



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 26.04.2018
DELIVERED ON : 05.10.2018
CORAM
THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

WEB COPY

C.R.P. (MD) (NPD) No.2620 of 2016

Subhadra ... Petitioner/Petitioner/Appellant/Defendant
vs

Chellan .. Respondent/Respondent/Respondent/Plaintiff

Civil Revision Petition filed under Section 115 of the Civil Procedure Code as against the fair and decretal order passed in I.A.No.104 of 2014 in A.S.(SR) No.2168 of 2014, dated 29.7.2016 on the file of the learned District Judge, Kanyakumari District at Nagercoil in O.S.No.83 of 2006 dated 1.6.2010 on the file of the learned Subordinate Judge, Kuzhithurai, Kanyakumari District.

For Petitioner : Mr.D.Senthilkumar
For Respondent : Mr.K.Sreekumaran Nair

ORDER

This Civil Revision Petition is directed against the order dated 29.07.2016 passed in I.A.No.104 of 2014 in A.S.SR.No.2168 of 2014 by the learned District Judge, Kanniyakumari District.

2. The facts in a nutshell are as under: The respondent herein filed the suit in O.S.No.83 of 2006 on the file of the learned Subordinate Judge, Kuzhithurai, for specific performance of contract for sale. The learned Subordinate Judge, by judgment and decree dated 01.06.2010, decreed the suit and held that the respondent herein is entitled to specific performance of contract for sale with costs on deposit of Rs.25,000/- within one month from the date of the said order and thereafter two months time was granted for execution of sale deed.

3. Assailing the said judgment and decree, the petitioner herein filed an appeal with a delay of 254 days and for condonation of the said delay, the petitioner filed an interlocutory application, being I.A.No.104 of 2014.

4. The learned Principal District Judge, by order dated 29.07.2016, dismissed the interlocutory application and refused to condone the delay.

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

5. Calling in question the said order, the present revision petition is filed.



6. The learned counsel appearing on behalf of the petitioner submitted that the petitioner has shown sufficient cause for the delay, namely her illness, but the Court below had dismissed the interlocutory application and also rendered a finding as if the suit has reached its logical conclusion, and such denial of right of the petitioner to file an appeal is illegal and therefore, the said order is to be set aside.

7. He further contended that the suit has been filed for specific performance and the petitioner has valid defence and fair chance of success in the appeal and if an opportunity of filing appeal is not granted, she would be put to irreparable loss and hardship.

8. Per contra, the learned counsel appearing on behalf of the respondent submitted that the petitioner had not given any satisfactory explanation for the delay. He reiterated the reasons that weighed with the Court below and prayed for dismissal of this revision petition.

9. I heard Mr.D.Senthilkumar, learned counsel for the petitioner and Mr.K.Sreekumaran Nair, learned counsel for the respondent and perused the documents available on record.

10. The Hon'ble Supreme Court, time and again, held that the power to condone delay by enacting Section 5 of the Limitation Act, 1963 is to enable the courts to do substantial justice to parties by disposing of matters on merits; that the expression "sufficient cause" employed by the Legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which serves the ends of justice which is the life purpose for the existence of the institution of courts; substantial justice deserves to be preferred as against technical considerations; and the courts should prefer to deliver justice on merits in preference to the approach which scuttles a decision on merits.

11. It is the specific case of the petitioner that she was indisposed and due to that she could not file the appeal within the stipulated time.

12. The Courts are empowered to allow the application for condonation of delay, on sufficient cause being shown or reject such an application in exercise of its judicious discretion. However, such judicious discretion to condone the delay by adopting a liberal approach has to be exercised only in deserving cases, and not in cases where the delay is on account of lethargic attitude and negligence on the part of the applicant. It is not as if each application for condonation of delay has to be allowed as a matter of right, no matter whether any "sufficient cause" for the delay is shown or not. Each case is to be decided on facts and circumstances. The length of delay is no matter. All that matters is the acceptability of explanation



13. The above said view of this Court is fortified by the following decisions of this Court:

(a) In Mohammed Aslam and others v. C.N.A.Gowdhaman, 2005 (2) CTC 766, the delay was of 1251 days. In the said judgment, a Division Bench of this Court observed as under:

"12. In the impugned order, as said earlier, the learned Judge has not considered the explanation offered by the applicant for the delay of 1251 days. Though the learned Judge was conscious of the fact that by condoning the inordinate delay, the respondents therein (appellants herein) will be put to great hardship, instead of compensating them, directed for the payment of Rs. 10,000/- to the State Legal Services Authority, Chennai, admittedly, which is not a party in this proceedings. We are unable to share the above view. Having found that by condoning the inordinate delay only on the ground that the applicant should be given an opportunity and having found that the said act will cause great hardship to other side, viz., respondents therein, it is but proper to compensate them by awarding reasonable costs to them. The learned Judge has not resorted to such recourse. It is not in dispute that the Courts are here to render justice to both parties. We are unable to understand how the respondents will be compensated by payment of Rs. 10,000/- to the State Legal Services Authority, Chennai. Equally, we are conscious of the fact that the length of delay is no matter, and acceptability of the explanation is the only criterion. Sometimes the delay of shortest range may be uncondonable due to want of acceptable explanation, whereas in certain other cases, delay of a very long range can be condoned as the explanation therefor is satisfactory. In every case of delay, there may be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and shut the door against him. If the explanation does not smack the mala fides or it is not put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the Court should not lean towards acceptance of the explanation. We are also aware that refusal to condone the delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the Court is always deliberate. Now, even the higher court of this land have interpreted that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice. Accordingly, in order to give one opportunity to the respondent/applicant and at the same time, to compensate the



appellants/respondents, we intend to modify the order of the learned Judge dated 10.03.2005. Though it is stated that the applicant had paid a sum of Rs. 10,000/- to the State Legal Services Authority, Chennai as ordered, in addition to the said amount, the applicant/respondent is directed to pay a further sum of Rs. 20,000/- (Rupees twenty thousand only) to the appellants/respondents within 15 days from today, failing which the order of the learned Judge dated 10.03.2005 shall stand set aside. OSA. No. 44 of 2005 is disposed of accordingly.”
(emphasis supplied)

(b) In yet another decision of this Court in Pavayammal and another v. S.N.Chockalingam and others, 2009 (5) CTC 414, a learned Single Judge of this Court held as under:

“7. The word ‘sufficient cause’ under Section 5 of the Limitation Act will have to be interpreted in a purposeful and meaning way. As a matter of fact, the Court of law is not supposed to adopt a pedantic approach instead it has to take a liberal view while dealing with the Application of condonation of delay. Ordinarily a party does not stand to gain by lodging in Appeal belatedly. Refusing to condone a delay will result in meritorious matter being thrown out at the nascent stage and thereby the cause of justice being defeated. On the other hand, if a party is allowed to enter into the scene of main proceedings, then the matter can be decided on merits. Of course a Court of law providing due opportunities to the parties to prove their case. The judiciary is respected not on account of its power to legalise injustice on technical grounds but it is capable of removing injustice and is expected to do so. This Court is of the considered view that substantial justice will have to be delivered to the parties overriding technicalities.”

(emphasis supplied)

(c) The proposition of law laid down in the above said two decisions was also reiterated in the subsequent decision of a learned Single Judge of this Court in P.Subramanian (dead) and others v. S.Viswasam, 2011-1-LW 53.

14. There is absolutely no dispute with regard to the fact that the present suit is one for specific performance. In the affidavit filed in support of the interlocutory application for condonation of delay, the petitioner stated that only because of ill-health she could not file the appeal within the prescribed time and she has also enclosed a medical certificate issued by the Government Doctor to fortify her plea of ill health.



limitation are not meant to destroy the right of the parties and they are meant to see that parties do not resort to dilatory tactics. The Supreme Court further held that it must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned and that alone is not enough to turn down his plea and to shut the door against him. The Hon'ble Supreme Court further held that if the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor.

16. Since it is a suit for specific performance and as substantial rights of the parties are involved and having regard to the reasons recorded supra, without going into the other issues involved, this Court is of the considered opinion that the ends of justice would be served, if the petitioner is permitted to prosecute the appeal on merits, however, subject to certain terms.

17. For the foregoing reasons, the following order is passed:

- (i) This revision is allowed by setting aside the order passed in I.A.No.104 of 2014 in A.S.(SR)No.2168 of 2014, dated 29.07.2016 on the file of the learned District Judge, Kanyakumari District at Nagercoil, on condition that the petitioner should pay a sum of Rs.5,000/- to the respondent's counsel within a period of two weeks from the date of receipt of a copy of this order.
- (ii) On such payment being made by the petitioner, the learned District Judge, Kanyakumari District is directed to number the appeal and dispose of the same within a period of four months from the date of serving the summon in the appeal.
- (iii) No costs.

Sd/-

Assistant Registrar(AD-II)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1.The District Judge,
Kanyakumari District at Nagercoil.

2.The Subordinate Judge,
Kuzhithurai, Kanyakumari District

+1CC to Mr.G.Aravinthan, Advocate, SR.No.89100

+1CC to Mr.K.Sreekumaran Nair, Advocate, SR.No.89078

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