

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE **R.PONGIAPPAN**

C.R.P.NPD.No.4453 of 2014

The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Tiruvannamalai. Petitioner

Vs

1. Sankaralingam
2. The District Collector,
Collectorate,
Tiruvannamalai.
3. The Tahsildar,
Taluk Office,
Cheyyar. Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the order dated 05.06.2014, made in I.A.No.83 of 2013 in A.S.No.Nil of 2013 on the file of the learned Subordinate Judge, Cheyyar by allowing this Civil Revision Petition.

For Petitioner : Mr.C.Munusamy

For Respondents : No appearance

ORDER

Aggrieved over the order dated 05.06.2014 passed in I.A.No. 83 of 2013 in unnumbered appeal suit on the file of the Subordinate Court, Cheyyar, the petitioner, who is the first defendant in O.S.No.61 of 2003 on the file of the learned District Munsif, Cheyyar, Tiruvannamalai, filed this Civil Revision Petition.

2. Before the trial Court, the first respondent viz., Sankaralingam in this Civil Revision Petition filed a suit in O.S.No.61 of 2003 as against the petitioner and two other respondents and sought for the relief of declaration declaring that the petitioner/first defendant has not entitled to initiate action under the Revenue Recovery Act, further prayed for the relief of injunction restraining the petitioner and other revenue authorities in initiating the proceedings under the Revenue Recovery Act. By a judgment dated 07.07.2003, the learned District Munsif, Cheyyar, Tiruvannamalai, allowed the said suit in favour of the first respondent. Decree has also been granted in his favour.

3. Against the said order, before the learned Subordinate Judge, Cheyyar, the petitioner herein preferred an appeal with huge delay, for which, the petitioner filed an application in I.A.No.83 of 2013 under

Order 41 Rule 3A of C.P.C., and prayed to condone the delay of 2985 days in filing the appeal. The learned Subordinate Judge, Cheyyar, after affording opportunity to the respondents, by an order dated 05.06.2014, dismissed the said application filed by the petitioner. Aggrieved over the said findings, the petitioner is before this Court with the present Civil Revision Petition.

4. Today when this revision petition is taken up for hearing, the learned counsel appearing for the petitioner is present and made a submission that because of the reason that the officials concerned are not initiated proceedings in a reasonable time, a delay of 2985 days has been occurred in filing the appeal. He has further submitted that the money to be recovered from the first respondent is a public money and thereby the appeal in respect of the judgment and decree dated 07.07.2003, passed by the learned District Munsif, Cheyyar, Tiruvannamalai, is very much necessary. According to him, the reason stated in the affidavit filed by the petitioner is sufficient to condone the delay.

5. Despite of notices served on the respondents, they have not appeared before this Court. Hence I am of the opinion that since the

Civil Revision Petition is pending from the year 2014, it is appropriate to pass orders on considering the submission made by the learned counsel appearing for the petitioner and also on perusal of the case records.

6. The submission made by the learned counsel appearing for the petitioner is considered.

7. Since the petitioner filed the application before the Court below for condoning the delay of 2985 days, it is necessary to see, whether the petitioner has projected sufficient cause to condone the delay or not. In this aspect, on going through the affidavit filed by the petitioner in support of the condonation petition, he has stated that for getting administrative sanction, the file was sent to the superior officials and thereafter the file relevant to this matter was mingled with other case records. Therefore, the petitioner did not file an appeal within the stipulated period.

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8. In this occasion, it is relevant to see the period of limitation under Order 41 Rule 3A of Limitation Act. On close scrutiny of the said section reveals the fact that, it cannot be said that the Rule 3A does not provide and additional right to the litigants in condoning the delay. Now

on going through the Article 116B of Limitation Act, which prescribe 30 days as limitation to challenge the decree, from the date on which the decree was passed. But in this case, the petitioner has approached the first Appellate Court with the delay of 2985 days.

9. Further more, in respect of the condonation of delay, our Hon'ble Apex Court in the judgement reported in **(2013)12 SCC 649** in the case of ***Esha Bhattacharjee Vs. Managing Committee of Raghunathapur Nafar Academy***, has held 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 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 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.

10. Now applying the factual aspects to the reasons stated by the petitioner in his affidavit, the same was not fulfilled the requirements, which are necessary to condone the delay. As already observed by the Hon'ble Apex Court, the application for condoning the delay should not be dealt with in a routine manner. Even though the

petitioner is a public servant, it is his duty to show some acceptable and relevant reasons for condoning the delay of 2985 days. But in the affidavit, no sufficient cause is projected. Further more before the trial Court, the petitioner has also entered into appearance and only after hearing the petitioner, the learned District Munsif, Cheyyar, Tiruvannamalai, pronounced the judgement. So it cannot be said that the petitioner is not aware of the proceedings initiated in O.S.No.61 of 2003.

11. It is true, if the petitioner has projected sufficient cause, the period of delay is immaterial. In this case, in the impugned order, the learned Subordinate Judge, Cheyyar, has observed that the petitioner has lethargically approached the first appellate Court, without any sufficient cause and only by holding as above, the learned Subordinate Judge, Cheyyar, dismissed the above said application filed by the petitioner.

12. Now considering the findings given by the learned Subordinate Judge, Cheyyar, it is true that the petitioner is not an ordinary man. Being a Senior Regional Manager, he is having responsibility to control the entire district in Civil Supply Corporation. So being a responsible Government Official, it is his duty to follow the case

files sent by him within the reasonable time and not otherwise. But in this case, the petitioner wants to condone the delay of nearly 9 years. In this regard, I am of the opinion that mingling of case papers along with the other papers is nothing but a lie invented by the petitioner for filing an appeal before the learned Subordinate Judge, Cheyyar. Without any responsibility and with almost negligence, the petitioner filed the application before the Court below. Further, this Court feels that if the delay is condoned, the first respondent is highly prejudiced more than that of prejudice caused to the petitioner.

13. In view of the above discussion, this Court is not inclined to allow this revision petition. Accordingly, this Civil Revision Petition is dismissed. No costs.

26.09.2019

Internet : Yes / No

Index : Yes / No

Speaking / Non Speaking order

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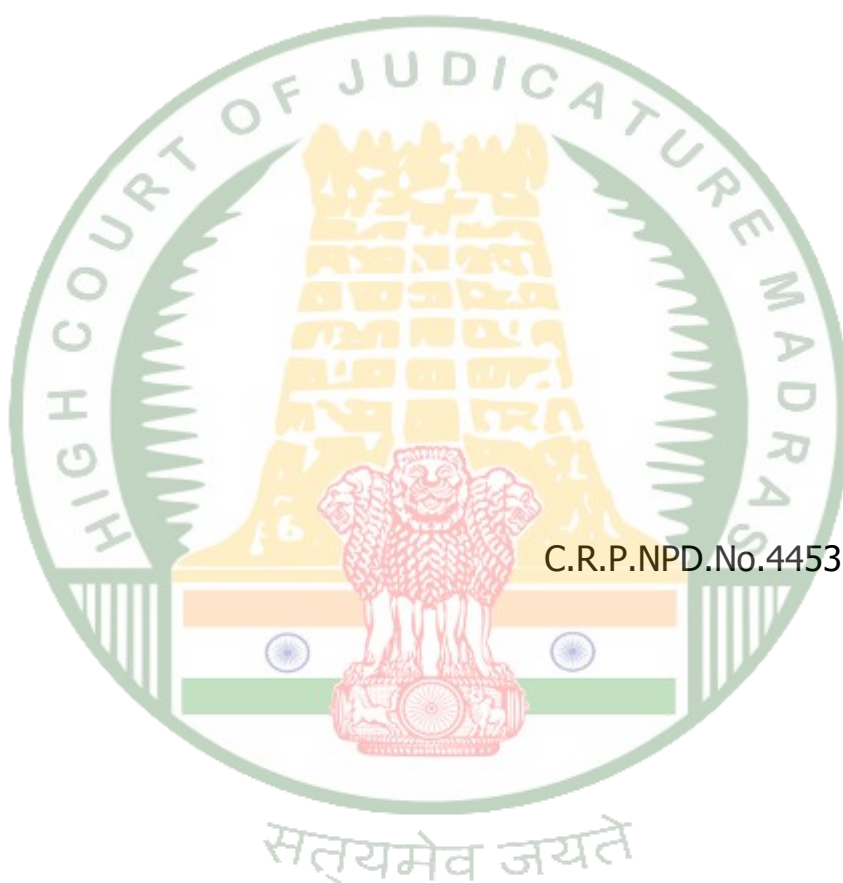
1. The Subordinate Court, Cheyyar.

2. The District Munsif Court,
Cheyyar, Thiruvannamalai.

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R.PONGIAPPAN, J.

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