



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.12.2019

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THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (NPD) (MD) No.1775 of 2011

and

M.P (MD) No.1 of 2011

Rathina Meenakshi ... Petitioner/Petitioner/
Appellant/1st Defendant

-Vs-

1.Perumal ... 1st Respondent/1st Respondent/
1st Respondent/Plaintiff

2.Bagavath Geetha ... 2nd Respondent/2nd Respondent/
2nd Respondent/2nd Defendant

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to allow the civil revision petition by setting aside the fair order and decretal order passed in I.A.No.285 of 2010 in unregistered A.S.No. Of 2010 on the file of the Principal District Court, Tirunelveli in O.S.No.39 of 2008, dated 28.02.2011 on the file of the Principal Sub Court, Tirunelveli.

For Petitioner : Mr.Chidambaram for Mr.R.ManiMaran
For R1 : Mr.Chathurthiraj for Mr.S.Kadarkarai
For R2 : No appearance

O R D E R

The petitioner, aggrieved by an order of the Principal District Judge, Tirunelveli made in I.A.No.285 of 2010 in un-numbered appeal dismissing her application for condonation of delay of 416 days in filing the appeal, has come up with this Civil Revision Petition.

2. The appeal was sought to be filed challenging the decree for specific performance granted by the Sub Court, Tirunelveli in O.S.No.39 of 2008. According to the petitioner, she could not file the appeal within the time allowed since she was forced to shift her residence as well as change her phone number. Due to inadvertence, she did not inform her counsel. Therefore, her counsel was unable to inform about the copy of the judgment and decree of the trial Court being made ready. According to her, she came to know about the



judgment and decree having made ready only she met her counsel at Tirunelveli when she went there for medical check-up.

3. The respondent/deGREE-holder resisted the application contending that the reasons set out are not bonafide and the petitioner also deposited the balance sale consideration into Court. It is also claimed that if the delay is condoned, it will cause undue hardship and prejudice to the respondent.

4. The learned Principal District Judge, Tirunelveli, who heard the application, concluded that the petitioner has not made out sufficient cause for condonation of delay of 416 days in filing the appeal. On the said conclusion, the learned Principal District Judge dismissed the application. Aggrieved, the petitioner has come up with this Civil Revision Petition.

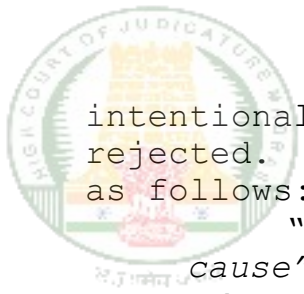
5. I have heard Mr.Chidambaran, learned counsel appearing for the petitioner and Mr.Chathurthiraj, learned counsel appearing for the first respondent.

6. Mr.Chidambaram, learned counsel appearing for the petitioner would submit that the learned Principal District Judge was not right in refusing to condone the delay, more so, when the delay was properly explained. He would also submit that the District Judge has not found that the delay was either malafide or intentional. In the absence of such findings, according to the learned counsel for the petitioner, the order of the learned Principal District Judge refusing to condone the delay is materially irregular and is result of improper exercise of jurisdiction.

7. Contending contra, Mr.Chathurthiraj, learned counsel appearing for the respondent would submit that the fact that the petitioner failed to furnish the change of address or change of phone number to the counsel would show her negligence and hence, the power to condone the delay under Section 5 of Limitation Act cannot be exercised as it would amount to encouraging negligence.

8. I have considered the rival submissions.

9. Of course, there is a delay of more a year in filing the appeal. The suit is one for specific performance. As rightly contended by the learned counsel for the respondent, the reasons set out by the petitioner for the delay would indicate that there is some negligence on her part. But there is nothing to show that the said reasons are false or non-existent. The Hon'ble Supreme Court in ***Bhivchandra Shankar More vs. Balu Gangaram More & Ors reported in 2019 SAR (Civil) 632*** held that while considering the term 'sufficient cause' under Section 5 of the Limitation Act, the Court should give liberal construction so as to advance substantial justice and unless it is shown that the delay is either malafide or



intentional, an application to condone the delay should not be rejected. While saying so, the Hon'ble Supreme Court had observed as follows:-

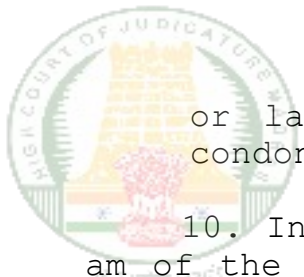
"15. It is a fairly well settled law that "sufficient cause" should be given liberal construction so as to advance sustainable justice when there is no inaction, no negligence nor want of bonafide could be imputable to the appellant. After refering to various judgments, in B.Madhuri, this Court held as under:-

"6.The expression "sufficient cause" used in Section 5 of the Limitation Act, 1963 and other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which serves the ends of justice. No hard-and-fast rule has been or can be laid down for deciding the applications for condonation of delay but over the years courts have repeatedly observed that a liberal approach needs to be adopted in such matters so that substantive rights of the parties are not defeated only on the ground of delay."

16.Observing that the rules of limitation are not meant to destroy the rights of the parties, in N.Balakrishnan v. M.Krishnamurthy (1998) 7 SCC 123, this Court held as under:-

"11.Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is not repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. 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."

As pointed out earlier, an appeal under Section 96 CPC is statutory right. Generally, delays in preferring appeals are required to be condoned, in the interest of justice, where there is no gross negligence or deliberate inaction



or lack of bonafide is imputable to the party seeking condonation of delay."

10. In view of the above dictum of the Hon'ble Supreme Court, I am of the considered opinion that the petitioner deserves a chance to prosecute the appeal, more so when the decree is one for specific performance. At the same time, the respondent should be compensated for the delay. Hence, the order of the Principal District Judge, Tirunelveli in I.A.No.285 of 2010 is set aside and the delay of 416 days in filing the appeal will stand condoned subject to the condition that the petitioner pays a cost of Rs.5,000/- to the learned counsel for the respondent appearing in this Court, on or before 3rd January, 2020, failing which, the Civil Revision Petition will stand dismissed automatically. Accordingly, the Civil Revision Petition is allowed. However, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar(CS)

am

To

1.The Principal District Judge,
Tirunelveli.

2.The Principal Subordinate Judge,
Tirunelveli.

copy to

The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.(2 copies)

+1 CC to M/s.M/S.S.KADARKARAI, Advocate (SR-105045[F] dated 16/12/2019)

+1 CC to M/s.M/S.R.MANIMARAN, Advocate (SR-105046[F] dated 16/12/2019)

C.R.P. (NPD) (MD) No.1775 of 2011
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ns (CO)

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