



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :27.09.2018

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

AND

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.P (MD) No.5458 of 2018

in

AS (MD) SR.No.13495 of 2018

T.G.Navaneetha Krishnan (died)

N.Renuka (died)

1.N.Sureshkumar

2.N.Sudharson

3.N.Balaji

...Petitioners/Appellants/Defendants
Sought to be Preferred in AS SR

Vs.

T.G.R.Vasanthakumar

...Respondent/Plaintiff

Petition filed under Section 5 of the Limitation Act, 1963 to condone the delay of 4506 of days in filing the above Appeal Suit.

Prayer in AS (MD) SR.No.13495/18:

Appeal filed under section 76 of the Civil Procedure against the judgment and Decree dated 01/09/2005 in O.S.No. 129/2004 on the fild of Ist Additional District Judge (PCR), Tiruchirapalli.

For Petitioners: Mr.G.Prabhu Rajadurai

ORDER

PUSHPA SATHYANARAYANA, J

This application has been filed under Section 5 of the Limitation Act, 1963 for condonation of delay of 4506 days in filing the above Appeal Suit for setting aside the exparte decree dated 01.09.2005 passed by the learned I Additional District Judge (PCR) Trichy in O.S.No.129 of 2004.



2.The facts in nutshell are as follows:-

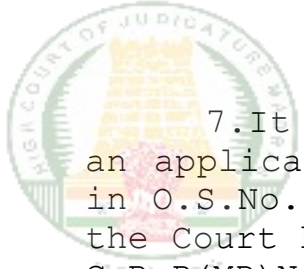
The suit property originally belongs to the father of the petitioners which consists of two schedules. 'A' schedule is a house property comprised in T.S.No.1560/181 in Puthur Village and 'B' schedule is a house bearing Door No.19-A in T.S.No.5/1, Trichy District. It is stated that the respondent has instituted a suit in O.S.No.129 of 2004 on the file of the I Additional District Judge, Trichy contending that the father of the petitioners has failed to execute the sale agreement dated 09.04.2000. The said suit was resisted by the father of the petitioners by filing a written statement *inter alia* contending that he has not executed any sale agreement in favour of the respondent and no portion of the suit schedule property has been handed over to him as alleged in the plaint. The said suit was decreed *exparte* on 01.09.2005 for non appearance of the father of the petitioners. Therefore, an application in I.A.No.875 of 2007 has been filed seeking to set aside the *exparte* decree.

3.It is stated that the respondent has also filed E.P.No.34 of 2008 to execute the *exparte* decree. Meanwhile, the father of the petitioners has also filed E.A.No.21 of 2008 under Section 28 of Specific Relief Act, 1963 seeking to rescind the contract contending that the difference amount was not paid by the respondent even after the expiry of three years. Thereafter, the respondent has filed an application seeking time to extend the said period.

4.The Court below, while allowing the application filed by the respondent seeking extension of time, dismissed the application filed by the father of the petitioners to rescind the contract allegedly entered into between the respondent and the father of the petitioners.

5.While situation stood thus, the father of the petitioners expired on 05.12.2010. It is stated that the Counsel who appeared on behalf of the petitioners without their consent not pressed the application in I.A.No.875 of 2007 to set aside the *exparte* decree, dated 01.09.2005 in O.S.No.129 of 2004. Consequently, the said application was dismissed as withdrawn by the learned I Additional District Judge, Trichy, by an order dated 03.10.2013.

6.Aggrieved by the same, the petitioners filed an application seeking to restore I.A.No.875 of 2007 under Order IX Rule 9 read with Section 151 of the Code of Civil Procedure, 1908. According to the petitioners, the Court below has dismissed the said application even without numbering the same. Challenging the said dismissal, the petitioners have filed C.R.P.(MD)Nos.1373 and 1374 of 2014 before this Court and this Court, by an order dated 27.10.2014 dismissed the said revision petitions.



7. It is further stated that the petitioners have also filed an application under Order IX Rule 9 seeking to restore the suit in O.S.No.129 of 2004. The said application was also dismissed by the Court below. Aggrieved by the same, the petitioners have filed C.R.P(MD)No.2621 of 2015. This Court, by an order dated 07.12.2015 allowed the said revision directing the Court below to number the said application and dispose of the same on merits and in accordance with law.

8. Challenging the said order, the respondent has preferred S.L.P before the Hon'ble Supreme Court and the same was dismissed on 12.02.2016 confirming the order of this Court dated 07.12.2015. It is further stated that pursuant to the order of the Hon'ble Supreme Court, the said application was numbered as I.A.No.659 of 2015 and the same was allowed. Aggrieved by the same, the respondent has preferred revision before this Court in C.R.P.(MD) No.1117 of 2016. The same was allowed by this Court on 02.09.2016. Challenging the said order, the petitioners have preferred S.L.P in S.L.P.No.3366 of 2016 before the Hon'ble Supreme Court and the same was dismissed.

9. It is further stated that as the petitioners spent all these years in prosecuting the applications filed one after another, there is no deliberate or wilful delay on the part of the petitioners and therefore, it is appropriate to challenge the judgment and decree dated 01.09.2005 passed in O.S.No.129 of 2004. In the above circumstances, the delay of 4506 days in filing the above Appeal Suit had crept-in.

10. Learned counsel appearing for the petitioners submitted that there was no lack of diligence on the part of the petitioners in pursuing their appeal and the appeal filed by them had arguable and important points of law and therefore and the reasons given by the petitioners were sufficient for condonation of delay as prayed for.

11. The question that arises for consideration is whether the causes shown by the petitioners to condone the delay of 4506 days in preferring the above appeal suit are sufficient or not?

12. It is well settled that 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 other party. This is 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.

13. In **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others** reported in (2013) 12 SCC 649, the Hon'ble Supreme Court has held as follows:-

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.

The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). **Rules of limitation are not meant to destroy the rights of the parties.** They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy



must be kept alive for a legislatively fixed period of time.
(Emphasis Supplied)

14. The learned counsel for the petitioners contended that the time taken by the petitioners in prosecuting the other applications which went up to the Hon'ble Supreme Court has to be excluded under Section 14 of the Limitation Act. Exclusion of time of bona fide prosecuting proceedings in wrong forum is contemplated in Section 14. However, the conditions for invoking Section 14, firstly that the prior proceedings had been prosecuted with due diligence and in good faith, secondly, the failure of the prior proceedings was due to defect of jurisdiction or other causes of like nature. Therefore, Section 14 of Limitation Act does not enable a litigant to get the benefit beyond what is contemplated in the Section. In the absence of prosecution of earlier proceedings in due diligence and good faith, the petitioners are not entitled to invoke Section 14 of the Limitation Act.

15. Considering the facts and circumstances of the case and also the delay of 4506 days in filing the appeal suit, we are of the view that the petitioners have not given sufficient cause for condonation of delay. Accordingly, this petition is dismissed. Consequently, Appeal Suit in AS(MD)SR.No.13495 of 2018 is rejected.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar(CS-I)

To

Ist Additional District Judge (PCR),
Tiruchirapalli.

SMS

BU/SKN/SAR-I :12.10.2018 : 5P/2C

Order made in
C.M.P (MD) No.5458 of 2018
in
AS (MD) SR.No.13495 of 2018
27.09.2018