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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 16.07.2018

DELIVERED ON : 22.10.2018

CORAM

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

C.R.P. (NPD) No.1174 of 2018

and

CMP (MD) No.4988 of 2018

1.Madhavan Pillai
2.Thulasi Bai

.. Petitioners

vs

Thabasi

.. Respondent

Revision filed under Section 115 of Civil Procedure Code, against the Fair and Decretal order dated 27.04.2018 passed in I.A.No.120 of 2013 in O.S.No.84 of 2006 on the file of the learned District Court, Kanyakumari @ Nagercoil.

For Petitioners : Mr.M.Vallinayagam
Senior Counsel
for Mr.D.Nallathambi

For Respondent : Mr.K.P.Narayanakumar

ORDER

This revision is directed against the order dated 27.4.2018 passed in I.A.No.120 of 2013 in O.S.No.84 of 2006 on the file of the learned District Court, Kanyakumari, dismissing the petition filed by the petitioners under Section 5 of the Limitation Act to condone the delay of 1716 days in filing the petition to set aside the ex parte decree dated 29.1.2008. The defendants are husband and wife.

2. The respondent herein filed the suit for recovery of a sum of Rs.7,68,740/- from the petitioners being the advance amount received by them based on the agreement dated 4.5.2006 with subsequent interest at the rate of 12% per annum from the date of plaint till the date of realisation. By the judgment dated 29.1.2008, an ex parte decree has been passed in the suit.

3. Pursuant to the decree dated 29.1.2008, the respondent had



filed E.P.No.34 of 2008 seeking to sell the properties described in the Execution Petition, which were already attached before judgment for realisation of the decree amount.

4. It appears from the typed set of papers that properties were brought for sale through Court auction sale on 2.9.2010 and one Vinil Jeba Pradeep was the Court auction purchaser.

5. The petitioners have filed I.A.No.120 of 2013 under Section 5 of Limitation Act to condone the delay of 1716 days in filing petition to set aside the ex parte decree dated 29.1.2008 alleging that the respondent had took out suit summons to the local address of the petitioners and the fact remains that the petitioners were residing at Maharashtra and took treatment at Sonebhadra. According to the petitioners, now only they came to know about the ex parte decree passed in the suit. As such there was a delay of 1716 days in filing petition to set aside the ex parte decree and delay is neither wilful, nor wanton.

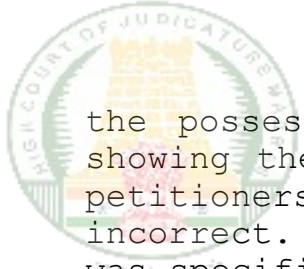
6. Resisting the petition, the respondent filed counter stating that the petitioners very well aware of the suit proceedings and the respondent had taken out suit summons several times to the address of the petitioners and the petitioners purposefully avoided to receive the same. It is incorrect to state that at the relevant point of time, the petitioners were living at Bombay. It is stated that the petitioners have already sent notice through their Advocate on 1.12.2008 and the respondent sent reply, which was received by their Advocate. According to the respondent, execution proceedings were initiated and delivery of the property was also effected. Therefore, the petitioners have filed petition belatedly with mala fide intention and prayed for dismissal of the petition.

7. Before the trial Court, the 1st petitioner examined himself as P.W.1 and marked Exs.P1 to P21. The respondent examined himself as R.W.1 and marked Exs.R1 to R17.

8. Upon consideration of the oral and documentary evidence, the trial Court dismissed the petition. Aggrieved by the same, the petitioners have filed the present Civil Revision Petition.

9. I heard Mr.M.Vallinayagam, learned Senior Counsel for Mr.D.Nallathambi, learned counsel for the petitioners and Mr.K.P.Narayanakumar, learned counsel for the respondent and also perused the materials available on record.

10. Assailing the order of the trial Court, the learned Senior Counsel submitted that the trial Court ought to have considered that the petitioners were set ex parte in the main suit by way of substituted service and they were not residing in the address shown in the plaint. He would submit that the alleged sale agreement dated 4.5.2006 have a recital regarding handing over of



the possession to the respondent, the approach of the respondent showing the very same property address as residence address of the petitioners for service of summons in the suit was improper and incorrect. The learned Senior Counsel next submitted that when it was specifically pleaded by the petitioners that due to their family problems, they shifted their residence to the city of Bombay and temporarily resided with their son from 2008 to 2012, the trial Court ought to have condoned the delay.

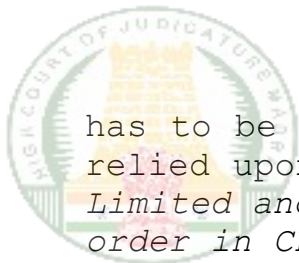
11. The learned Senior Counsel would further submit that the trial Court ought not to have taken rigid approach in the petition filed under Section 5 of the Limitation Act, as it was enough to show the shifting of residence of the petitioners during the relevant period 2008-2012. Despite the petitioners having produced certificate from local police station for identification of petitioners residing in the rental premises at Maharashtra, the trial Court has failed to take note of the same.

12. The learned Senior Counsel then argued that doctrine of sufficient cause under Section 5 of the Limitation Act includes the merits of the main case. As such in the present revision, the petitioners established the merits on their side in the main case and the claim of the respondent was only to recover the advance amount to the tune of Rs.7.50 lakhs with interest and the petitioners are ready to deposit the said amount to the credit of the suit to defend the suit on merits. Since the petitioners have shown sufficient cause for the delay, the trial Court ought to have taken liberal approach and prayed for setting aside the order of the trial Court. In support, the learned Senior Counsel relied upon the decisions in (i) *Shakuntala Devi Jain v. Kuntal Kumari and others*, reported in AIR 1969 SC 575; (ii) *Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and others*, reported in AIR 1987 SC 1353; (iii) *Ram Nath Sao @ Ram Nath Sahu and others v. Gobardhan Sao and others*, reported in 2002 (1) CTC 769; and (iv) *N. Balakrishnan v. M. Krishnamurthy*, reported in (1998) 7 SCC 123.

13. Per contra, the learned counsel for the respondent submitted that the petitioners have wantonly evaded to receive the suit summons and in fact, in the Execution Petition also the position was the same. Since the petitioners have evaded to receive summons/notice, the respondent has taken steps for service of notice/summons by substituted service. He would submit that in the Execution Petition, properties were sold in Court auction and now the Execution Petition is pending for effecting delivery of the properties in favour of the auction purchaser. Since the petitioners have not shown sufficient cause for the delay, the trial Court has rightly dismissed the petition and therefore, there is no necessity to interfere with the order of the trial Court.

14. The learned counsel then contended that the affidavit filed in support of the petition was misleading one and such filing of the misleading affidavit has to be strongly discouraged and costs

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has to be imposed on the deponent. In support, the learned counsel relied upon the decisions in (i) *Sciemed Overseas Inc. v. BOC India Limited and others*, reported in (2016) 3 SCC 70 and (ii) un-reported order in CRP (NPD) No.1708 of 2011, dated 20.4.2017 (*Ramani Ammal v. Sivakumar and another*).

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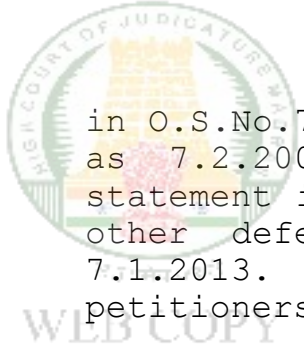
15. The point that arises for consideration is whether the trial Court was right in dismissing the petition filed by the petitioners seeking to condone the delay of 1716 days in filing the petition under Order 9, Rule 13 CPC.

16. The grievance of the petitioners is that since they were residing at Maharashtra from the year 2006 to 2012, they were not aware of the suit proceedings initiated by the respondent and in fact, from 2006 to 2012, both the petitioners were not well and were taking treatment at Maharashtra. The suit in question was of the year 2006 and the respondent has taken steps to serve the summons on the petitioners during the year 2006 and 2007. Admittedly, no documents have been filed by the petitioners to show that they were residing at Maharashtra during the year 2006, 2007 and 2008.

17. The petitioners have produced Exs.P1 to P20-medical prescriptions issued by various hospitals to show that they were taking treatment at Maharashtra during the year 2006 to 2012. On a perusal of Exs.P1 to P20, it is seen that they were related to the years 2009, 2010, 2011 and 2012, i.e., after the ex parte decree dated 29.1.2008 was passed in the suit.

18. It is the say of the respondent that the petitioners were aware of the suit proceedings and they were wantonly avoided to receive the suit summons. According to the respondent, on 1.12.2008, the petitioners have issued a notice through their Advocate to the respondent, wherein their address has been mentioned as "Naduthala Veedu, Pathramangalam, Kappiyara, Chellamkonam post, Kanyakumari District". The respondent has suitably replied the notice issued by the petitioners through his Advocate, wherein the filing of the suit being O.S.No.84 of 2006 before the District Court by the respondent for recovery of the advance amount has been mentioned and the petitioners' Advocate has duly acknowledged the reply. According to the respondent, through reply notice dated 5.1.2009 also, the petitioners were aware of the filing of the suit. The notice dated 1.12.2008 issued by the petitioners would clearly show that during the year 2008, the petitioners were residing in Kanyakumari District only and not in Maharashtra as alleged by them.

19. On a perusal of the typed set of documents filed by the respondent, it is seen that the South Indian Bank Limited has filed the suit being O.S.No.77 of 2007 before the learned Sub-Court, Kuzhithurai, wherein the petitioners were arrayed as defendants 3 and 4 and the petitioners have entered appearance in the said suit through their advocate and filed vakalat. The respondent had produced the vakalat filed by the petitioners and other defendants



in O.S.No.77 of 2007, wherein the date of signing has been mentioned as 7.2.2008. The petitioners have also filed their written statement in the said suit and after contest by the petitioners and other defendants, the suit O.S.No.77 of 2007 was decreed on 7.1.2013. Thus, it is clear that during the year 2008, the petitioners were not residing at Maharashtra.

20. Therefore, as rightly held by the trial Court the petitioners were all along having knowledge about the suit being O.S.No.84 of 2006 filed by the respondent during the relevant time from 2006 to 2008 and despite knowing very well about the ex parte decree passed on 29.1.2008, they filed petition to set aside the ex parte decree only in the year 2012 and the delay was unexplained.

21. Admittedly, the petitioners have not explained each and every day delay. The delay to be condoned is 1716 days. Though the first petitioner let in evidence before the trial Court, he had failed to produce documents to substantiate that at the relevant point of time, he was residing at Maharashtra and was taking treatment at Maharashtra and also the delay in filing the petition to set aside the ex parte decree is not wanton and only the circumstances alleged in the petition.

22. In all cases, 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 way of documentary proof that there was sufficient cause for the delay in filing petition to set aside the ex parte decree passed on 29.1.2008.

23. The decision relied upon by the learned Senior Counsel for the petitioners in *Shakuntala Devi Jain v. Kuntal Kumari and others, supra*, is in relation to allowing of delay condonation petition for filing the appeal. In the said case, the Hon'ble Supreme Court, taking note of the fact that the appellant therein despite making attempts to procure a certified copy held that the copying department has failed to supply the copy, which contributed huge delay in filing the appeal. Here, in the case on hand, the delay of 1716 days occurred in filing the petition to set aside the ex parte decree. As stated *supra*, the delay was not properly explained by the petitioners. Therefore, in the facts and circumstances of the case on hand, the decision in *hakuntala Devi Jain v. Kuntal Kumari and others, supra*, will not be applicable to the present case.

24. In *Collector, Land Acquisition v. Mst.Katiji and others, supra*, the Hon'ble Supreme Court held as under:

" 3. Refusing to condone delay can result in 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."

25. In *Ram Nath Sao @ Ram Nath Sahu v. Gobardhan Sao*, supra, the Hon'ble Supreme Court held:

"12. Thus it becomes plain that the expression "sufficient cause" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. In a particular case whether explanation furnished would constitute sufficient cause or not will be dependent upon facts of each case. There cannot be a straitjacket formula or accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal an exception more so when no negligence or inaction or want of bona fide can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine like manner. However, by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way."

26. In the case on hand, admittedly, pursuant to the ex parte decree, the respondent had filed Execution Petition to sell properties which were attached before judgment and realise the decree amount. The Execution Petition mentioned properties were sold in Court auction and now the Execution Petition is pending for effecting delivery to the auction purchaser. Filing of the Execution Petition and properties sold to the auction purchaser are not disputed by the petitioners. For the sake, at this stage, if the petition of the petitioners allowed, much hardship and loss would be caused to both the respondent as well as the Court auction purchaser. In the facts and circumstances of the case, the decisions relied upon by the petitioners in *Collector, Land Acquisition v. Mst. Katiji and others* and *Ram Nath Sao @ Ram Nath*



Sahu v. Gobardhan Sao, supra, will not be applicable to the case of the petitioners.

27. 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."

28. 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 of 1716 days.

29. In *Sciemed Overseas Inc. v. BOC India Limited and others, supra*, the Hon'ble Supreme Court held:

"29. Similarly, in *Muthu Karuppan v. Parithi Ilamvazhuthi*, reported in (2011) 5 SCC 496, this Court expressed the view that the filing of a false affidavit should be effectively curbed with a strong hand. It is true that the observation was made in the context of contempt of court proceedings, but the view expressed must be generally endorsed to preserve the purity of judicial proceedings. ..."

30. In an un-reported order in CRP (NPD) No.1708 of 2011, dated 20.4.2017 (*Ramani Ammal v. Sivakumar and another*), I have observed as under:

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11. It is needless to say that the above facts and circumstance involved in the above cases would



demonstrate that filing false affidavit and playing fraud upon the Court of law is unacceptable and liable to be rejected."

Thus, filing of the false affidavit should be curbed with a strong hand.

31. 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 bona fides are to be considered.

32. It is settled law that 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.

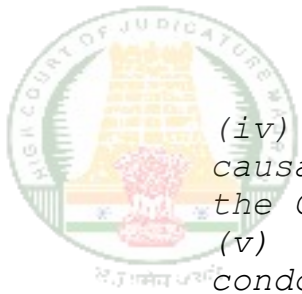
33. In *Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & others*, reported in 2013 (5) CTC 547 (SC) : 2013 (5) LW 20, the Hon'ble Supreme Court held that there should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an Application for condonation 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. Lakhmir 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 Hon'ble 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.

(vii) The concept of liberal approach has to en capsule 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."

34. 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 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.

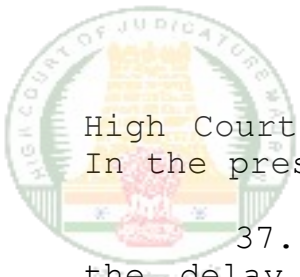
26. The Law of Limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party 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."

35. 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)

36. 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 1716 days.

37. As stated supra, in the case on hand, the explanation for the delay given by the petitioners are not acceptable. Though liberal approach is to be taken in petitions under Section 5 of the Limitation Act, the petitioners have not shown semblance of bona fide 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 bona fide in it.

38. 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. As stated supra, pursuant to the ex parte decree, the respondent had filed Execution Petition to sell the properties, which were already attached before judgment and realise the amount. The Execution Petition mentioned properties were sold in Court auction and now the Execution Petition is pending for effecting delivery of the properties to the auction purchaser.

39. 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.

40. 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.

41. From a reading of the averments, it is seen that the petition seeking to condone the delay of 1716 days in filing petition to set aside the ex parte decree was filed in a casual manner without giving proper reasons, much less acceptable reasons, cannot be sustained and the trial Court was right in dismissing the petition.

42. At the cost of repetition, it is reiterated that the petitioners have not shown the 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 misleading. Thus, the inordinate delay of 1716 days in filing petition to set aside the ex parte was not properly explained by the petitioners.

43. 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 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 liable to be dismissed.

44. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar(CS-I)

To

The District Judge,
Kanyakumari @ Nagercoil.

+1cc to Mr.K.P.NARAYANAKUMAR, Advocate, SR.No.91552

+1cc to Mr.D.NALLATHAMBI, Advocate, SR.No.91063

C.R.P. (MD) (NPD) No.1174 of 2018
and
CMP (MD) No.4988 of 2018
22.10.2018

VS

KK/RP/SAR-1/26.11.2018/13P-4C