

A.Nos.3757 and 3758 of 2019
in C.S.No.793 of 2010

PUSHPA SATHYANARAYANA, J.

The defendant in the suit is the applicant in A.No.3757 of 2019 seeking condonation of delay of 1937 days in filing the application to set aside the ex-parte decree dated 03.10.2013.

2. He also filed A.No.3758 of 2019 seeking for stay of all further proceedings in E.P.No.59 of 2018 on the file of this Court pending disposal of the applications filed in the suit.

3. The suit is filed for delivery of vacant possession. The applicant /defendant had purchased the property on 04.06.2001 in auction sale conducted by the Park Town Benefit Fund, Chennai. The property was brought to sale as a secured asset, which was owned and mortgaged by one Anthony Ammal. Pursuant to the auction, possession was also given to the applicant/defendant along with the tenants and the tenants also attorned the tenancy in his favour. The applicant/defendant also had filed a suit in O.S.No.6081 of 2003 against the respondents/plaintiffs seeking for injunction and also obtained a decree on 18.04.2006.

4. According to the applicant/defendant, no notice was served on him in the suit and he got the knowledge of the suit filed and decreed only after the notice in the execution petition in E.P.No.59 of 2018 was served to one of the his tenants, who brought it to his knowledge.

5. Learned counsel for the applicant/defendant submitted that the defendant has been residing in Melpadi Muthu Street, Nungambakkam, Chennai-34, whereas, the suit summons were sent to the address shown in the plaint, which is the property purchased by the applicant/defendant in the court auction. The present suit for delivery of vacant possession is filed after the auction purchase by the applicant.

6. The deceased first respondent also seems to have filed a suit in O.S.No.3942 of 2001 on the file of the XV Assistant Judge, City Civil Court, Chennai, challenging the said auction. Curiously in the said suit, the applicant/defendant, who is the auction-purchaser, was not made as party. However, the plaintiffs obtained a decree on 16.07.2002. After obtaining the decree for setting aside the sale behind the back of the purchaser, the present suit was filed for delivery of vacant possession by adding the applicant as a party, however, serving the summons to a wrong address.

7. It is admitted by the learned counsel for the respondents/ plaintiffs that the suit notice was taken only to the address of the property, which was purchased by the applicant/defendant. One cannot expected to reside in all the properties that he or she may purchase. It is the bounden duty of the plaintiffs to verify the correct address for service before initiating the *lis*. It is also relevant to mention that when the first suit seeking to set aside the auction sale was filed in O.S.No.3942 of 2001 itself, the relief sought for in the present suit ought to have been prayed for.

8. In the present case, the attitude and conduct of the respondents/plaintiffs by filing one suit after another with respect to the same property only indicates that that they are interested in only getting an exparte order behind the back of the persons, who may be affected.

9. It has been repeatedly highlighted by the Hon'ble Supreme Court that certain principles have to be adopted while dealing with the application for condonation of delay. The following judgments could be fruitfully referred in this regard :

(i) In **Esha Battacharjee V. Management Committee of Raghunathpur Nafar Academy, 2013(12) SCC 649**, the Hon'ble Apex Court culled out certain guidelines by referring a catena of earlier decisions and the excerpts of the same would run thus:

"**21.**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 encapsulate 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 scrutinised 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.

In the said judgment, the Hon'ble Apex Court also added the following guidelines :

"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."

(ii) In **S.Ganesharaju (d) their Lrs and another vs. Narasamma (d) through their Lrs and others, 2012(4) Scale 152**, it has been held as follows :

"15. The expression "sufficient cause" as appearing in **Section 5** of the Indian Limitation Act, 1963, has to be given a liberal construction so as to advance substantial justice.

16. Unless respondents are able to show malafide in not approaching the court within the period of limitation, generally as a normal rule, delay should be condoned. The trend of the courts while dealing with the matter with regard to condonation of delay has tilted more towards condoning delay and directing the parties to contest the matter on merits, meaning thereby that such technicalities have been given a go-by.

17. Rules of limitation are not meant to destroy or

foreclose the right of parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly.

18. We are aware of the fact that refusal to condone delay would result in foreclosing the suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate.

19. In fact, it is always just, fair and appropriate that matters should be heard on merits rather than shutting the doors of justice at the threshold. Since sufficient cause has not been defined, thus, the courts are left to exercise a discretion to come to the conclusion whether circumstances exist establishing sufficient cause. The only guiding principle to be seen is whether a party has acted with reasonable diligence and had not been negligent and callous in the prosecution of the matter. In the instant case, we find that appellants have shown sufficient cause seeking condonation of delay and same has been explained satisfactorily."

(iii) The Hon'ble Apex Court in **Oriental Aroma Chemical Industries Ltd., vs. Gujarat Industrial Development Corporation and another, 2010 (2) Supreme 115**, observed as follows :

"8.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. The expression "sufficient cause" employed in [Section 5](#) of the Indian Limitation Act, 1963 and other similar statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate - [Collector, Land Acquisition, Anantnag v. Mst.Katiji](#), (1987) 2 SCC 107, [N.Balakrishnan v. M.Krishnamurthy](#), (1998) 7 SCC 123 and [Vedabai v. Shantaram Baburao Patil](#), (2001) 9 SCC 106."

(iv) In **AIR 2002 SC 1201 (Ram Nath Sao alias Ram Nath Sahu and aothers v. Gobardhan Sao and others**, the Hon'ble Supreme Court held in the following manner :

"13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. 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. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the Court should lean against acceptance of the explanation. While condoning the delay, the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses."

10. A perusal of the aforesaid judgments of the Hon'ble Supreme Court makes it clear that time and again it has been held that 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. It has also held that 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.

11. Following the aforesaid judgments and also that the reasons whatever that have been stated in the affidavit being satisfactory, the applicant/defendant has made out sufficient reasons for the condonation of delay and thus, this Court is of the considered view that one more opportunity could be given to the applicant/defendant to get the matter adjudicated on merits.

12. Accordingly, the delay of 1937 days in filing the application to set aside the ex-parte decree dated 03.10.2013 is condoned.

13. It is to be stated that the Hon'ble Supreme Court held in a catena of decisions that when the condonation of delay application itself is pending, passing of interim orders is impermissible, as the main case itself *non-est* in the eye of law. At this juncture, it is relevant to refer to the judgment of the Hon'ble Apex Court in **State of West Bengal V. Somdeb Bandyopadhyay, (2009) 2 SCC 694**, wherein, it has been held as follows :

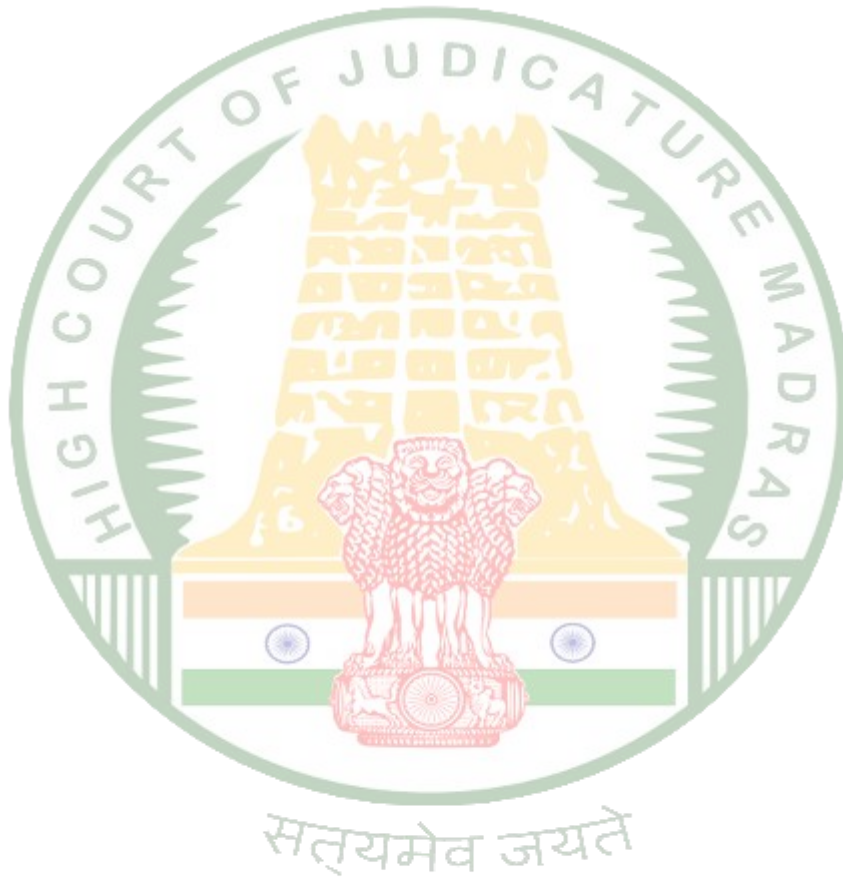
"7. It is to be noticed that even without condoning the delay and entertaining the writ appeal the High Court has passed a series of interim orders. Such a course is impermissible as the appeal was non est in the eye of the law without it being entertained. Admittedly, the delay in preferring the writ appeal was not condoned at the time when the interim orders were passed."

14. In view of the ratio laid down by the Hon'ble Apex Court in the above judgment, it is crystal clear that the passing of interim orders during pendency of a condonation application was impermissible such a course is not legally permissible and thus, A.No.3758 of 2019 filed as such seeking stay of the execution proceedings cannot be entertained.

15. In the result, A.No.3757 of 2019 is allowed and A.N.o.3758 of 2019 is dismissed. It is open to the applicant to file similar application as and when necessary.

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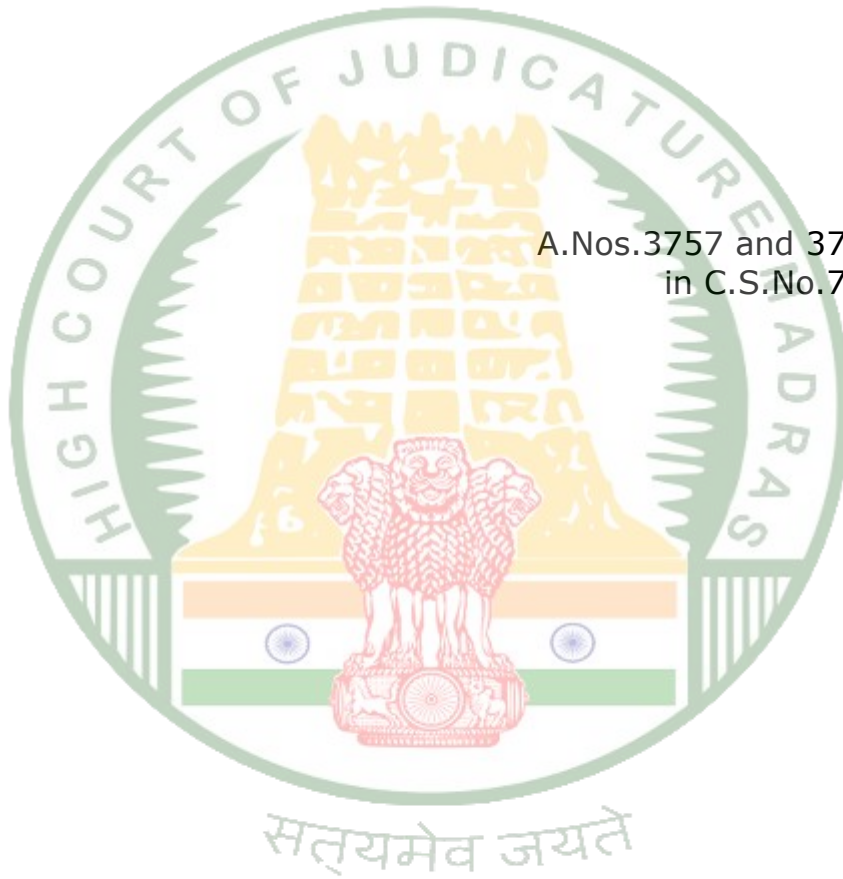


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