

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.P.No.22655 of 2019

in

A.S.SR.No.56719 of 2019

C.Ravi ...Petitioner/2nd Defendant

Vs..

1.Sulochana

2.Kumari

3.Manjula

4.C.Rajendran

...Respondent

Civil Miscellaneous Petition filed under Order 41 Rule 3A of CPC, 1908 to condone the delay of 668 days in filing the appeal against the judgment and decree dated 03.03.2017 in O.S.No.2 of 2014 on the file of the I Additional District and Sessions Judge, Vellore, Vellore District.

For Petitioner : Mr.M.Deva Raj

For Respondent : Mr.A.K.Raghavelu
for Respondents 1 to 3

ORDER

This Civil Miscellaneous Petition is filed to condone the delay of 668 days in filing the appeal against the judgment and decree dated 03.03.2017 in O.S.No.2 of 2014.

2.The suit was filed for partition and the petitioner is the second defendant in the Original Suit. The appeal suit is filed challenging the preliminary decree passed in the partition suit and it is an admitted fact that an Interlocutory Application has already been filed by the respondents before the Trial Court for passing final decree and in that Interlocutory Application one Mr.V.B.Bhaskar, is appointed as an Advocate Commissioner, who inturn received the remuneration of Rs.20,000/- also and for the process of preparing the final

report to be submitted before the Trial Court for passing a final decree, the case is listed for 'filing report' on 09.01.2020.

3. Under these circumstances, the First Appeal is filed with petition to condone the delay of 668 days.

4. The learned counsel appearing on behalf of the petitioner strenuously contended that the petitioner was suffering with multiple disk disorders, Cervical Spondylosis-Radi Culovathy, Acid Peptic Disease, Type II Diabetic Mellitus, low back pain-Bilateral Sciatica and was almost crippled and bedridden from March, 2017 onwards. It is contended that the petitioner was unable to move out of bed and was suffering from pain and mental agony and he was not in a position to think about his case at all and thus not contacted his Advocate for the purpose of preferring an appeal.

5. The learned counsel appearing on behalf of the petitioner reiterated by stating that the delay is neither wilful nor wanton, however admitted that the delay of 689 days is enormous. When the petitioner was not in a position to meet his counsel for the purpose of filing an appeal, in view of his continuous ailments, the delay is to be condoned as the Appeal Suit is filed questioning the share to be allotted to the petitioner. In support of the said contentions, the learned counsel appearing on behalf of the petitioner cited the judgment of the Madras High Court in the case of Arun Alexander Lakshman Vs. A.P.Vedavalli reported in 2007 (4) CTC 449, wherein the Division Bench of this Court observed as follows in paragraphs 11, 17 & 18, which are extracted herein;

"11. It is settled law that "sufficient cause" must receive a liberal construction so as to advance substantial justice when no negligence, or inaction, or want of bonafide, is imputable to the applicant, the over-riding consideration being doing substantial justice. The Court should not lightly condone the delay in filing the application to set aside the exparte Decree. Discretion is to be exercised like any other judicial discretion with vigilance and circumspection. The true test is whether the applicants have acted with due diligence.

.....

17. It is settled law that Section 5 application is to be construed liberally so as to do substantial justice to the parties. The provision contemplates that the Court has to go into the position of the person concerned and find out if the delay can be said to have been resulted from the cause which the petitioner had adduced and whether the cause stated in

the circumstances of the case is sufficient. It is the condition precedent for the exercise of discretion that the Court must satisfy itself as to whether there was sufficient cause for exercising such discretion and condoning the delay. The expression 'sufficient cause' should be considered with pragmatism with a justice oriented approach.

18. Court has to see whether sufficient cause is shown for the delay. What is or what is not 'sufficient cause' would depend upon varied and special circumstances of each case. To decide whether sufficient cause is shown or not, it is very undesirable to act upon precedents as every Judge has to deal with particular facts of each case. In State of Kerala V. E.K. Kuriyipe [1981 Supp SCC 72], it was held that whether or not there is sufficient cause for condonation of delay is a question of fact dependent upon the facts and circumstances of the particular case."

6. Considering the legal principles settled in the very same judgment her Lordship Justice R. Bhanumathi. J., while speaking for the Bench made an observation in Paragraph No. 17 itself that it is a settled law that Section 5 application is to be construed liberally so as to do substantial justice to the parties. The provision contemplates that the Court has to go into the position of the person concerned and find out if the delay can be said to have been resulted from the cause which the petitioner had adduced and whether the cause stated in the circumstances of the case is sufficient. Not stopping with that, the learned Judge further observed that it is the condition precedent for the exercise of discretion that the Court must satisfy itself as to whether there was sufficient cause for exercising such discretion and condoning the delay. The expression 'sufficient cause' should be considered with pragmatism. Thus, the Division Bench in unambiguous terms held that mechanical approach is undesirable in order to provide complete justice to the parties. The reasons placed before the Court, the genuity of the cause as well as the trustworthiness of the statements ought to be considered by the Court for exercising the discretionary power for the purpose of condoning the huge delay. Courts are normally condoning the delay if the period is reasonable, however in respect of the enormous delay in filing the Appeal Suit, the Courts are bound to consider the reason and its genuity as well as the trustworthiness of the documents or the pleadings made in this regard. Therefore, with these principles, the facts of the case on hand as narrated by the petitioner is to be considered by this Court.

7.The petitioner in the present petition has stated that he was suffering with multiple disk disorders, Cervical Spondylosis-Radi Culovathy, Acid Peptic Disease, Type II Diabetic Mellitus, low back pain-Bilateral Sciatica and was almost crippled. These all are the common diseases in the current day lifestyle and more specifically diabetics cannot be considered as a disease as per the Medical World, it is considered as a deficiency and therefore, this cannot be a reason for not filing of the appeal for about 2 years. Therefore, the nature of the diseases and the statement made that the petitioner was bedridden and crippled are to be considered together for the purpose of exercising the power of discretion to condone the enormous delay.

8.The learned counsel appearing on behalf of the respondent disputed the contentions raised by the petitioner by stating that the reasons stated are cooked up stories, invented with an idea to prolong and protract the litigation. In order to substantiate the averments set out by the petitioners, no medical records have been produced. Certain general diseases are narrated which is not sufficient to condone the huge delay of about 2 years. Such general statement is made in order to avoid the final decree, as the petitioner himself is aware of the fact that the Advocate Commissioner was appointed who had already received the payment from the parties and the case is listed for submission of report on 09.01.2020. Under these circumstances, the huge delay of 689 days cannot be condoned at all.

9.In respect of said contentions, the learned counsel appearing on behalf of the respondent cited the judgment of this Court in the case of Zulaiha Syed Mohideen Vs. D.Visalakshi Ammal & Others reported in MANU/TN/2222/2013, wherein the Court made following observations;

5.Before going into the merits of the case, first of all, it should be stated that in a case of this nature for condonation of delay, it is well settled that length of delay is not material, but the reasons stated thereof for condonation of delay. In other words, for condonation of delay, the reasons adduced must be properly pleaded, convincing and acceptable and explanation should be offered for condonation of the delay. Unless proper explanation is offered, the Courts could not exercise its discretion in the proper perspective to advance substantial justice. It is also settled that when a court has exercised its discretionary power to condone the delay, the appellate Court, in exercise of its discretion, should not ordinarily interfere with such decision unless the discretion exercised is

arbitrary and overlooking the interest accrued to another party to the dispute. The appellate Court should also see whether the trial court has taken into consideration all the aspects of the matter, the advantage or disadvantage that may be caused to the other side while condoning the delay inasmuch as during the interregnum, the other party could have asserted a vested right. With this background, let us analyse the merits of the rival contentions urged by the counsel for both sides.

6 to 11.....

12. On behalf of the revision petitioner, several decisions were cited. The learned counsel for the respondents objected for relying on the decisions by stating that they relate to condonation of delay in filing a petition and not with respect to condonation of delay in re-presenting a petition. Such an argument of the counsel for the respondents cannot be countenanced. Each and every case depends on the facts and circumstances of that case. Further, the issue involved in this case is whether the delay in filing a petition has been properly explained and sufficient cause has been shown for the delay or not and in support of the same, the learned counsel for the revision petitioner has relied on the following decisions:-

(i) In (Kandaswamy and four others vs. Krishnamandiram Trust, Karur, by its Trustees and 33 others) 2001 (4) CTC 722 this Court took note of the fact that the conduct of the revision petitioner in keeping quiet for over two years only on account of inability to mobilise other petitioner evidences would amount to gross negligence, irresponsible inactive attitude and therefore the petitioner lacks bonafides. Under those circumstances, this Court refused to condone the delay of 797 days in filing a petition to set aside the exparte decree. In the above case, this Court also referred to the decision of the Honourable Supreme Court reported in (M.K Prasad vs. P. Arumugam) (2001) 6 Supreme Court Cases 176, which was relied on by the learned counsel for the respondents

(ii) In (Sundar Gnanalivu rep. by his power of attorney agent Mr. Rukmini vs. Rajendran Gnanavolivu, rep. by its power of attorney agent Veina Gnanavalivu) 2003 1 Law Weekly 585, the Division Bench of this Court held that when the averments in the affidavit are untrue, lacks bona fides, then the case falls within the exception to the Rule of Liberal approach and it does not deserve the liberal approach formula in matters relating to condonation of delay. In this

case also, the Division Bench of this Court followed the decision of the Honourable Supreme Court reported in (M.K Prasad vs. P. Arumugam) (2001) 6 Supreme Court Cases 176, which was relied on by the learned counsel for the respondents. In Para Nos. 14-A and 15, the Division Bench of this Court held thus:-

14-A. In yet another Division Bench Judgment reported in (1990) 1 LLN 457 (Tamil Nadu Mercantile Bank Limited, Tuticorin versus Appellate Authority under the Tamil Nadu Shops and Establishments Act, Madurai and another) the principles relating to Rule of limitation have been discussed and the legal position has been stated by His Lordship Mr. Justice M. Srinivasan, as he then was, in paragraphs 14 and 17, which read as under:-

"14.If a litigant chooses to approach the Court long after the time prescribed under the relevant provisions of the law, he 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. Hence, to view a matter of condonation of delay, with a presupposition that no prejudice will be caused by the condonation of delay to the respondent in that application will be fallacious. In our view, each has to be decided on the facts and circumstances of the case. 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.

"17.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 (underlining is ours)

15. 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. Sufficient caution has been exhibited to note that wherever there is lack of bona fides or attempt of hood-wink the Court by the party concerned who has come forward with an application for condonation of delay, in such cases, no indulgence should be shown by condoning the delay applied for. It is also clear to the effect that it is not the number of days of delays that matters, but the attitude of the party which caused the delay. In other words when the Court finds that the party who failed to approach the Court within the time stipulated comes forward with an explanation for condoning the delay, the Court if satisfied that the delay occasioned not due to the deliberate conduct of the party, but due to any other reason, then by sufficiently compensating the prejudice caused to the other side monetarily, the condonation of delay can be favourably ordered."

(iii) In the decision of this Court reported in (G. Jayaraman vs. Devarajan) 2007 (2) CTC 643, this Court held in a case where there was a delay of 553 days in filing an application to set aside the decree that discretion must not be exercised in an arbitrary or vague manner but must be exercised with vigilance and circumspection. It was further held that delay cannot be condoned as a matter of judicial generosity and the right accrued to the other side ought to be kept in view while considering the plea relating to affording opportunity to advance substantial justice. The facts involved in that case is identical to the facts of the case on hand. In that case, the decree holder was prevented from enjoying the fruits of the decree for about 8 years because of the filing of one petition after the other by the defendants to successfully stall the execution of the decree. In that context, this Court held that liberal approach theory would cause prejudice to the plaintiff/decreed holder and the discretion exercised by the trial court to condone the delay of 553 days cannot be sustained. In Para Nos. 9, 10 and 16, this Court held as follows:-

"9. Of course, it is the consistent view taken by the Supreme Court in various decisions that "sufficient cause" appearing in Section 5 of the Limitation Act should be liberally considered and the Court should be slow in shutting the door of justice to a litigant on the score of limitation. When the reason for the delay is properly explained, the Court is to adopt a pragmatic approach to condone the delay when there is no negligence, inaction or want of bona fide on the part of the Applicant.

10. At the same time, the discretion must be exercised in any arbitrary or vague or fanciful manner, but must be exercised like any other judicial discretion with vigilance and circumspection. Delay cannot be condoned as a matter of judicial generosity. Where delay could have been avoided by due care and caution, the Court may not exercise the discretion to condone the delay.

16. As stated earlier, delay cannot be excused as a matter of judicial generosity. Rendering substantial justice is not to cause prejudice to the opposite party. Money suit was filed way back in 1998 and Revision petitioner/plaintiff has been pursuing the matter for nearly 7 to 8 years. The matter could not reach finality because of one Application or other filed by the respondent/Defendant. The party claiming indulgence must prove that he is reasonably diligent in prosecuting the matter. This test for condoning the delay is not satisfied in this case. Liberal exercise of jurisdiction under Section 5 of the Act would cause prejudice to the plaintiff/Decree holder, who has been pursuing the money suit for quite a long time. In condoning the delay, there is improper exercise of discretion, and therefore, the impugned order cannot be sustained."

(iv) In (Shanmugam vs. Chokkalingam) 2009 (5) CTC 48 this Court held that the petitioner therein do not deserve indulgence inasmuch as the averments made by him in the affidavit are false and untrue. Under those circumstances, this Court refused to condone the delay of 332 days in filing a petition to set aside the exparte decree.

(v) In (Oriental Aroma Chemical Industries Limited vs. Gujarat Industrial Development Corporation and another) 2010 AIR SCW 1788 the Honourable Supreme Court rejected an application for condonation of delay of 4 years in filing an application to set aside an exparte decree on the ground that the explanation offered for condonation of delay is found to be not satisfied.

(vi) In the decision of this Court reported in (K.M. Balasubramaniam vs. C. Loganathan and another) 2011 (2) MWN (Civil) 741 this Court had an occasion to consider a case for condonation of delay of 1581 days in re-presenting an application to set aside the exparte decree. In that case, the suit was filed for recovery of money which was decreed exparte and the Execution Petition filed by the decree holder was also ordered exparte. Thereafter, the decree holder obtained sale certificate also and at the time of taking delivery of the property, the petitioner therein filed the application to condone the delay of 1581 days in setting aside the exparte decree. In that case also, a Petition under Section 47 of the CPC was filed stating that the decree is not executable. In the above facts and circumstances, this Court held that the delay offered for condonation of delay is not proper and acceptable. In Para Nos. 18 and 19, it was held as follows:-

18. It is not in dispute that the suit was filed based on a pro-note dated 01.08.1999 and the ex parte decree was passed on 08.09.2004, nearly 7 years back. It is an admitted fact that the Petitioner appeared in the suit as well as in the earlier E.P. No. 87 of 2005 through Counsel, however, the alleged petition filed under Order 9, Rule 13, C.P.C. to set aside the ex parte decree was not represented for more than four years and four months. Though arrest was ordered in the earlier E.P., however, as the petitioner evaded service, the E.P. was closed, then the present Execution Petition in E.P. No. 292 of 2006 was filed against the property belongs to the petitioner. Notice was served properly on the petitioner/judgment debtor and after proclamation of sale, property was sold in public auction. The successful bidder, a third party to the Suit paid the entire amount. As the sale was confirmed and Sale certificate was also issued, the amount deposited by the auction purchaser was withdrawn by the decree-

holder by filing a petition before the Court below and full satisfaction was recorded. At this stage, the petitioner is not entitled to seek an order to condone the inordinate delay of 1581 days in representing an unnumbered Application, seeking an order to set aside the ex parte. It cannot be disputed that the length of delay is not a matter for deciding the petition filed under Section 5 of Limitation Act and rendering substantial justice is the paramount consideration.

19. In the instant case, it is clear that the Petitioner/Judgment Debtor has deliberately adopted delay tactics at various stages. Having appeared through Counsel in the earlier Execution Petition in E.P. No. 87 of 2005, evaded arrest and has not challenged various orders passed in the Execution Petitions has casually filed the Application before the court below to condone the delay in representing an Application filed under Order 9, Rule 13, C.P.C. and also filed a Petition under Section 47, C.P.C. which would show that it is an abuse of process of law, as argued by the learned counsel for the Respondents. On the aforesaid circumstances, I could find no merit in favour of the petitioner to allow the inordinate delay of 1581 days in representing an unnumbered Application, seeking an order to set aside the ex parte decree. As found by the Court below, the inordinate delay has not been satisfactorily explained by the Petitioner herein. While deciding the Petition, this Court has to consider the substantial justice. I am of the view that allowing the petition would render only injustice to the Second respondent/auction purchaser, who was impleaded by the order of this Court in this Revision and the first respondent/decreed holder, hence, to meet the ends of justice, the Civil Revision Petition is liable to be dismissed, as an abuse of process of law by the Petitioner herein."

(vii) In (Postmaster General and others vs. Living Media India Limited and another) (2012) 3 SCC 563, the Honourable Supreme Court, while dismissing the application for condonation of delay of 427 days in filing the Special Leave Petition, held condonation of delay is not an exception and it should not be used as an anticipated benefit for the government departments.

In that case, the Honourable Supreme Court held that unless the Department has reasonable and acceptable reason for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process cannot be accepted. In Para Nos. 25, 26, 27, 28, and 29, the Honourable Supreme Court dealt with the scope of 'sufficient cause' and held as follows:-

25. We have already extracted the reasons as mentioned in the "better affidavit" sworn by Mr. Aparajeet Pattanayak, SSRM, Air Mail Sorting Division, New Delhi. It is relevant to note that in the said affidavit, the Department has itself mentioned and is aware of the date of the judgment of the Division Bench of the High Court in Office of the Chief Postmaster vs. Living Media Limited as 11.09.2009. Even according to the deponent, their counsel had applied for the certified copy of the said judgment only on 08.01.2010 and the same was received by the Department on the very same day. There is no explanation for not applying for the certified copy of the impugned judgment on 11.09.2009 or at least within a reasonable time. The fact remains that the certified copy was applied for only on 08.01.2010 i.e., after a period of nearly four months.

26. In spite of affording another opportunity to file better affidavit by placing adequate material, neither the Deponent nor the person-in-charge has filed any explanation for not applying the certified copy within the prescribed period. The other dates mentioned in the affidavit which we have already extracted, clearly show that there was delay at every stage and except mentioning the dates of receipt of the file and the decision taken, there is no explanation as to why such delay had occasioned. Though it was stated by the Department that the delay was due to unavoidable circumstances and genuine difficulties, the fact remains that from day one the Department or the person/persons concerned have not evinced diligence in prosecuting the matter to this Court by taking appropriate steps.

27. It is not in dispute that the person (s) concerned were well aware or conversant with the issues involved including the

prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few."

10. In the case of Sundar Gnanalivu Vs. Rajendran Gnanavolivu reported in MANU/TN/2123/2003, the Division Bench made following observations;

"8. In the judgment reported in MANU/SC/0573/1998 : 1998 (2) CTC 533 (N. Balakrishnan versus M. Krishnamurthy), the position has been set out as under

in para 14:

14. 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 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....

(Underlining is ours)

9. In the Judgment reported in MANU/SC/0398/2001 : 2001(6) SCC 176 M.K. Prasad versus P. Arumugam), it has been held as under in para 9.

9. Again in State of W.B. v. Administrator, Howrah Municipality and G. Ramegowda Major v. Special Land Acquisition Officer this Court observed that the expression "sufficient cause" in Section 5 of the Limitation Act must receive a liberal construction so as to advance substantial justice and generally delays be condoned in the interest of justice where gross negligence or deliberate inaction or lack of bona fides is not imputable to the party seeking condonation of delay. Law of limitation has been enacted to serve the interests of justice and not to defeat it. Again in N. Balakrishnan v. M. Krishnamurthy this Court held that acceptability of explanation for the delay is the sole criterion and length of delay is not relevant, in the absence of anything showing mala fide or deliberate delay as a dilatory tactic, the court should normally condone the delay....

(Underlining is ours)

10. In a recent Judgment of the Honourable Supreme Court reported in MANU/SC/0135/2002 : 2002(3) SCC 195 = 2002-3-L.W.417 (Ram Nath Sao @ Ram Sahu & Others versus Gobardhan Sap & Others), the position has been succinctly set out in para 12 which reads as under:

12. ...Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine-like manner....

(Underlining is ours)

11. In the Division Bench Judgment of our High Court, in the Judgment reported in MANU/TN/0252/2000 : 2000 (3) CTC 727 = 2000 3 L.W. 938 (C. Subraniam versus Tamil Nadu Housing Board rep. by its Chairman And Managing Director), the position has been stated as under in para 31:

31. To turn up the legal position, (1) the work "sufficient cause" should receive liberal construction to do substantial justice; (2) what is "sufficient cause" is a question of fact in a given circumstances of the case; (3) it is axiomatic that condonation of delay is discretion of the Court; (4) length of delay is no matter, but acceptability of the explanation is the only criterion' (5) 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 in such finding unless the discretion was exercised on wholly untenable or perverse; (6) The rules of limitation are not meant to destroy the rights of the parties but they are meant to see that the parties do not resort to dilatory tactics to seek their remedy promptly; (7) Unless a party shows that he/she is put to manifest injustice or hardship, the discretion exercised by the lower Court is not liable to be revised; (8) If the explanation does not smack of mala fides or it is put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor; (9). If the delay was occasioned by party deliberately to gain time, then the court should lean against acceptance of the explanation and while condoning the delay, the Court should not

forget the opposite party altogether.

13. In yet another Division Bench Judgment reported in 1990 (1) LLN 457 (Tamil Nadu Mercantile Bank Ltd. Tuticorin versus Appellate Authority Under The Tamil Nadu Shops And Establishments Act, Madurai And Another), the principles relating to rule of limitation have been discussed and the legal position has been stated by His Lordship Mr. Justice M. Srinivasan, as he then was, in paragraphs 14 and 17 which read as under:

14. ...If a litigant chooses to approach the Court long after the time prescribed under the relevant provisions of the law, he 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. Hence to view a matter of condonation of delay with a presupposition that no prejudice will be caused by the condonation of delay to the respondent in that application will be fallacious. In our view, each case has to be decided on the facts and circumstances of the case. 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.

17. ...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?

(Underlining is ours)

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. Sufficient caution has been exhibited to note that wherever there is lack of bona fides or attempt to hood-wink the Court by the party concerned who has come forward with an application for condonation of delay, in such cases, no indulgence should be shown by condoning the delay applied for. It is also clear to the effect that it is not the number of days of delay that matters, but the attitude of the party which caused the delay. In other words when the Court finds that the party who failed to approach the Court within the time stipulated comes forward with an explanation for condoning the delay, the Court if satisfied that the delay occasioned not due to the deliberate conduct of the party, but due to any other reason, then by sufficiently compensating the prejudice caused to the other side monetarily, the condonation of delay can be favorably ordered.

The Division Bench in the above said case made an observation that a liberal approach should be extended while considering the application for condonation of delay. Sufficient caution has been exhibited to note that wherever there is a lack of bonafides or attempt to hoodwink the Court by the party concerned who has come forward with an application for condonation of delay, in such cases, no indulgence should be shown by condoning the delay applied for. It is observed that question of limitation is not merely a technical consideration but based on principles of sound public policy as well as equity and that a litigant cannot be expected to have Damocles' sword hanging over his head indefinitely for a period to be determined at the whims and fancies of the opponent.

11. Thus, the Courts have taken a clear view that the intention of the parties in filing appeal belatedly after causing prejudice to the interest of the other parties then also the delay cannot be condoned by exercising the power of discretion. Therefore all these aspects are to be considered. Mechanical or routine approach is impermissible, may be permissible in respect of the delay of short span and not otherwise.

12. In the case of Lanka Venkateswarlu (D) by L.R.s Vs. State of A.P. & others reported in MANU/SC/0153/2011, the Hon'ble Supreme Court made an observation as follows;

"20. In the case of M. Balakrishnan (supra), this

Court again reiterated the principle that rules of limitation are not meant to destroy the rights of parties. They are meant to see that the parties do not resort to dilatory tactics, but seek their remedy promptly.

21 to 25.....

26. We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as "liberal approach", "justice oriented approach", "substantial justice" can not be employed to jettison the substantial law of limitation. Especially, in cases where the Court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any lis between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms.

The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. Whilst considering applications for condonation of delay under Section 5 of the Limitation Act, the Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections can not and should not form the basis of exercising discretionary powers."

सत्यमेव जयते

13. In the case of Pundlik Jalam Patil (D) by Lrs. Vs. Exe. Eng. Jalgaon Medium Project & others reported in MANU/SC/4694/2004, the Hon'ble Supreme Court held as follows:

15. In Ajit Singh Thakur Singh and anr. vs. State of Gujarat [(1981) 1 SCC 495] this court observed :

"It is true that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before

limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute sufficient cause."

(Emphasis supplied) This judgment squarely applies to the facts in hand.

17. Shri Mohta, learned senior counsel relying on the decision of this court in N. Balakrishnan vs. M. Krishnamurthy [(1998) 7 SCC 123] submitted that length of delay is no matter, acceptability of explanation is the only criterion. It was submitted that if the explanation offered does not smack of mala fides or it is not put forth as part of dilatory tactics the court must show utmost consideration to the suitor. The very said decision upon which reliance has been placed holds that the law of limitation fixes a life span for every legal remedy for the redress of the legal injury suffered. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of Limitation is thus founded on public policy. The decision does not lay down that a lethargic litigant can leisurely choose his own time in preferring appeal or application as the case may be. On the other hand, in the said judgment it is said that court should not forget the opposite party altogether. It is observed:

"It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time."

18. In Ramlal and others vs. Rewa Coalfields Ltd. [AIR 1962 SC 361], this court held that: "in construing Section 5 of the Limitation Act, it is relevant to bear in mind two important considerations. The first consideration is that the expiration of period of limitation prescribed for making an appeal gives rise to right in favour of the decree holder to treat the decree as binding between the parties and this legal right which has accrued to the decree holder by lapse of time should not be light heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause of excusing delay is shown discretion is given to the court to condone

the delay and admit the appeal. 'It is further necessary to emphasis that even if the sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by section 5. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage the diligence of the party of its bona fides may fall for consideration." On the facts and in the circumstances, we are of the opinion that the respondent beneficiary was not diligent in availing the remedy of appeal. The averments made in the application seeking condonation of delay in filing appeals do not show any acceptable cause much less sufficient cause to exercise courts' discretion in its favour."

14. In the case of Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & Others reported in MANU/SC/0932/2013, the Hon'ble Apex Court of India made an observation as follows:

"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-challant manner requires to be curbed, of course, within legal parameters."

It is very important to consider the judgement of the Hon'ble Supreme Court in the case of Esha Bhattacharjee, wherein the Hon'ble Apex Court laid down certain principles which were culled out particularly and those principles are the guiding principles for the purpose of deciding the petitions filed to condone the delay. The above principles, cited supra reveals that the concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed totally to unfettered free play.

15. The concepts such as "liberal approach", "justice oriented approach", "substantial justice" cannot be employed in jettison the substantial law of limitation. The law of limitation is substantial and therefore the principles laid down is to be scrupulously followed while condoning the delay under the law of limitation. The limitation has got a specific purpose and object and more specifically to avoid prejudice to the respective parties. In the event of prolongation or protraction of the litigation, undoubtedly and for an unspecified period when the specific law of limitation has got a specific purpose and object, then the power of discretion is to be exercised cautiously. Power of discretion cannot be exercised in the absence of any valid reason. In other words, powers can be exercised for the purpose of passing orders only by recording reasons which must be candid and convincing and must be passed on certain sound legal principles. Therefore, recording of reasons for exercising discretionary powers is one of the elementary principles of law. In the event of exercising discretionary powers without recording reasons, undoubtedly the same would cause not only prejudice and will set a bad principle

and therefore, the Courts must be cautious while exercising power of discretion more specifically in such matters where the law of Limitation is substantial.

16. Let us now consider the facts and circumstances of the present case. Admittedly, the delay is 668 days in filing the Appeal Suit which is about 2 years. The reasons stated by the petitioner is that he was suffering from multiple disk disorders, Cervical Spondylosis-Radi Culovathy, Acid Peptic Disease, Type II Diabetic Mellitus, low back pain-Bilateral Sciatica and was almost crippled and some other diseases. Perusal of the entire averments made in this regard, this Court has no hesitation in arriving at a conclusion that these kind of diseases cannot be construed as so serious, so as to immobilize the petitioner or even in such immobilization, the 2 years delay or 2 years immobilization may not be possible and further even going beyond that the statement in this regard has not been substantiated by producing relevant medical documents. Even in the case of submitting a medical document, it is insufficient that if a Doctors Certificate is produced.

17. In the present case the learned counsel appearing on behalf of the petitioner produced a certificate issued by one Dr.S.Babu, who has issued the certificate stating that "to whomsoever it may concern". Perusal of the medical certificate raised a doubt that whether the petitioner has taken complete treatment with this Doctor for about 2 years or any other medical documents are available or not. In the absence of any such details in the medical certificate issued by the Doctor stating that petitioner was suffering from multiple disk disorders, Cervical Spondylosis-Radi Culovathy, Acid Peptic Disease, Type II Diabetic Mellitus, low back pain-Bilateral Sciatica and was almost crippled cannot be trusted upon.

18. Thus, the trustworthiness of the medical certificate is not substantiated by filing other supportive documents. Therefore, this Court is of the opinion that the said medical certificate is insufficient and cannot be trusted upon. Except this, no such documents are enclosed along with condone delay petition. The fact remains that the suit is filed after passing of preliminary decree and the Advocate Commissioner, appointed who had already been received remuneration and the matter is listed on 09.01.2020 for submission of reports.

19. Considering the facts and circumstances, the petitioner has not made out a ground to condone the enormous delay of 668 days, as the reasons furnished are neither cogent nor convincing. The petitioner could not be able to establish that the huge delay was occurred on account of certain genuine reasons. In the absence of any bonafide or proof, the Court

cannot exercise its discretionary powers so as to condone the enormous delay of 668 days.

20.This being the factum discussed in the aforementioned paragraphs, this Court has no hesitation in coming to the conclusion that the reasons furnished by the petitioner is insufficient and not candid. Thus, the Civil Miscellaneous Petition in C.M.P.No.22655 of 2019 stands dismissed and consequently, the A.S.SR.No.56719 of 2019 stands rejected. No costs.

s/d-

Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

mrm
To

I Additional District and Sessions Judge,
Vellore, Vellore District.

+1 CC to Mr.A.K.Raghavelu, Advocate sr 101918.

+1 CC to Mr.M.Deva Raj, Advocate sr 19352 (04/03/2020)

C.M.P.No.22655 of 2019
in

A.S.SR.No.56719 of 2019

KK(CO)
SP(21/01/2020)

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