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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.04.2018

Pronounced on : 05.07.2018

CORAM

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

C.R.P. (MD) (NPD) Nos.2046 and 2047 of 2015

S.Shenbagam Ammal .. Petitioner in both the CRPs

VS

S.S.Selvaraj (died)

1.S.S.Chellammal

2.Mani

3.Raja

4.Revathi

.. Respondents in both the CRPs

Common Prayer: Revisions filed under Section 115 of the Code of Civil Procedure, against the order dated 11.6.2010 passed in I.A.Nos.739 and 743 of 2009 in O.S.No.185 of 2004 on the file of the Principal District Munsif, Thoothukudi.

(In both the CRPs)

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.R.Manimaran

COMMON ORDER

Civil Revision Petition No.2046 of 2015 is directed against the order dated 11.06.2010 passed in I.A.No.739 of 2009 in O.S.No.185 of 2004 on the file of the learned Principal District Munsif, Thoothudi, dismissing the petition to condone the delay of 1450 days in filing petition to restore the suit, which was dismissed for default on 02.04.2004.

2. Civil Revision Petition No.2047 of 2015 is directed against the order dated 11.06.2010 passed in I.A.No.743 of 2009 in O.S.No.185 of 2004 on the file of the Principal District Munsif, Thoothudi, dismissing the petition to condone the delay of 1925 days to brought on record the legal heirs of the original defendant. The petitioner is the plaintiff and the deceased S.S.Selvaraj is the defendant in the suit. Both are husband and wife.



3. Since parties and the averments set out in the affidavits filed in support of petitions are one and same, both revisions were heard together and disposed of by this common order though the Principal District Munsif, Thoothukudi had passed separate order in I.A.Nos.739 and 743 of 2009.

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4. The plaintiff has filed the suit against the deceased defendant for cancellation of a gift deed dated 05.03.1981 executed by the deceased defendant in favour of her and for permanent injunction restraining the deceased defendant from alienating or encumbering the suit property or any portion thereof in any manner. The suit was dismissed for default on 02.04.2004.

5. I.A.No.739 of 2009 filed by the plaintiff to condone the delay of 1450 days in filing petition to restore the suit alleging that since steps to implead the legal heirs of the deceased defendant was not taken, the suit was dismissed for default. It is alleged that originally the suit was instituted before the learned Sub-Court, Thoothukudi and subsequently, on the point of jurisdiction, the same was transferred to the file of the learned Principal District Munsif Court. The new counsel engaged by the plaintiff before the learned Principal District Munsif Court had not informed the plaintiff about the hearing date. Now only the plaintiff came to know about the dismissal of the suit for default. Delay of 1450 days caused in filing petition to restore the suit.

6. The plaintiff has also filed I.A.No.743 of 2009 to condone the delay of 1925 days in filing the petition to bring on record the legal heirs of the deceased defendant on the same set of averments as stated in I.A.No.739 of 2009. According to the plaintiff, the delay is neither willful nor wanton.

7. Resisting both the petitions, respondents filed counter stating that the plaintiff has slept over the matter for more than 5½ years in filing petition to implead the legal heirs and also petition to restore the suit. The plaintiff has no prima facie case to file these petitions. Change of counsel cannot be a ground for condoning the delay of 5½ years. It is stated that the respondents have filed S.O.P.No.72 of 2004 before the High Court seeking succession certificate consequent to the death of the deceased defendant, wherein the plaintiff was arrayed as respondent. The plaintiff has contested the S.O.P.No.72 of 2004 by stating that the suit filed by her was dismissed for default for not taking steps. According to the respondents, the plaintiff was silent all those days and belatedly filed these petitions. Each and every days has not been properly explained and prayed for dismissal of the petitions.

8. Before the trial Court, the petitioner examined herself as P.W.1 and no documents were marked. Upon consideration of the rival submissions, the trial Court dismissed both petitions. Aggrieved by the same, the plaintiff has filed these revisions.



9. I heard Mr.G.Prabhu Rajadurai, learned counsel for the petitioner and Mr.R.Manimaran, learned counsel for the respondents in both the Civil Revision Petitions and also perused the materials available on record.

10. The learned counsel for the petitioner submitted that the trial Court ought to have condoned the delay having regard to the circumstances of the case and also the trial Court ought to have taken a liberal and sympathetic view in condoning the delay, as the petitioner was living without support from anyone. He submitted that the trial Court ought to have considered the merits of the case. He argued that since there was no indication of the proceedings from the counsel, the petitioner has not appeared before the Court when the matter was posted for taking steps. The delay is neither wilful nor wanton and prayed for setting aside the order of the trial Court.

11. Per contra, the learned counsel for the respondents submitted that the petitioner had slept over the matter for nearly 5½ years and petitions filed to implead the legal heirs of the deceased defendant and to restore the suit which was dismissed for default on 02.04.2004 with vague allegations. He submitted that the trial Court has rightly dismissed the petitions and there is no need to interfere with the same.

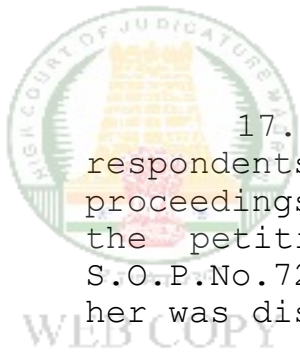
12. The point that arises for consideration is whether the trial Court was right in dismissing the petitions being I.A.Nos.739 and 743 of 2009.

13. According to the petitioner, her husband (deceased defendant) died on 01.07.2003. The suit was dismissed for default, as she has not taken steps to implead the legal heirs of the deceased husband. Since her husband has no legal heirs, the petitioner has not taken steps to implead the legal heirs of the deceased. The respondents are not the legal heirs of the deceased defendant.

14. The grievance of the petitioner is that since her new counsel has not informed the hearing date, steps had not been taken to bring on record the legal heirs of the deceased defendant, resultantly, the suit was dismissed for default.

15. It is settled that even by engaging a counsel, party to the case, is not relieved of his duties and obligations. Where a party either does not fully brief the counsel or keep no contact with him, it is the party who is in default and negligence and has to bear the consequences.

16. In the case on hand, the petitioner was not diligent even after engaging the present counsel on record. Hence putting the blame on the counsel cannot be an excuse to the petitioner to establish sufficient cause for condonation of delay.



17. On the other hand, the learned counsel for the respondents submitted that the respondents have initiated proceedings in S.O.P.No.72 of 2004 before the High Court, wherein the petitioner had participated and contested the matter. In S.O.P.No.72 of 2004, the petitioner pleaded that the suit filed by her was dismissed for default for not taking steps.

18. The aforesaid submission of the respondents would clearly show that the petitioner had knowledge about the death of the deceased defendant and also dismissal of the suit for default.

19. It appears that S.O.P.No.72 of 2004 was disposed of on 10.04.2007 and the petitioner had filed petitions on 23.03.2009 nearly after two years from the date of disposal of S.O.P. The petitioner as a litigant has every and equal responsibility to follow up her case and mere allegation of negligence levelled against her counsel cannot be a sufficient reason to condone the delay. The petitioner owes duty to satisfy the Court that she had sufficient cause for not filing petitions in time.

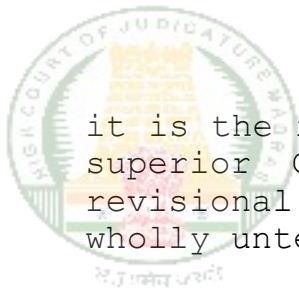
20. It is settled that where there was no satisfactory explanation by the petitioner for the inordinate delay, it was very unfair for the Court to condone the delay. Condonation of delay is a matter of discretion of the Court and Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within the certain limit.

21. 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 petitioner has not established by preponderance of evidence to show that there was sufficient cause for the delay in filing petition to restore the suit as well as delay in filing petition to bring on record the legal heirs of the deceased defendant.

22. On a reading of the plaint averments, it is alleged that the plaintiff has no issues. The defendant had started illicit intimacy with one Chellammal and he has been living with her. From the above averment, it is seen that the plaintiff would definitely knew children, if any, born through Chellammal.

23. 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 bonafides are to be considered.

24. 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.

25. 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. Lakhmira 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."

26. 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."

27. 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.

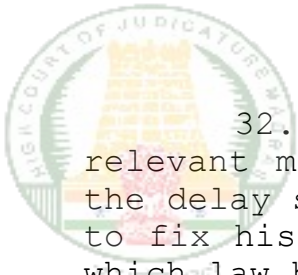
(emphasis supplied)

28. 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 nearly 5½ years.

29. As stated supra, in the case on hand, the explanation for the delay given by the petitioner is not acceptable. Though liberal approach is to be taken in petitions under Section 5 of the Limitation Act, the petitioner has not shown semblance of bonafide for the delay on her part. As rightly held by the trial Court that reason for the delay stated by the petitioner does not have any bonafide in it.

30. This Court is in full agreement with the proposition that refusal to condone the delay would result foreclosing a suitor from putting forth his/her 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.

31. 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. This Court has not delved into the merits of the suit.



32. 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.

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33. From a reading of the averments, it is seen that petitions seeking to condone the delay of 1450 and 1925 days respectively were filed in a casual manner without giving proper reasons, much less acceptable reasons, cannot be sustained and the trial Court was right in dismissing both the petitions.

34. At the cost of repetition, it is reiterated that the petitioner has not shown the sufficient cause to condone the delay as contemplated in the decisions of the Supreme Court supra. The petitioners are seriously lacking to apply the provision of Section 5 of Limitation Act, as the affidavit filed by the petitioner before the trial Court is vague and bereft of particulars without any convincing explanation for the period commencing from the date of dismissal of the suit till the date of filing of the petitions to restore the suit as well as to implead the legal heirs of the deceased defendant. In the case on hand, the inordinate delay was not properly explained by the petitioner.

35. 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, this Court is of the view that the petitioner has failed to explain each and every day delay and the trial Court was absolutely right in dismissing both the petitions. I do not find any reason to interfere with the order passed by the trial Court. Resultantly, the Civil Revision Petitions are devoid of merits and the same are liable to be dismissed.

36. In the result, both the Civil Revision Petitions are dismissed. No costs.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar(CS-III)

To

The Principal District Munsif,
Thoothukudi.

order made in
C.R.P. (MD) (NPD) Nos.2046 & 2047 of 2015
05.07.2018

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