

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 19.11.2019

Pronounced On : 03.12.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

Civil Revision Petition (NPD) No.4174 of 2013

1. Tamil Nadu Electricity Board,  
Rep. By its Chairman,  
Anna Salai, Chennai - 2.

2. The Chief Engineer / Transmission,  
Tamil Nadu Electricity Board,  
Anna Salai, Chennai -2

.. Petitioners

Vs

M/s.Daksha Cable Industries,  
Rep. By its Proprietor Ramakant Khare,  
143-A, Govt. Industrial Estate,  
Kandivili (West),  
Mumbai - 400 067

सत्यमेव जयते.. Respondent

**PRAYER:** Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the Fair and Decreetal order dated 08.03.2013 made in I.A.No.152 of 2012 in O.S.No.938 of 2011 on the file of learned XVIII Additional Judge, City Civil Court, Chennai.

For Petitioners : Mr.S.R.Shanmugadoss, Standing Counsel  
for Mr.V.Viswanathan

For Respondent : Mr.R.Thiagarajan

**ORDER**

The defendants in CS No.393 of 2006 on the file of this Court, which was subsequently transferred to the City Civil Court and numbered as O.S.No.938 of 2011, are the petitioners herein.

2. Initially, the respondent herein, as a plaintiff, has filed a suit as against the revision petitioners, seeking the following reliefs.

(a) For a declaration that the defendants or any one authorised by it shall not be entitled to invoke or enforce or encash the Bank Guarantee furnished by the plaintiff on 21.03.2005 vide No.BG/Fin./88/45 issued by Dena Bank, Kandivili West, Mumbai - 400 067, in favour of the 1<sup>st</sup> Defendant or invoke or enforce or encash the Bank Guarantee contrary to the terms contained in Purchase order Lr.No.ACE/TR-II/EP/A2/T.1215/POTR.1324/ D.67/2005 dated 09.03.2005, by holding the letter of demand dated 2.5.2006- Lr.No.CE/TR/SE/TRII/EP/AE.Daksha Cable D75/06 dated 2.5.06 issued by the Defendants as illegal, invalid and unenforceable in law.

(b) For permanent injunction restraining the Defendants or any one authorised by them from invoking or encashing the Bank Guarantee No.BG/Fin./88/45 dated 21.03.2005 issued by Dena Bank, Kandivili (West) Mumbai - 400 067 and the

subsequent extension dated 24<sup>th</sup> October 2005, issued by Dena Bank, except in accordance with law.

(c) For permanent injunction restraining Defendants or their Officers or any one authorised by them from imposing any penalty or damages or forfeiture of the security deposit or calling for fresh orders in respect of the Purchase Order Lr.No.ACE/TR-II.EP/A2/T1215/POTR/1324/D.67/2005 dated 09.03.2005, in view of torrential rain and the strike in the Plaintiff's factory premises M/s.Daksha Cable Industries, 143-A, Govt. Industrial Estate, Kandavalli (West), Mumbai.

(d) For permanent injunction restraining Defendants or any on authorized by it from terminating the Purchase order Lr.No.ACE/TR-II.EP/A2/T.1215/POTR/1324/ D.67/2005 dated 09.03.2005, except in accordance with law.

3. When the suit is pending for trial, on the point of pecuniary jurisdiction, the suit was transferred to the learned Additional District and Sessions Judge, FTC-IV. For the reason that the petitioners have not appeared before the Court concerned, on 06.07.2011, the learned Additional District and Sessions Judge (FTC-IV), Chennai passed an order of exparte against the revision petitioners. Consequently, decree has also been passed in favour of the respondent/plaintiff.

4. Immediately on 17.09.2012 the petitioners filed an application under Section 5 of the Limitation Act in IA No.152 of 2012 and prayed to condone the delay of 412 days in filing the application to set aside the exparte decree.

5. The learned XVIII Additional District and Sessions Judge (FTC-IV), Chennai, after affording an opportunity to the respondent herein by order dated 08.03.2013, dismissed the application filed by the revision petitioners. Aggrieved over the said order, the petitioners are before this Court, with the present Civil Revision Petition.

6. In the impugned order, the learned XVIII Additional District Judge, City Civil Court, Chennai, has held that the petitioners have not shown any sufficient cause for condonation of the delay. He has further held that the reasons stated by the petitioners that the bundle was misplaced with other records and another one reason stated by the petitioners that due to the change of Government, the panel advocates have changed and thereby, the application to set aside the exparte decree, has not been filed within the time frame, have not been substantiated.

7. When this Civil Revision Petition came up for hearing, the learned standing counsel appearing for the revision petitioners would contend that due to the change of Government, the petitioners were not in a position to identify the panel advocate. Only after appointing the new panel advocate, the work of filing an application to set aside the exparte decree was entrusted and therefore, the reason stated by the Court below, for rejecting the application, do not have any merit and accordingly, he prayed to allow the application.

8. On the other hand, the learned counsel appearing for the respondent would contend that before filing the application, the petitioners herein had informed the respondent/plaintiff's bankers, over telephone, that they have preferred an appeal in AS No.2654 of 2011 and that the same is pending before the Hon'ble High Court, Madras. Only on verification it was found out that no such appeal has been filed by the petitioners herein. Thereafter, on 04.08.2012, itself, the respondent/plaintiff issued another legal notice for initiating contempt proceedings. Though the said notice was served on the petitioners, they have not filed any application immediately. Therefore, the reasons stated by the revision petitioners, are false.

9. Upon considering the arguments advanced by either side, it is true, that the petitioners being Government department, they have to be vigilant and careful and ought to have watched the proceedings initiated by the respondent/plaintiff. In this case, in our hand, the duties and responsibilities, entrusted to the officers, who are working in the petitioner's department, are not followed in accordance with law. However, it is to be noted that in **Sundar Gnanoolivu Vs. Rajendran Gnanavolivu** [Manu/TN/2121/2003] a Hon'ble Division Bench of this Court has held as follows:

“13....

.....Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long time, it cannot be presumed to be non-deliberate delay, and in such circumstances of the case, he cannot be heard to plead that substantial justice deserved to be preferred as against technical considerations.

We are of the view that the question of limitation is not merely a technical consideration. Rules of limitation are based on principles of sound public policy and principles of equity. Is a litigant liable to have a Damocles' sword hanging over his head indefinitely for a period to be determined at the whims and fancies of the opponent?

14. On a conspectus reading of the above principles set out in the various judgments, it is well settled that a liberal approach should be extended while considering the application for condonation of delay.”

10. Following the said observation, this Court is also of the same opinion that this type of application has to be approached liberally. In support of his contentions, though the learned counsel appearing for the respondent, relied on the judgments in (i) *United India Assurance Company Ltd. Division Office Vs. Pravin Paul and Ors.* [MANU/TN/0430/1992], (ii) *P.K.Ramachandran Vs. State of Kerala and Ors.* [MANU/SC/1296/1997], (iii) *Indian Oil Corporation Ltd., Madras Vs. Sakuntala Ganapathy Rao* [MANU/TN/0310/1998] and (iv) *C.Raghupathy Vs. C.Govindan and Ors.* [MANU/TN/2322/2008], it is necessary to see whether the reasons stated by the petitioners, are bonafide or not.

11. All are aware that in the year 2011, the then existing Government changed and the present Government constituted the new cabinet. Further, it is usual that whenever there is a change in government, the panel Advocates of various department, who had appeared, would resign and thereafter, new panel Advocates are appointed for conducting the

cases relating to various departments. So the reason stated by the petitioners, is a genuine one.

12. Now on going through the averments set out in the plaint, the plaintiff has ultimately prayed an order of permanent injunction, restraining the defendants from invoking the bank guarantee already given by the respondent/plaintiff. In fact, the plaintiff/respondent herein is a contractor, who has entered into a contract with the petitioners for doing some work. In the plaint itself, it was admitted by the plaintiff / respondent that due to the extraordinary circumstances, he did not finish the work within the time agreed. In this regard, it is necessary to see what are the conditions to be enforced, if the breach of contract has occurred. For deciding the same, elaborate enquiry is necessary. Otherwise, there may be a chance to the petitioners, for losing the government money. Moreover, it is necessary to see whether any amount was paid to the respondent/plaintiff at the time of entering into contract. All the above said facts have to be decided only at the time of trial

13. Further, our Hon'ble Apex Court, in ***Robin Thapa Vs. Rohit Dora***, reported in **2019 (7) SCC 348**, has recently held as follows:

“7. Ordinarily, a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits.”

14. As per the principles set out by our Hon'ble Apex Court, herein also, this Court is of the opinion that if the delay requires to be condoned by the petitioners, is not condoned and elaborate trial is not conducted, it will lead to furthermore consequences and create multiplicity of proceedings. Accordingly, in order to fix the liability of either parties, in the agreement entered into between the petitioners and respondent, it is necessary to condone the delay of 412 days in filing the application to set aside the exparte decree.

15. Therefore, in the light of the above observations, the impugned order dated 08.03.2013, made in IA No.152 of 2012, on the file of the learned XVIII Additional Judge, City Civil Court, Chennai, is set aside and the delay of 412 days in filing the application to set aside the exparte decree is condoned. The Civil Revision Petition is allowed. No Costs.

16. Now considering the fact that the suit has been filed in the year 2006, this Court is of the opinion that appropriate direction is necessary to the learned XVIII Additional Judge, City Civil Court, Chennai, for completing the trial. Accordingly, the learned XVIII Additional Judge, City Civil Court, Chennai, is directed to post the suit in OS No.938 of 2011, on a day-to-day basis and further, directed to dispose the suit as early as possible, preferably, within a period of three months, from the date of receipt of a copy of this order.

03.12.2019

Speaking/Non-speaking order  
Index: Yes/No  
Internet: Yes  
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To

The XVIII Additional Judge (FTC-IV), City Civil Court, Chennai.

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R.PONGIAPPAN, J.,

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Pre-delivery Order in  
CRP (NPD) No.4174 of 2013

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