

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.12.2018

Delivered on : 08.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Petition No.5243 of 2018
in Civil Miscellaneous Appeal SR No.16561 of 2018
and
Civil Miscellaneous Appeal SR No.16561 of 2018

S.Karthigeyan Petitioner/Appellant-in-Person

Vs

M.Abirami Respondent/Respondent

Civil Miscellaneous Petition No.5243 of 2018 filed under Section 5 of the Limitation Act to condone the delay of 2224 days in filing the Memorandum of grounds for Appeal preferred against the decree/order passed on 31.10.2011 in G.W.O.P.No.43 of 2009 on the file of the Principal District Court, Vellore.

Civil Miscellaneous Appeal SR No.16561 of 2018 filed under Section 47 of Guardian and Wards Act read with Section 8 of the Hindu Minority and Guardianship Act against the order dated 31.10.2011 passed in G.W.O.P.No.43 of 2009 on the file of the Principal District Court, Vellore.

For Petitioner/ Appellant : Mr.S.Karthigeyan
Petitioner-in-person

For Respondent : Mr.T.Arul

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ORDER

C.M.P.No.5243 of 2018 has been filed by the petitioner under Section 5 of the Limitation Act to condone the delay of 2224 days in filing the appeal against the order passed in G.W.O.P.No.43 of 2009 dated 31.10.2011 on the file of the Principal District Court, Vellore.

2. The petitioner has filed G.W.O.P.No.43 of 2009 under Sections 7, 8 and 25 of the Guardian and Wards Act, 1890 seeking to appoint him as guardian of minor K.Kavin and also seeking direction on the respondent to return the custody of the minor K.Kavin to him.

3. In the affidavit filed in support of the petition, the petitioner averred that due to some personal and financial reasons, he was not able to file the appeal against the order passed in G.W.O.P.No.43 of 2009 in time. Further, it is averred that the copy of the award produced by the respondent is a tampered one and it took nearly four years for him to collect the documents. It is further averred that the petitioner had filed F.C.O.P.No.85 of 2015 for visitation rights under Section 12 of Guardians and Wards Act and the same was dismissed on the intervention of the respondent by filing petition under Order 7, Rule 11 of CPC and the same was nothing to do with the present case. It is also averred that the petitioner was out of station for his legal studies and returned to Tamil Nadu in the second week of January, 2018 and therefore, delay of 2224 days occurred in filing the appeal.

4. I heard Mr.S.Karthigeyan, petitioner appearing in person and Mr.T.Arul, learned counsel for the respondent.

5. The petitioner appearing in person submitted that since he was away from Tamil Nadu for doing his legal studies and he returned back only in the second week of January, 2018 and also due to some personal and financial reasons, he could not able to file the appeal in time and hence the delay of 2224 days occurred. The petitioner appearing in person further submitted that he is having a good case on merits and the delay in filing the appeal is neither wilful, nor wanton.

6. By relying upon the decision in N.Balakrishnan v. M.Krishnamurthy, reported in 1999-1-L.W. 739, the petitioner appearing in person submitted that the primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice and refusal to condone the delay would cause serious prejudice to him and prayed for condonation of the delay of 2224 days in filing the appeal.

7. Per contra, the learned counsel for the respondent submitted that the petitioner has not shown sufficient cause for the delay and the reasons set out in the affidavit are not genuine and each and every day delay has not been properly explained by the petitioner. He would submit that there was no bona fide in the petition and prayed for dismissal of the same.

8. I have considered the submissions made by the petitioner appearing in person and the learned counsel for the respondent and also perused the materials available on record.

9. The point that arises for consideration in this petition is whether the petitioner has shown sufficient cause for condoning the delay of 2224 days in filing the appeal.

10. The grievance of the petitioner is that due to personal and financial reasons, he was not able to file the appeal against the order passed in G.W.O.P.No.43 of 2009 within the statutory period of limitation and delay of 2224 days occurred in filing the appeal. Further grievance of the petitioner is that he was out of station for his legal studies and returned back to Tamil Nadu only in the second week of January, 2018. According to him, the delay is neither wilful, nor wanton.

11. It appears that the affidavit filed in support of the petition, does not disclose sufficient cause for condonation of delay. It is simply stated that because of some personal and financial reasons, the petitioner was unable to file the appeal against the order passed in G.W.O.P.No.43 of 2009 in time. It is also stated that the petitioner was out of station for his legal studies and returned back to Tamil Nadu in the second week of January, 2018. In my opinion, it is just a reason and it does not fall within the scope of "sufficient cause". The affidavit does not disclose the nature of personal and financial reasons and also the particulars of legal studies stated by the petitioner. Though the petitioner stated that he was studying LLB, nothing has been produced to establish the same. Further, studying of LLB is not the reason for not preferring the appeal within the statutory period of limitation.

12. In *State of Haryana v. Chandra Mani and others*, reported in 1996(II) CTC 109, the Hon'ble Supreme Court held thus:

"11. The expression "sufficient cause" should therefore, be considered with pragmatism in injustice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. it must be held that the delay of 109 days in this

case has been explained and that it is a fit case for condonation of the delay."

13. In Collector, Land Acquisition and another v. Katiji and others, reported in 1987 SCR (2) 387, the Hon'ble Supreme Court held thus:

"..... Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore, set aside. Delay is condoned and the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides. Appeal is allowed accordingly. No costs."

14. In N.Balakrishnan v. M.Krishnamurthy, reported in 1999-1-L.W. 739, 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."

15. The decision in N.Balakrishnan, cited by the petitioner appearing in person 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 2224 days in

filing the appeal.

16. 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.

17. 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. Admittedly, in the case on hand, the explanation offered by the petitioner is not satisfactory.

18. 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 encapsule 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."

19. 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."

20. 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)

21. 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 six and half years.

22. 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 petition under Section 5 of the Limitation Act, the petitioner appearing in person has not shown semblance of bona fide for the delay on his part in preferring the appeal within the period of limitation.

23. 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.

24. In the instant case, the petitioner and the respondent are husband and wife. From the wedlock, a male child by name K.Kavin was born.

25. On a perusal of the typed set of papers produced by the petitioner in person, it is seen that the respondent wife filed H.M.O.P.No.106 of 2007 for divorce before the learned Sub-Court, Vellore and the matter was referred to Lok Adalat. On

20.07.2007, a settlement was arrived at before the Lok Adalat organised by the District Legal Services Authority, Vellore. The following is the settlement recorded before the Lok Adalat:

"Petitioner and Respondent agreed for Divorce.
Both petitioner and Respondent withdrawn the
allegations made against each other.
Hence Divorce granted."

26. On further perusal of the typed set of papers, after granting divorce, the petitioner had filed G.W.O.P.No.43 of 2009 on the file of the learned Principal District Court, Vellore seeking to appoint him as guardian of the minor Kavin and also directing the respondent to return the custody of minor Kavin to him. After full trial, by an order dated 31.10.2011, G.W.O.P.No.43 of 2009 came to be dismissed by the trial Court.

27. It appears that after the dismissal of G.W.O.P.No.43 of 2009, the petitioner had preferred F.C.O.P.No.85 of 2005 before the learned Family Court, Vellore for custody of the child. By an order dated 13.11.2017, the said petition came to be rejected by the Family Court.

28. As stated supra, G.W.O.P.No.43 of 2009 came to be dismissed way back on 31.10.2011 and if really, the petitioner aggrieved by the same, he ought to have filed the appeal within the statutory period. But the petitioner has failed to do so and had filed the appeal on his own with a delay of 2224 days without showing the sufficient cause.

29. 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. The other side would have in all probability destroyed the records thinking that the records would not be relevant as there was no further proceeding in the matter.

30. 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.

31. From a reading of the averments, it is seen that petition seeking to condone the delay of 2224 days has been filed in a casual manner without giving proper reasons, much less acceptable reasons and the same cannot be sustained in law.

32. At the cost of repetition, it is reiterated that the

petitioner has not shown sufficient cause to condone the delay as contemplated in the decisions of the Hon'ble Supreme Court, supra. The petitioner is seriously lacking to apply the provision of Section 5 of the Limitation Act, as the affidavit filed by the petitioner in support of the petition is very vague and bereft of material particulars without any convincing explanation for the period commencing from the date of the order passed and/or the expiry of statutory period till the date of filing of the petition. In the case on hand, the inordinate delay of 2224 days in filing the appeal has not been properly explained by the petitioner.

33. 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 petitioner appearing in person has failed to explain each and every day delay.

34. For the foregoing discussions, the Civil Miscellaneous Petition is liable to be dismissed. Accordingly, the same is dismissed. Consequently, Civil Miscellaneous Appeal SR No.16561 of 2018 is rejected. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs

To

The Principal District Judge,
Vellore.

सत्यमेव जयते

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in CMA SR.No.16561 of 2018
and

CMA SR.No.16561 of 2018

KS (CO)
CS/14/03/2019

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