

A.No.8153 of 2019
in C.S.No.757 of 2007

PUSHPA SATHYANARAYANA, J.

Seeking to condone the delay of 4378 days in filing the written statement, the first defendant in this suit filed this application.

2. The suit was filed by the respondents 1 to 5 herein along with two other plaintiffs for declaration that the suit property is the trust property of the first plaintiff ; direction to the second defendant to handover the suit property to the plaintiffs ; consequentially direct the second defendant to furnish accounts in respect of the suit property ; and also pass appropriate orders for administration of the above suit property by the first plaintiff.

3. The first plaintiff is a registered cultural and charitable trust. One T.A.Ganesan is the founder of the first plaintiff trust. The first defendant claimed to be in occupation in a portion of the suit property set up a Will dated 02.11.1991 as if, it was executed by the founder T.A.Ganesan. She had also applied for letters of administration in O.P.No.678 of 1992. As the suit property was claimed by the first defendant, the suit had been filed by the plaintiffs.

4. The suit summons was served on the defendants on 17.09.2007 and a vakalat is said to be filed on behalf of the first defendant on 01.02.2008. Though the case has been pending for so many years, the first defendant had not filed the written statement. Hence, it appears from the records that on 16.12.2016, this Court had posted the matter before the learned Master for recording the evidence, as there was no representation by the first defendant either in person or through counsel and also no written statement was filed till then.

5. Admittedly, subsequent to the same, the proof affidavit by P.W.1 was filed and documents Exs.P.1 to P.41 were marked. It is, at this stage, the present application is filed by the first defendant for condonation of delay of 4378 days in filing the written statement.

6. In the affidavit filed in support of the above application, the first defendant has stated as follows :

"3. I state that the suit was filed in the year (sic 2007) and notice was served on 17.09.2007 and I entrusted the matter to my erstwhile counsel who failed to file written statement. Meanwhile some of the office bearers of the plaintiffs have died and they were substituted the alleged newly appointed/elected persons. Meanwhile my erstwhile counsel switched over to other side and evinced his allegiance to the

plaintiffs. Smelling the foul play, I filed an application to revoke the vakalath in Application No.398/2018 and the same was allowed on 17.06.2019.

4. I further state that I went to my native place and I could not meet my present counsel and remain incommunicado and no written statement was prepared to be filed before this Hon'ble Court in time.

5. I further state the plaintiff underwent several changes due to death of the few trustees and new trustees were added as per the orders passed in the Application No.1296 of 2015 dated 08.04.2015. Further my erstwhile counsel has not handed over entire papers which caused extreme inconvenience, to me and the present counsel and we are unable to prepare the written statement. In fact, I have lodged a complaint before the Bar Council of Tamil Nadu and Puducherry and the same is pending. In view of the above stated fact the delay has to be calculated only from 17.06.2019. However, by way of abundant caution I am filing the petition for condoning the delay right from the date of service of the notice to me."

On the above averments, the first defendant prayed for condonation of delay.

7. This application was resisted by the plaintiffs by filing a counter-affidavit signed by the fourth plaintiff. The plaintiffs have denied the averments in the affidavit filed by the first defendant specifically alleging that no specific dates were mentioned as to when the demand for return of bundle from the previous Advocate was made and the same was refused by him. The erstwhile counsel had

filed a vakalat on 01.02.2008. The revocation of the vakalat of the erstwhile counsel was ordered in A.No.398 of 2019 by the learned Master on 16.07.2019. The present counsel had filed the vakalat on 10.01.2019, though the vakalat was signed on 14.11.2018. The plaintiffs had further stated that the first defendant/applicant claimed to be in possession of the property and also had filed T.O.S.No.40 of 1995 for issuance of letters of administration. As the property is belonging to the trust, the Court had directed the plaintiff in the said T.O.S. to implead the trustees of the trust. However, instead of filing the application to implead the trustees, the T.O.S. was amended in this Court by order dated 02.12.2016 and this Court had directed the plaintiff therein to file an application for impleadment, which she did not do so. Hence, the T.O.S. was dismissed on 16.12.2016. Thereafter, the applicant herein, who is the plaintiff in T.O.S. No.40 of 1995, had filed an application to restore the T.O.S. by swearing an affidavit dated 01.10.2018 and the said application is said to be pending. In the light of the above facts, it is stated that the applicant/first defendant cannot plead ignorance of the pendency of the suit or even to file the written statement within time. According to the plaintiffs, admittedly, as the applicant/first defendant is in occupation of the premises, she has to pay the property tax arrears and also arrears to Chennai Metro Water Supply and Sewerage Board

(CMWSSB), which amounts to Rs.17,03,597/-.

8. Now the question that has to be decided is whether the delay of 4378 days in filing the written statement should be condoned, when there is no just and sufficient cause shown by the applicant ?

9. Though the applicant has made various allegations against the erstwhile counsel and to support the same had filed the application to revoke the vakalat given to the erstwhile counsel, as the prudent litigant, the applicant had not taken any steps for around 12 long years. The application to revoke the vakalat was filed only in the year 2019, whereas, in the affidavit filed in support of the above application, nothing has been stated for not filing the written statement from the date of receipt of the suit summons, till the revocation of vakalat application filed in the Court in the year 2019. Though the applicant had stated that her erstwhile counsel switched over to the other side and evinced his allegiance to the plaintiffs, there is nothing on record to prove the said allegation. The applicant had filed T.O.S. in the year 1995 itself, wherein, the respondents/plaintiffs were directed to appear as the defendants in the T.O.S. In fact, in A.No.6982 of 2015, which was filed by the fourth plaintiff for rejecting T.O.S.No.40 of 1995, the applicant herein/first defendant has been

contesting. The said T.O.S. itself was dismissed for non-prosecution for not carrying out the directions given by this Court in carrying out the amendment on 16.12.2016. As the T.O.S.No.40 of 1995 itself was dismissed for non-prosecution, A.No.6982 of 2015 was closed.

10. From the above proceedings, it is very clear that the applicant was conscious of the fact that the suit is pending and the same has to be contested in the manner known to law by filing the written statement. Nothing has stated by the applicant/first defendant as to what prevented her from filing the written statement within time, prior to the dismissal of the T.O.S. in the year 2016. Even presuming that there was a misunderstanding between the applicant and her counsel and as stated in the affidavit, a complaint has been lodged by her before the Bar Council of Tamil Nadu and Puducherry, the same has got nothing to do with the suit filed by the plaintiffs, as it is the duty of the applicant/first defendant to defend her case.

11. Now when the evidence is already taken on behalf of the plaintiff and documents were marked and P.W.1's evidence is closed, this application to condone the delay in filing the written statement is filed.

12. As stated earlier, on 16.12.2016, when this Court dismissed T.O.S.No.40 of 1995 for non-prosecution for not carrying out the directions of this Court also sent the plaintiff for evidence before the learned master, despite the fact that the plaintiffs were directed to give evidence in the suit, the applicant/first defendant had not taken any steps to file the written statement on time. The conduct, behaviour and also the attitude of the applicant/first defendant and her inaction and negligence are to be considered as relevant factors in deciding this application. It is more than 12 years since the suit has been laid by the plaintiffs and the applicant/first defendant has successfully stalled the progress of the *lis* by not filing the written statement and proceedings with the suit. The delay is more than/close to 12 years.

13. The Court has to outweigh the hardship, for which, the plaintiffs are put for keeping the *lis* pending for more than a decade merely because of the conduct of the other side. If the applicant has been taken for a ride by her counsel, which is of her choice, that cannot be the ground for jeopardising the interest of the plaintiffs. As mentioned earlier, the affidavit filed in support of this application is also bereft of any particulars about the conduct of the Advocate. In fact, in the counter-affidavit, it is stated that the very application for

the revocation of the vakalat itself is in collusion with the erstwhile counsel of the first defendant. When the delay is inordinate, without any sufficient cause, the liberal approach cannot be extended. The act of the applicant/first defendant is seriously prejudicing the interest of the respondents/plaintiffs, which cannot be compensated by imposing terms.

14. At this juncture, it is apt to refer to the judgment of the Hon'ble Supreme Court in **Basawaraj V. Land Acquisition Officer, (2013) 14 SCC 81**, wherein, it was held as follows :

"11. The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only *so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned*, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide *Madanlal v. Shyamlal*, (2002) 1 SCC 535 and *Ram Nath Sao v. Gobardhan Sao* (2002) 3 SCC 195.

12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex*

which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.

14. In *P. Ramachandra Rao v State of Karnataka* (2002) 4 SCC 578, this Court held that judicially engrafting principles of limitation amounts to legislating and would fly in the face of law laid down by the Constitution Bench in *Abdul Rehman Antulay v. R.S. Nayak* (1992) 1 SCC 225.

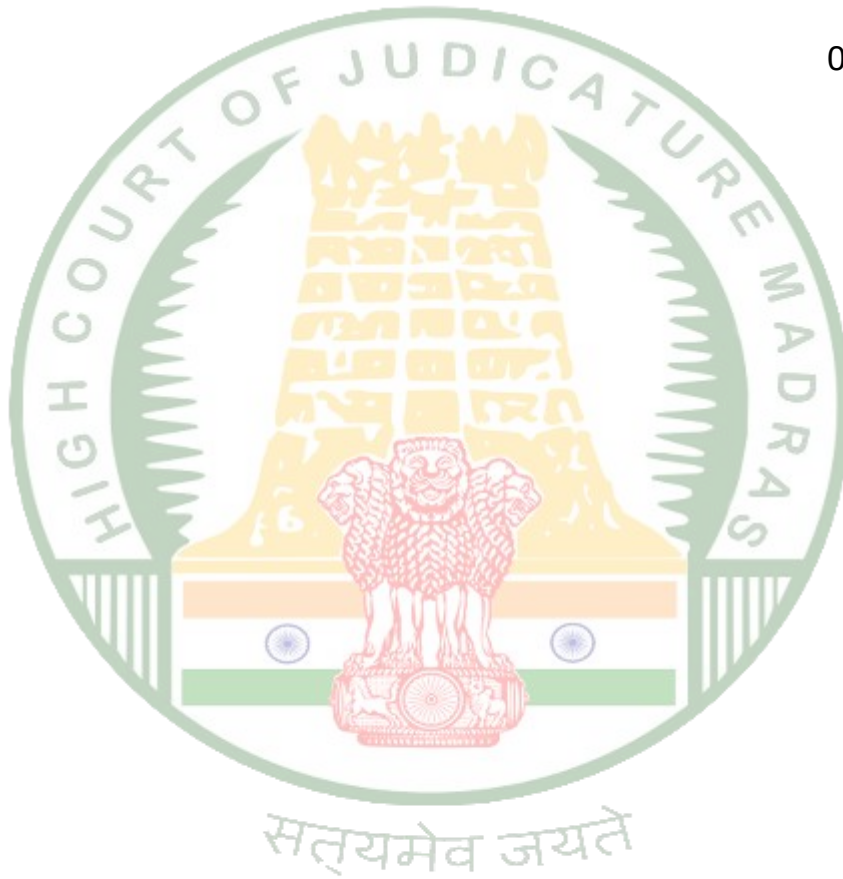
15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."

15. Considering the law reiterated in **Basawaraj case (cited supra)**, this Court is not inclined to condone the delay in filing the written statement and accordingly, this application is dismissed.

16. Post the suit before the concerned Additional Master for continuation of evidence on 07.11.2019 for completing the trial on or before 31.01.2020.

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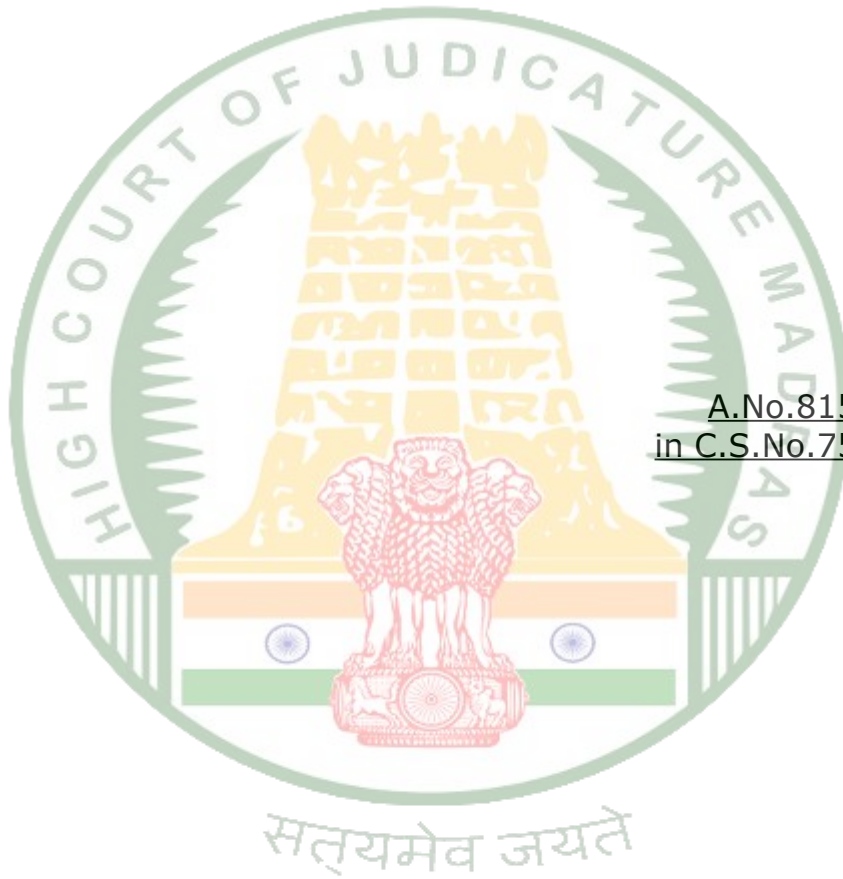
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