

C.M.P.Nos.1030 to 1034 of 2010
in S.A.637 of 1984
and
Rev.Appl.No.136 of 2010
and M.P.No.1 of 2010

G.K.ILANTHIRAIYAN, J.

The petitions in C.M.P.Nos.1030 & 1031 of 2019 have been filed to condone the delay of 1247 days in filing the petition to set aside the order of dismissal dated 19.07.2002 passed in S.A.No.637 of 1984 and to restore the same on file.

2. The petitions in C.M.P.Nos.1032 to 1034 of 2019 have been filed to condone the delay of 2842 days in filing the application to set aside the abatement caused due to the death of the first appellant, to set aside the abatement on account of the death of the first appellant and to bring the third petitioner herein as the legal representatives of the deceased first appellant.

3. This second appeal has been filed as against the judgment and decree dated 06.01.1984 passed in A.S.No.34 of 1983 on the file of the Subordinate Judge, Srivilliputhur, reversing the judgment and decree dated 11.10.1982 passed in O.S.No.217 of 1981 on the file of the Additional District Munsif Court, Sattur.

4. The defendants in the above said suit filed the above said second appeal in S.A.No.637 of 1984 before this Court and this Court by a judgment and decree dated 24.11.1997 allowed the appeal and dismissed the suit filed by the plaintiffs. Aggrieved by the same, the plaintiffs filed an appeal before the Hon'ble Supreme Court of India in S.L.P.(Civil) No.10758 of 1999 and on 13.08.1999, the Hon'ble Supreme Court of India ordered notice to the respondents viz., defendants. Thereafter, it was found that both the defendants were died on 10.05.1994 and 05.10.1993 respectively, even during the pendency of the second appeal before this Court. Even then, there was no substitute petition has been filed by the legal representatives of the deceased appellants/defendants before this Court, as such the Hon'ble Supreme Court of India set aside the judgment and decree dated 24.11.1997 passed by this Court and granted liberty to the legal heirs of the deceased defendants to move substitution application, before this Court along with the application to condone the delay in filing the application for substitution. If such applications have been moved, the Hon'ble Supreme Court of India requested this Court to consider the same within a period of three months from the date of the receipt of the certified copy of that order.

5. As directed by the Hon'ble Supreme Court of India, this Court again taken the above said appeal on file and while pending this second appeal, the legal heir did not take steps to implead themselves on record as legal representatives of the deceased defendants/appellants. Though the Hon'ble Supreme Court of India set aside the judgment and decree passed by this Court dated 24.11.1997, it has been given direction to the legal heirs of the defendants/appellants to move the application for substitution before this Court by an order dated 05.10.2001. It is pertinent to mention that the Hon'ble Supreme Court of India requested this Court to dispose the appeal within a period of three months.

6. In fact, the legal heirs of the deceased appellants were parties to the proceedings before the Hon'ble Supreme Court of India viz., Civi. Appeal No.7006 of 2001 arising out of S.L.P.(C).No.10758 of 1999. On the remand back by the Hon'ble Supreme Court of India, this Court had given ample opportunities to the legal heirs of the appellants to file necessary applications to implead themselves as legal representatives of the deceased appellants. Even then, the legal representatives of the appellants did not file any application and as such, this Court by a judgment and decree dated 19.07.2002, dismissed the appeal as abated.

Further, if the legal heirs of the appellants wanted to pursue the matter, it is open for them to file necessary application before this Court. The relevant portion of the order reads as follows :-

"3. Admittedly, when the appeal was heard by the Apex court, the legal representatives of the appellants were parties before the Apex Court. Only after hearing them, the order dated 05.10.2001 was passed by the Apex Court. Even though Their Lordships of the Supreme Court granted time of three months from the date of receipt of the certificate copies of that order to file an application before this Court in the appeal for substitution of the legal representatives and for condonation of delay in filing such an application, the legal representatives of the appellants did not file any such application.

4. The matter came up before this Court on 24.06.2002. at request of the counsel for the appellants, the matter was adjourned to 03.07.2002. Against on 03.07.2002, at request, it was adjourned to 05.07.2002. Again on 05.07.2002, the matter was further adjourned to 09.07.2002. When the matter was posted on 09.07.2002, at request, it was posted on 12.07.2002. On 12.07.2002, finally it was directed to post on 19.07.2002.

5. Today, the matter came up. Admittedly,

till date there is no application for substitution of legal representatives or for condonation of delay. Today only it is represented that they have filed it and the same is not yet numbered.

6. The learned counsel for the respondents correctly objected to the submission made by the counsel for appellants that they have not filed any application. In view of the fact that the Supreme Court has already directed that if any application has been filed, the same could be disposed of within three months from the date of receipt of the certified copy of that order. Admittedly, from the date of receipt of the order of the Apex Court within the time stipulated, no such application has been filed. Therefore, as requested by the learned counsel for the respondents, this Court has no other alternative except to dismiss this appeal as abated. If the legal representatives of the appellants want to pursue the matter further, it is open for them to file necessary application before this Court.

7. With the above observation, the second appeal is dismissed as abated. No costs."

As liberty given by this Court, now the legal representatives of the deceased appellants filed these applications to condone the delay in filing the set aside the abatement, to set aside the abatement and to bring the

legal representatives on record on behalf of the deceased first appellant.

7. In fact, after filing these applications, the Registry of this Court returned the above said applications for want of some corrections. Thereafter, these applications were not re-presented within the time stipulated by the Registry of this Court. After 1234 days, those applications were re-presented, with the condone delay petition in C.M.P.No.9577 of 2006 for re-presenting all these petitions. This Court by an order dated 26.02.2010, being satisfied the reasons stated in the affidavit accompanying with the petition to condone the delay of 1234 days in re-presenting, the said petition was allowed and condoned the delay on condition to pay a sum of Rs.700/- to the Tamil Nadu Mediation Centre within a period of two weeks. Accordingly, the petitioner complied the conditions and these applications were numbered.

8. It is also seen from the records, without even passing any order in the condone delay petition, the Registry of this Court numbered the other petitions ie., to condone delay in filing the petition to set aside the abatement, to set aside the abatement and bring the legal heirs of the deceased first appellant on record in C.M.P.Nos. 1032 to 1034 of 2010. The other two applications to condone the delay in filing the petition to set aside the order of dismissal dated 19.07.2002 and to restore the same on

file were numbered in C.M.P.Nos.1030 and 1031 of 2010. Those applications are not necessary, since the main second appeal in S.A.No.637 of 1984 dismissed as abated and the petitions are pending in C.M.P.Nos.1032 to 1034 of 2010 to condone delay in filing the petition to set aside the abatement, to set aside the abatement and bring the legal heirs of the deceased first appellant.

9. The learned Senior Counsel appearing for the petitioner submitted that though this Court allowed the second appeal by a judgment and decree dated 24.11.1997, they could not enjoy the fruits of the decree, since while passing the judgment and decree by this Court, the appellants died. On that point, the Hon'ble Supreme Court of India set aside the judgment and decree passed by this Court and remanded back with liberty to the legal representatives of the deceased appellants to file necessary applications to substitute them as appellants and proceed with the matter further. Unfortunately, the legal representative of the deceased appellants i.e., the proposed appellant herein did not receive any information from his counsel within the time. She had no knowledge about the order passed by the Hon'ble Supreme Court of India and the time fixed for filing the necessary application to substitute the legal heirs in the second appeal. The proposed appellant being lady and uneducated and

not conversant with the legal proceedings, she could not able to file the petition immediately as directed by the Hon'ble Supreme Court of India. Therefore, he prayed to condone the delay and requested the matter to be disposed of on merits.

10. Per contra, the learned counsel appearing for the respondent submitted that even at the time of passing the judgment and decree by this Court, the appellants died long back viz., four years before the date of judgment. Even then, the proposed appellant did not bring to the notice of his counsel and did not file any application to substitute her as proposed appellant. Further without noticing the same, this Court allowed the appeal and as against which, the respondents preferred Special Leave Petition before the Hon'ble Supreme Court. After ordering notice, it was found that even pending the second appeal before this Court, the appellants were died on 10.05.1994 and 05.10.1993 respectively. Therefore, the Hon'ble Supreme Court of India by an order dated 05.10.2001 allowed the appeal by setting aside the judgment and decree dated 24.11.1997, passed by this Court in S.A.No.637 of 1984. Further liberty was given to the proposed appellant herein to file necessary application to substitute her as appellant and proceed the case within a period of three months.

11. The proposed appellant was very much appeared before the Hon'ble Supreme Court of India and she had full knowledge about the order passed by the Hon'ble Supreme Court of India. Even then, she failed to file necessary applications before this Court to substitute her as proposed appellant as directed by the Hon'ble Supreme Court of India. This Court had given ample opportunity to file necessary applications, even then she failed to file necessary applications. Therefore, this Court dismissed the appeal as abated by an order dated 19.07.2002. Further the present applications were filed with delay of 2842 days in filing the application to set aside the abatement and to bring her as legal representative of the deceased first appellant. These applications were returned for want of some materials and thereafter these applications were re-presented with delay of 1247 days. Without even ordering notice to the respondents, these applications were allowed by this Court by an order dated 22.06.2010 in C.M.P.No.9577 of 2006.

12. In fact, the respondents filed Review application in Rev.Appln. No.136 of 2010 as against the order dated 22.06.2010 passed in C.M.P.No.9577 of 2006. Though the respondents not interested in proceed with the review application, they had valid objection to condone the delay

in filing these applications. He further contended that there is absolutely no reason stated in the affidavit to condone the delay. He further submitted that the suit is of the year 1981 and as such now almost 40 years over as such it cannot be reopened now for fresh consideration. To substantiate his arguments, the learned counsel appearing for the respondent cited the following reported judgments:-

i. (2010) 8 SCC 685 - Balwant Singh (dead) Vs. Jagdish Singh and others

ii. (2015) 1 SCC 680 - Dohil Construction company Pvt Ltd Vs. Nahar Exports Ltd & anr.

Therefore, he prayed for dismissal of these petitions.

13. Heard Mr.S.V.Jayaraman, learned Senior Counsel appearing for the petitioner and Mr.N.Dhamodaran, learned counsel appearing for the respondents.

14. These petitions are filed to condone the delay of 2842 days in filing the application to set aside the abatement caused due to the death of the first appellant, to set aside the abatement on account of the death of the first appellant and to bring the third petitioner herein as the legal representatives of the deceased first appellant. In fact these three petitions were returned for want of some corrections and thereafter the

same were re-presented with the petition in C.M.P.No.9577 of 2006 to condone the delay of 1234 days in re-presentation. Further this Court allowed the said petition and now these petitions were number for consideration.

15. It is seen from the affidavit filed along with these petitions, there is absolutely no reason stated to condone the delay of 2842 days in filing the set aside as well as to bring the petitioner as legal representative of the deceased first appellant. Already this Court discussed the case in very detailed manner and this Court is not satisfied with the reasons stated in the accompanied affidavit filed in this petitions. Further the suit is of the year 1981 and it cannot be re-opened after 40 years. Further while dismissing the second appeal, this Court categorically stated and relevant portion reads as follows :-

"4. The matter came up before this Court on 24.06.2002. at request of the counsel for the appellants, the matter was adjourned to 03.07.2002. Against on 03.07.2002, at request, it was adjourned to 05.07.2002. Again on 05.07.2002, the matter was further adjourned to 09.07.2002. When the matter was posted on 09.07.2002, at request, it was posted on 12.07.2002. On 12.07.2002, finally it was

directed to post on 19.07.2002.

5. Today, the matter came up. Admittedly, till date there is no application for substitution of legal representatives or for condonation of delay. Today only it is represented that they have filed it and the same is not yet numbered."

It is seen from the above, this Court had given enough opportunities to the proposed appellant to file necessary application to substitute her as appellant. Even then the proposed appellant failed to use those opportunities given by the Hon'ble Supreme Court of India as well as by this Court. Further in the condone delay petition no reason have been assigned to condone the delay.

16. The learned counsel appearing for the respondent relied upon the judgment reported in **(2010) 8 SCC 685** in the case of **Balwant Singh (dead) Vs. Jagdish Singh and others**, which the head note reads as follows :-

"A. Civil Procedure Code, 1908 - Or.22 Rr 9(2) & (3) - "Sufficient Cause" for setting aside abatement of suit and condonation of delay in bringing LRs on record - Meaning, ambit and scope of - Necessity of liberal interpretation and balancing of rights of parties - Held, even if "sufficient cause" has to receive liberal

construction, it must squarely fall within concept of reasonable time and proper conduct of party concerned - Liberal construction cannot be equated with doing injustice to the other party - This balance has to be kept in mind by Court while deciding such applications - Expression "Sufficient cause" implies presence of legal and adequate reasons - There is no straitjacket formula uniformly applicable to all cases - Test to judge whether or not a cause is sufficient is to see whether it could have been avoided by the party by exercise of due care and attention - Limitation Act, 1963 - S.5 - "Sufficient Cause" - What is - Interpretation of Statutes - Basic rules - Determination of legislative intent - Redundancy, rule against applied - Words and Phrases - "Sufficient cause" - Meaning of"

17. In another judgment reported in **(2015) 1 SCC 680** in the case of ***Dohil Construction company Pvt Ltd Vs. Nahar Exports Ltd & anr.***, the Hon'ble Supreme Court of India as follows :-

"22. We may also usefully refer to the recent decision of this Court in Esha Bhattacharjee (supra) where several principles were culled out to be kept in mind while dealing with such applications for condonation of delay.

Principle Nos. (iv), (v), (viii), (ix) and (x) of paragraph 21 can be usefully referred to which read as under:

(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.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for 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.

23. When we apply those principles to the case on hand, it has to be stated that the failure of the Respondents in not showing due diligence in filing of the appeals and the enormous time taken in the refiling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bonafides as displayed on the part of the Respondents. Further, when the Respondents have not come forward with proper details as regards the date when the papers were returned for refiling, the non-furnishing of satisfactory reasons for not refiling of papers in time and the failure to pay the Court fee at the time of the filing of appeal papers on 06.09.2007, the reasons which prevented the Respondents from not paying the Court fee along with the appeal papers and the failure to furnish the details as to who was their counsel who was previously entrusted with the filing of the appeals cumulatively considered, disclose that there was total lack of bonafides in its approach. It also requires to be stated that in the case on hand, not refiling the appeal papers within the time prescribed and by allowing the delay to the extent of nearly 1727 days, definitely calls for a stringent scrutiny and cannot be accepted as having been explained without proper reasons.

As has been laid down by this Court, Courts are required to weigh the scale of balance of justice in respect of both parties and the same principle cannot be given a go-by under the guise of liberal approach even if it pertains to refiling. The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the Respondents not deserving any indulgence by the Court in the matter of condonation of delay. The Respondents had filed the suit for specific performance and when the trial Court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the Respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered."

These judgments are squarely applied to the case on hand and this Court does not find any merits in these petitions. Therefore, this Court is not inclined to allow the condone delay petition and accordingly all the

petitions are dismissed.

18. In view of the order passed in the Civil Miscellaneous Petitions, the Review application stands closed. Consequently, connected miscellaneous petition is closed.

03.02.2020

Index : Yes/No
Internet : Yes/No
Speaking order/Non-speaking order

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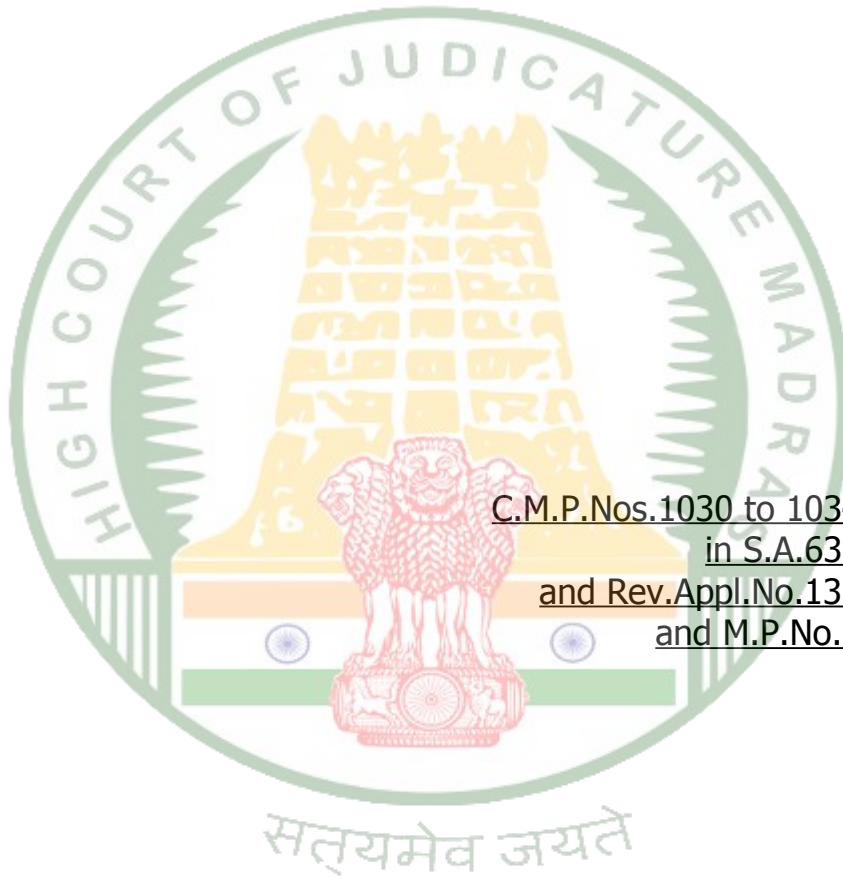


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