



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P. (PD) (MD) No.961 of 2018

Chandra Sekaran (Died)

1.Mallika

2.Piramaya

3.Piramila

:Petitioners/Petitioners/Defendants 2 to 4
vs.

Shanthi

:Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed Under Article 227 of Constitution of India, against the Judgement and decree dated 12.01.2018 passed in I.A.No.1118 of 2017 in O.S.No.158 of 2008 on the file of District Munsif Court, Aranthangi.

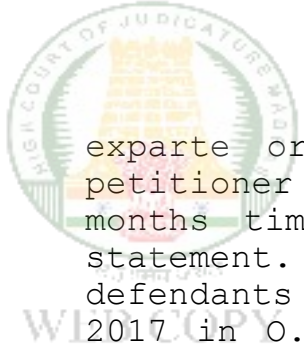
For Petitioners : Mr.N.Balakrishnan
For Respondent : Mr.K.Baalasundaram

ORDER

This Civil Revision Petition is filed against the Judgement and decree dated 12.01.2018 passed in I.A.No.1118 of 2017 in O.S.No.158 of 2008 on the file of District Munsif Court, Aranthangi.

2.Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent.

3.The respondent in this Civil Revision Petition, as plaintiff, filed a suit in O.S.No.158 of 2008 on the file of the District Munsif Court, Aranthangi, for the relief of declaration and permanent injunction against the petitioners. The petitioners herein are the defendants 2 to 4 in the suit. It is the case of the petitioners herein that they are the legal heirs of the deceased defendant and they were impleaded as defendants 2 to 4 in O.S.No.158 of 2008. Therefore, the Court was directed to file their written statement. However, they had not filed their written statement in time due to the reason that the first petitioner was suffering from Jaundice and therefore, she was not able to give instructions to the counsel on record. When the matter was called on 28.09.2016, due to the non filing of the written statement, the lower Court set the petitioners/defendants exparte and passed an



exparte order. Due to the reason of the Jaundice, the first petitioner was taking continuous treatment for more than about 8 months time. Therefore, she was not able to file her written statement. Under the above circumstances, the petitioners/defendants 2 to 4 herein filed an application in I.A.No.1118 of 2017 in O.S.No.158 of 2008 to condone the delay of 235 days in filing the petition to set aside the ex parte order. However, the petitioners in that application had stated that as the first petitioner was suffering from Jaundice, they were not able to file their written statements and give appropriate instructions to their counsel. They did not file any proof with regard to their submission that the first petitioner was suffering from Jaundice. Therefore, the lower Court dismissed the application to condone the delay of 235 days in filing the petition to set aside the ex parte order. Aggrieved by the same, the present Civil Revision Petition has been filed.

4.The learned counsel appearing for the petitioners has submitted that the first petitioner was suffering from Jaundice and she is representing the petitioners 2 and 3. The second petitioner is the son of the first petitioner and he was out of station due to his employment. The third petitioner is the daughter of the first petitioner and she was married and settled down separately and that the petitioners 2 and 3 gave instructions to the first petitioner to file a common written statement. However, due to Jaundice, the first petitioner was not able to give instruction to the counsel on record to file written statement and to file restoration petition to set aside the exparte order. Further, the learned counsel for the revision petitioner submitted that the first petitioner was not able to produce any documentary proof for taking medicine for Jaundice, as she was taking country medicine. Hence, there was a delay of 235 days in filing the application to set aside the exparte order. Therefore, the delay, cannot be construed as neither wilful nor wanton, which is only the first petitioner's ill health viz., due to Jaundice.

5.In support of his contention, the learned counsel appearing for the petitioners referred a Judgment of this Court in **AJAY KUMAR GULECHA v. J.VIJAYAKUMAR** reported in **2015 (1) CTC 811**, wherein this Court has observed as follows:-

"14. The Hon'ble Supreme Court recently in Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & others, 2013 (5) CTC 547 (SC) : 2013 (5) LW 20 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. Lakhmir Singh (dead) and others, 1984 (4) SCC 66; State of Nagaland v. Lipok AO and others, 2005 (1) MWN (Cr.) 166 (SC) : 2005



(3) SCC 752; New India Insurance Co. Ltd v. Smt Shanti Misra, Adult., 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 Condoned Delay Petition. The principles are elucidated in the said judgment and Paragraphs 15 & 16 of the Judgment are usefully extracted 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 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."



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."

6. The learned counsel appearing for the petitioners has also relied on the decision of this Court in **S.MURUGAN v. MALAICHAMY** reported in **2016 (1) MWN (Civil) 180**, wherein this Court has observed as follows:-

"14. The Supreme Court in Parimal vs. Veena [2011(2) Scale 302], explained the concept of "sufficient cause". The Supreme Court said:

"9. "Sufficient Cause" is an expression which has been used in large number of Statutes. The meaning of the word "sufficient" is "adequate" or "enough", in as much as may be necessary to answer the purpose intended. Therefore, word "sufficient" embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that party had not acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been "not acting diligently" or "remaining inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously.



7. In the case on hand, the delay is only 235 days in filing the petition to set aside the *ex parte* order and hence, it is not proper to deny the opportunity of the petitioners to put forth their case before the lower Court. Therefore, the principle laid down by this Court in the decision cited *supra*, is squarely



applicable to the facts of the instant case. Accordingly, following the said decisions, this Court is of the view that it is appropriate to condone the delay of 235 days in filing the petition to set aside the *ex parte* order, by providing an opportunity to the petitioners to contest the case before the lower Court.

8.This Court carefully perused the records and the order passed by the lower Court and convinced that the reason stated in the affidavit could be accepted as the people in our country used to take country medicine for Jaundice. Further, the learned counsel for the revision petitioners specifically pleaded that the first petitioner was not able to produce any proof for taking treatment for Jaundice due to the reason that she was taking country medicine. Therefore, this Court has no hesitation to accept the reason stated by the revision petitioners and accordingly condoned the delay of 235 days in filing the petition to set aside the *exparte* order, dated 12.01.2018.

9.In the result, this Civil Revision Petition is allowed by setting aside the order dated 12.01.2018 passed in I.A.No.1118 of 2017 in O.S.No.158 of 2008 by the learned District Munsif, Aranthangi.

10.The learned counsel for the respondent has submitted that a direction may be given to the lower Court to dispose of the suit at the earliest point of time. This Court also accepted the contention of the learned counsel appearing for the respondent. Considering the fact that the suit was filed during the year 2008, the lower Court is directed to dispose of the suit, as expeditiously as possible. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

Sub Assistant Registrar(CS-IV)

To

1.The learned District Munsif, Aranthangi.

2.The Record Keeper, V.R.Section,

Madurai Bench of Madras High Court, Madurai.(2 COPIES)

+1 CC To MR.N.BALAKRISHNAN, Advocate SR. NO. 84908

C.R.P. (PD) (MD) No.961 of 2018

14.09.2018