme Court in yet another case in Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation and another, reported in 2010 (5) SCC 459 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 where the delay is inordinate.



9. The Hon'ble Supreme Court further went on to hold in the case of Balwant Singh (dead) v. Jagdish Singh and others, reported in 2010 (8) SCC 685 that the term liberal cannot be extended according to the likes and dislikes of the party to approach the Court and there should be some reasonableness insofar as the prescribed period is concerned. The relevant paragraphs of the said judgment is extracted as follows:

"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."

10. In the present case on hand, the revision petitioner has made vague averments, accusing his Advocate for the delay, to substantiate his stand for filing the application belatedly and the same do not inspire the confidence of this Court to condone the delay, as it is the contention of the 1st respondent that the office of the Advocate of the petitioner is situated just three kilometres away from his residence. It is pertinent to mention here that it is obligatory on the part of the party approaching the counsel to keep in touch with him / her till the closure of a case and miscommunication cannot be cited as a reason for belated approach. Further, the case of the petitioner does not come in any of the principles that had been culled out by the Hon'ble Supreme Court (supra). The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered that has to be exercised in time, as time is precious and wasted time would never revisit. Rules of limitation are not meant to destroy the rights of the parties and they are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly.



11. Ordinarily, when such an application for delay condonation comes up for hearing, 'Rule' is issued to enable the other side to appear and say whatever he wants to say for not condoning the delay, but what is done ordinarily does not necessarily mean that in all cases, at all times irrespective of the facts and circumstances of that particular case, this Court should blindly and mechanically tread the same beaten path / practice of issuing 'Rule', by condoning the delay. In the case on hand, huge delay of 1385 is involved and no sufficient cause has been reasoned out for the delay, as the principles are analogue to those, which are applied by the court while condoning delay on sufficient cause being shown under Section 5 of the Limitation Act, 1963. It is also seen that the Civil Revision Petition itself was taken on file after condoning the delay of 25 days and therefore, it is clear that the petitioner is so lethargic and casual in prosecuting the case and the time of the Court cannot be bent according to the whims and fancies of the petitioner.

12. In view of the foregoing discussions and observations and finding no merits in the revision petition, this Court is of the view that the order dated 05.09.2014 passed by the learned District Munsif, Oddanchatiram in I.A.No.165 of 2014 in O.S.No.392 of 2007, holds goods and is perfectly valid in the eye of law, warranting no interference by this Court.

13. Accordingly, this Civil Revision Petition is dismissed as devoid of merits. No costs.

Sd/-
Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To

1. The District Munsif,
Oddanchatiram
2. The Record Keeper,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

ORDER IN
C.R.P. (NPD) (MD) No.2221 of 2015

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