



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

DATE : 20.09.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

CRL. R.C. (MD) NOS. 416 & 417 OF 2019

AND

CRL. M.P. (MD) NOS. 6011 & 6012 OF 2019

Gnanavadivelan .. Petitioner in Crl. R.C. No.416/19

Karthikayini .. Petitioner in Crl. R.C. No.417/19

- Vs -

R.Dhanabalan .. Respondent in both revisions

Common Prayer:

Criminal Revision Case filed u/s 397 r/w 401 of the Code of Criminal Procedure, against the order dated 28.02.2019, passed by the learned District Munsif-cum-Judicial Magistrate, Natham, in Cr. M.P. Nos.1087 & 1088 of 2019 respectively.

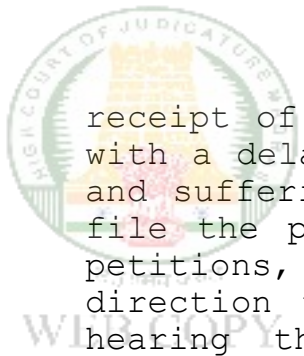
For Petitioners : Mr. T.S.R.Venkataramana

For Respondent : Mr. C.Mayilvahana Rajendran

COMMON ORDER

The present revision petitions have been filed against the order dated 28.2.2019, passed by the learned District Munsif-cum-Judicial Magistrate, Natham, in Cr. M.P. Nos.1087 & 1088/2019 in and by which the learned Magistrate, condoned the delay in filing the complaint on certain terms.

2. The case of the respondent herein/complainant before the court below is that the petitioners herein had borrowed certain huge sums of money and in lieu of repayment, had issued cheques to be presented on a particular date. However, on presentation of the cheque/(s), the same got dishonoured prompting the respondent herein/complainant to issue a lawyer's notice for which a reply was sent by the petitioners herein disputing the same. However, after



receipt of the reply, the complaint was not filed within time, but with a delay, stating that since the respondent herein was immobile and suffering from back pain and was under treatment, he could not file the petition on time and, therefore, filed the miscellaneous petitions, praying the court below to condone the delay and for a direction to take the complaint on file. The court below, after hearing the parties and advertent to the submissions placed, condoned the delay of 40 days in filing the complaint on condition that the petitioners herein pay a cost of Rs.1,000/- in each of the petition. Aggrieved by the said order of the court below in condoning the delay, the present revision petitions have been filed by the petitioners.

3. Learned counsel appearing for the petitioners contended that the delay in filing the complaint is fatal on the ground that though the respondent herein/complainant claims that he was bed ridden and immobile and was suffering from back pain and was taking treatment, however, he has not filed any proof to substantiate his ailment and in the absence of any documentary evidence to substantiate his ailment, the court below ought not have condoned the delay. It is the further submission of the learned counsel for the petitioners that Sections 142 (b) of the Negotiable Instruments Act speaks about 'sufficient cause' and not just a reason and, therefore, in the absence of sufficient cause shown by the respondent herein, the condonation of delay is per se impermissible.

4. It is the further submission of the learned counsel for the petitioners that the delay shown varies from 31 days in one place to 40 days in another place, which itself creates a doubt on the case filed by the respondent herein. It is further submitted that even according to the respondent herein, he had taken treatment from 20.04.2018 to 26.05.2018, yet the complaint was filed only on 06.06.2018 and, the reason for delay between 26.05.2018 and 06.06.2018 is not known. Further, the reply to the notice was sent by the petitioners on 23.03.2018 and the respondent herein was under treatment only from 20.04.2018 and no cause is shown for not taking any steps during the intervening period. In fine, it is the submission of the learned counsel for the petitioners that the respondent herein has not shown 'sufficient cause' as mandated u/s 142 (b) of the Negotiable Instruments Act, for two different spells and in the absence of proper and justifiable reasons, the condonation of delay ordered by the court below is unsustainable and, therefore, prayed for setting aside the order passed by the court below.

5. Learned counsel for the petitioners, in support of their contentions, relied on the following decisions to drive home the point that condonation of delay is not a matter of routine and that sufficient and justifiable cause should be shown to condone the delay :-



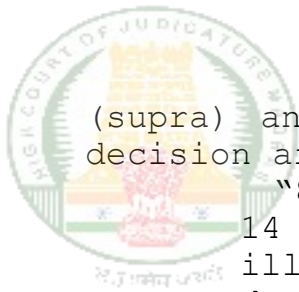
- i) Basawaraj & Anr. - Vs - Special Land Acquisition Officer (2013 (14) SCC 81);
ii) Sundar Gananaolivu - Vs - Rajendran Gnanavolivu (2003 (1) LW 585); and
iii) Office of the Post Master General & Ors. - Vs - Living Media India Ltd. & Anr. (Civil Appeal No.2474-2475/2012 - Dated 24.02.2012)

6. Per contra, learned counsel appearing for the respondent/complainant submitted that it is true that no medical records were placed before the Court, but it is due to sheer inadvertence and not wilful or wanton. Further, it is submitted by the learned counsel for the respondent/complainant that had the intention of the respondent/complainant was really to prolong the litigation, he would have given fictitious reasons and also tried to substantiate the same, which prevented him from filing the complaint. However, the respondent had approached the trial court in a fair manner and placed the factual truth, which has been appreciated by the trial court to condone the delay. Further, it is the submission of the learned counsel for the respondent that while he is being castigated as a devil, the petitioners are trying to paint themselves as angels by trying to project that a false case is trying to be foisted on them by raising a ground that on the basis of trust and belief the petitioners had signed the papers and given it to the respondents. It is submitted that no person of sound mind and in possession of all the faculties would sign that many papers and give them to a third party, be it a close friend. Further, it is the submission of the learned counsel for the respondent that even according to the petitioners, there were financial transactions between the parties and, therefore, the petitioners are trying to shield themselves from repaying the respondent by resorting to the technicality, which should not be allowed to be perpetrated. Therefore, unless the complaint is taken on file and a fair trial is conducted, the truth or otherwise of the matter could not be ascertained and precluding the respondent at the very threshold would cause grave prejudice and, therefore, prayed for dismissing the revision petitions. It is further submitted that no prejudice would be caused to the revision petitioners due to allowing of the delay petitions as they could very well come out of the case if truth and justice are on their side. Therefore, it is prayed that no interference is called for with the order passed by the court below.

7. This Court gave its careful consideration to the submissions advanced by the learned counsel for the parties and also perused the materials available on record as also the decisions to which attention was drawn.

8. Before advertng to the factual matrix on which the case revolves, guiding principles relating to condonation of delay, has been enunciated by the Hon'ble Apex Court in Basawaraj's case

<https://www.ecourts.gov.in/>



(supra) and for better clarity the relevant portions in the said decision are extracted hereunder :-

"8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide Chandigarh Admn. v. Jagjit Singh [(1995) 1 SCC 745 : AIR 1995 SC 705] , Anand Buttons Ltd. v. State of Haryana [(2005) 9 SCC 164 : AIR 2005 SC 565] , K.K. Bhalla v. State of M.P. [(2006) 3 SCC 581 : AIR 2006 SC 898] and Fuljit Kaur v. State of Punjab [(2010) 11 SCC 455 : AIR 2010 SC 1937] .)

9. Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient



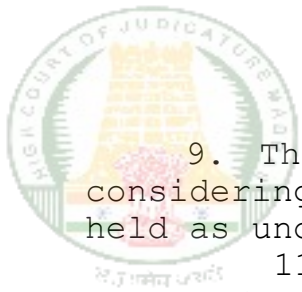
ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See *Manindra Land and Building Corpn. Ltd. v. Bhutnath Banerjee* [AIR 1964 SC 1336] , *Mata Din v. A. Narayanan* [(1969) 2 SCC 770 : AIR 1970 SC 1953] , *Parimal v. Veena* [(2011) 3 SCC 545 : (2011) 2 SCC (Civ) 1 : AIR 2011 SC 1150] and *Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai* [(2012) 5 SCC 157 : (2012) 3 SCC (Civ) 24 : AIR 2012 SC 1629] .)

* * * * *

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 : AIR 2002 SC 100] and *Ram Nath Sao v. Gobardhan Sao* [(2002) 3 SCC 195 : AIR 2002 SC 1201] .)

* * * * *

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



9. This Court, in Sundara Gnanavolivu's case (supra), after considering various decisions on the issue of condoning of delay, held as under :-

11. In a recent Judgment of the Honourable Supreme Court reported in 2002 (3) SCC 195 = 2002 3 L.W. 417 (Ram Nath Sao @ Ram Sahu & Others v. 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."

* * * * *

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 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 favourably ordered.

16. As held by His Lordship Mr. Justice M. Srinivasan, as he then was, in the Division Bench Judgment reported in 1990 (1) LLN 457 (Tamil Nadu Mercantile Bank Ltd. Tuticorin v. Appellate Authority Under The Tamil Nadu Shops And Establishments Act, Madurai And Another), the rules prescribing the period of limitation have to be obeyed by the



concerned party and in order to get over such period prescribed, sufficient explanation should be tendered. His Lordship was pleased to hold 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 a Damocles' sword hanging over his head indefinitely for a period to be determined at the whims and fancies of the opponent."

(Emphasis supplied)

10. Though the decision in Chief Post Master General's case (supra) is relied on by the petitioner, and that decision also relates to condonation of delay, however, the matter in issue relates to cases filed by Government. Though in the said decision, it has been held that the Government is also guided by the same ratio as is available to any other litigant, equally so, a whiff of different approach has been prescribed by the Supreme Court in relation to condonation of delay arising in filing of cases by the Government and, therefore, this Court is embarking upon discussing the said case in detail.

11. From a conspectus reading of the decisions quoted above, it is clear that it is the attitude of the party that matters and not the number of days delay. It has been cautioned that where the Court finds that the party, who failed to approach the Court within the stipulated time, comes forward with proper and sufficient explanation for condoning the delay, on the court being satisfied that the delay caused is not part of any deliberate conduct of the party or any dilatory tactics to prolong the litigation, the court can condone the delay. As has been held by the Supreme Court in Ram Nath Sao @ Ram Sahu & Ors. - Vs - Gobardhan Sap & Ors. (2002 (3) SCC 195), "acceptance of explanation furnished should be the rule and refusal an exception". So long as the party comes before the court with clean hands, the scales should naturally tilt in favour of the party.

12. Keeping the above principles in mind, this Court proceeds to dissect the materials on record to find out whether the order of the court below in condoning the delay is just and reasonable and whether the delay is not a dilatory tactics adopted on the side of the complainant.

13. In the case on hand, the delay in filing the complaint is around 40 days as held by the court below. According to the petitioner, in one place it is mentioned as 35 days, in another place it is mentioned as 31 days and in yet another place it is mentioned as 40 days. However, as has been held time and again, it is not the number of days delay that matters, but the cause shown for the delay to have occasioned.



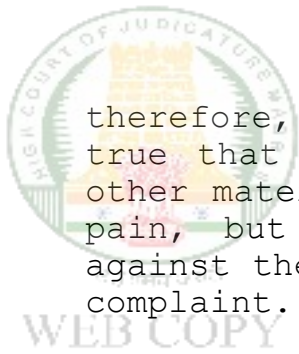
14. According to the complainant, the delay had occasioned due to the complainant falling ill with back pain and was taking treatment and was bed ridden due to which the complaint could not be filed within time. On the above reason, the trial court thought it fit to condone the delay by granting a conditional order. However, the said order is assailed by the petitioners contending that no medical records have been produced to substantiate the cause that prevented the complainant from filing the complaint on time.

15. As held by the Hon'ble Supreme Court in Basawaraj's case (supra), the meaning of the word "sufficient" is "adequate" or "enough". Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances of the existing case duly examined from the view point of a reasonable standard of a cautious man. Further, the Supreme Court has held that "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, and that whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible.

16. Therefore, it is crystal clear from the above decision of the Hon'ble Supreme Court that the cause espoused before the court should be sufficient enough for the court to believe the person for granting the relief. However, the point raised by the petitioners herein is not that sufficient cause has not been shown, rather, the issue raised before this Court is that no proof to establish the sufficient cause has been placed before the Court.

17. Placing of proof to establish sufficient cause and pleading sufficient cause are totally different. In certain cases, there may be sufficient cause, which could be visualised, but no proof thereof to establish the same could be placed. In such cases, it cannot be held that there being absence of any proof to establish sufficient cause, as pleaded, the relief could not be granted. The Court is duty bound to look at the scenario in a larger perspective in order to ensure justice to both parties and not confine itself within a narrow campus. Separation of grain from the chaff is the bounden duty of the court in dispensation of substantial justice.

18. The complainant has pleaded that he was bed ridden and was taking treatment for back pain due to which the delay has occasioned. The cause put forth by the complainant is back pain. As could be visualised, back pain is a very common phenomenon nowadays even among the younger generations for which treatment is taken with rest prescribed and that suffering with back pain does not warrant admission in a hospital always. Even from the records,



therefore, the possibility of back pain cannot be ruled out. It is true that the complainant could have placed some prescriptions or other materials, if any, with relation to taking treatment for back pain, but mere non-production of medical records cannot be put against the complainant for rejecting his legitimate claim to file a complaint.

19. Further, the complainant has given the legal notice well within time, but was held back from filing the complaint within the prescribed period of limitation on account of the above ailment. It is to be pointed out that even the reply to the notice issued by the petitioner in Crl. R.C. (MD) No.417/2019, the petitioner has accepted the acquaintance between the petitioner and the complainant and also the fact that there were money transactions between the petitioner and the complainant. The petitioner has even gone on to submit about the borrowings made by her from the complainant. That being the case, on the mere ground that there is a delay in filing the complaint cannot be put against the complainant for throwing out the complaint at the threshold, when the amount alleged to be involved in the transaction runs to lakhs of rupees.

20. Though the petitioners have raised a ground as to the reason for the petitioner not filing the complaint immediately after 26.5.18, but has filed it only on 6.6.18, it is to be remembered that after taking treatment, be it at a hospital or even at the residence, no prudent person will rush to the Court or police station for lodging a complaint. The person will be taking the aid of the counsel in preparing the brief for filing the same before the Court concerned, which is the natural course of happening. Therefore, the gap between the day when the complainant is said to have stopped his treatment and the filing of the complaint before the court cannot be taken to be a delay for the purpose of negating the claim of the complainant.

21. Condonation of delay is akin to a contempt petition, but with a string attached to it, where discretion is vested in the court to condone the delay. The discretion is totally vested in the court to render substantial justice and is not at the behest of one party or the other.

22. The delay occasioned over and above the period of limitation leaves the Damocles Sword hanging over the head of both the parties to the lis, particularly if the parties are at loggerheads, with the thin strand of thread, being the arbiter to the issue, holding the sword. It is the duty of the arbiter, herein the Court, to see that the breaking of the thread does not cause serious injury to either of the party, but at the same time, protecting the rights of the party, who has overshot the limitation, provided the delay occasioned is neither wilful nor wanton and that the said party exhibits genuineness.



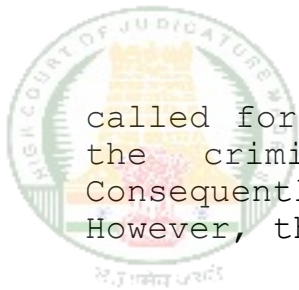
23. In the case on hand, though the complainant has cited reason for the delay, yet the only ground of attack is that no documentary evidence has been placed before the court to substantiate the reason cited for the delay. It is seen from the records as also the averments of the complainant that he was suffering from back pain and was bed ridden and this had prevented him to lay the complaint on time. It is not the stand of the complainant that he was hospitalized for treatment. Had that been the stand taken, then the complainant was duty bound to provide proof for the same.

24. It is common knowledge that for ailment of the nature put forth, people take treatment by consuming medicines after consulting the medical practitioners. Therefore, the necessary inference that the Court has to draw in the present case is that the complainant was taking treatment and was not hospitalized. Production of certain prescriptions would have been an additive factor in the armour of the complainant in canvassing the cause for condoning the delay. However, non-production of the same alone cannot be put against the complainant, more so, considering the fact that there have been financial transactions between the complainant and the revision petitioner in Crl. R.C. (MD) No.417/2019, which has been averred even by the said revision petitioner.

25. Therefore, mere non-production of documentary proof towards the reason claimed cannot be put against the complainant in a transaction of this nature and this Court has the duty to weed out the grains from the chaff and render substantial justice. Further, it is also to be borne in mind that though there is delay, which according to the revision petitioner wavers between 35 and 41 days and not clearly spelt out by the complainant, yet it is to be pointed out that the delay is not so very enormous so as to cause detriment to the petitioners. The averments in the complaint as well as certain averments in the counter of the petitioner herein in the legal notice relating to the financial transactions between both the parties, really tilt the balance of scales in favour of the complainant for condoning the delay.

26. Therefore, for the reasons aforesaid, this Court finds that "sufficient cause" as mandated by the Supreme Court in the above referred to decisions, has been pleaded by the complainant, which has been accepted by the court below, though through a cryptic order and, therefore, the same cannot be said to be perverse or illegal. This Court is of the considered view that the cause shown is sufficient enough for the court below to condone the delay, which the court below has rightly accepted.

27. In such view of the matter, for the reasons aforesaid, this Court is in agreement with the view taken by the court below and, <https://hdservices.courts.gov.in/hdservices/> of the considered opinion that no interference is



called for with the order passed by the court below. Accordingly, the criminal revisions fail and the same are dismissed. Consequently, connected miscellaneous petitions are also dismissed. However, there shall be no order as to costs.

WEB COPY

Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar(CS)

GLN

To
The District Munsif-cum- Judicial Magistrate,
Natham.

+1 CC to M/s.T.S.R.VENKAT RAMANA, Advocate (SR-88522[F] dated 23/09/2019)

CRL. R.C. (MD) NOS.416 &
417 of 2019
20.09.2019

JMN(21.10.2019) 11P : 3C