

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY THE 29TH DAY OF APRIL 2019

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

A. No.3216 of 2019

in

E.P.146 of 2016

O.P.MSEFC/Try.3 of 2014

(RIFC/TRY-19/No.3/2014),

File No:2340/A4/2014

M/s.CJP Industries,
Rep By its Managing Partner
Mr.S.Julius,
W 166/167, Sidco Industrial Estate,
Valavanthankottai,
Trichy - 620 015 ...Petitioner/Decree Holder

Vs.

M/s.Techpro System Limited
Rep by its Managing Director,
Techpro Towers, 11-A 17,5th Cross Road,
Sipcot IT park,
Siruseri Chennai -603 103 ...Respondent/Judgment Debtor

A.No.3216 of 2019

1.Amitha Bishnoi
Old No.54-E, New No.77
Gulmohar Avenue,
Velachery Road, Chennai - 600 032

...Applicant/2nd Respondent/Applicant/
Proposed Respondent 2

2.Akshay Kumar Bishnoi
S/o.Amitha Bishnoi
Old No.54-E, New No.77
Gulmohar Avenue,
Velachery Road, Chennai - 600 032

... Applicant/3rd Respondent/Applicant/
Proposed Respondent 3

Vs.

3.M/s.CJP Industries,
Rep By its Managing Partner Mr.S.Julius,
W 166/167, Sidco Industrial Estate,
Valavanthankottai,
Trichy - 620 015

...1st Respondent/applicant/
Respondent/ Petitioner

4.Techpro System Limited,
Rep by its Managing Director,
Techpro Towers, 11-A 17,5th Cross Road,
Sipcot IT park, Siruseri,
Chennai -603 103

...2nd Respondent/Applicant/
2nd Respondent/Judgment Debtor

Application praying that this Hon'ble Court be pleased to condone the delay of 6 days in filing the present Application No.4830 of 2018.

This application coming on this day before this court for hearing and the court made the following order:

This application has been filed seeking condonation of delay in filing the present application in Application No.4830 of 2018.

2.In fact, Application No.4830 of 2018 was numbered by the Registry without insisting on the delay petition. On appearance of the respondents, learned counsel for the respondents, Mr.C.T.Mohan, took a plea that there is a delay in filing Application No.4830 of 2018. His contention was that the order impugned was passed by the learned Master on 27.04.2018, which happened to be a last working day. Under the Original Side Rules a period of 8 days is available for filing an appeal against the order of the learned Master no limitation in filing the appeal expired during vacation. If limitation expires during vacation, the appeal on application can be filed on the re-opening day. If the application is filed on the re-opening day, there is no question of any delay. But it is seen from the record that application No.4830 of 2018 was filed only on 07.06.2018 i.e. 3 days after the re-opening day. Therefore,

the learned counsel for the respondents, the learned counsel for the applicant has filed the present application in Application No. 3216 of 2019 seeking condonation of delay. While calculating the delay period during which the Court was closed was not taken into account and the delay was shown only 6 days.

3.Mr.C.T.Mohan, learned counsel for the respondents has filed an elaborate counter and he would contend that the delay is 32 days and not 6 days. He will also find fault with the reasons assigned for condonation of delay. He would submit that the delay has not been properly explained. The affidavit filed in support of this application seeking for condonation of delay reads as follows:

"2.I state that I am filing the present application to condone the delay in filing the present application No.4830 of 2019. I state that when the matter came up for hearing on 16.04.2018, it was submitted by the counsel for the 1st respondent that the appeal against the order dated 27.04.2018 passed by the Master is barred by limitation which fact I had noticed only subsequently and hence as a matter of abundant caution, I am filing the present application to condone the delay in filing the present Application."

This reason according to Mr.C.T.Mohan, is not sufficient cause for condoning the delay. On reading of the above paragraph 2 of the affidavit, it is courses that Application No.4830 of 2018 was filed on the understanding that it is in time and the same was also numbered by the Registry without raising any objection on the question of any limitation.

4.The argument of the learned counsel, Mr.C.T.Mohan, regarding the limitation is a technical argument and the fact that application No.4830 of 2018 was not filed on the re-opening day alone raises the question of delay. If only the application has been filed on the re-opening i.e. 04.06.2019 there would have been no question of any delay.

I find that the reasoning given in paragraph no.2 of the affidavit is constitute a sufficient cause for condonation of delay as it reveals that the applicant was under misapprehension that the entire period of vacation is to be excluded while calculating the delay. By therefore, hence, this application is allowed and the delay is condoned.

Post the matter on **04.06.2019**.

Sd./- R.S.M.J.

29.04.2019

//Certified to be true copy//

Dated at Madras this the day of 2019.

TE/17/05/2019

COURT OFFICER(O.S.)

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