

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :02.12.2020

Pronounced on :10.12.2020

CORAM:

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

S.A.No.1077 of 2005

and

C.M.P.No.11197 of 2020

and

C.M.P.Nos.11199, 11202, 12223 & 12224 of 2020

and C.M.P.Nos.14707/05, 17652/05 & 47/06

Pranav H.Mehta,
Sole Proprietor of
M/s Bapalal & Co.,
No.15, First Floor, Kakani Towers,
Khader Nawaz Khan Road,
Chennai-600 006.

... Appellant /Plaintiff

/versus/

1.Surendra M.Mehta
2.Tushar Mehta (deceased)
3.Naresh M.Metha
4.Suresh B.Metha

... RR1 to 4 /Defendants 1 to 4 in trial Court

5.Vaidehi T.Mehta
6.Tuhin T.Mehta
7.Rohan T.Mehta
(respondents 5 to 7 are brought on record
as legal representatives of the deceased
2nd respondent vide order of Court
dated 24.03.2006 made in C.M.P.No.
18443 of 2005).

..Respondents

Prayer: Second Appeal has been filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 04.07.2003 in A.S.No.240 of 2001 on the file of the V Additional Judge, City Civil Court at Chennai confirming the judgment and decree dated 09.07.2001 made in O.S.No.9548 of 1995 on the file of the XV Assistant Judge, City Civil Court at Chennai.

For Appellant :Mr.Ravi Raja Bappu

For Respondents :Mrs.L.Maithili for R1, R3 and R5
Mr.Roshan Balasubramaniam for R6 & R7
R2 Died steps taken

J U D G M E N T

(The case has been heard through Video Conferencing)

Miscellaneous petition in C.M.P.No.11197 of 2020 is filed by one Neeta H.Mehta, D/O Late Mr.Harshkant Mehta to condone delay of 1761 days in filing the petition to set aside abatement caused due to the death of the sole appellant. She wants to get impleaded as the legal heir of the unmarried brother Pranav H. Mehta. He is the plaintiff in the suit and the sole appellant in the second appeal and he died on 07/07/2015.

2.The factual background of the litigation is that, Late Mr. Pranav.H.Mehta, claiming himself as the sole proprietor of M/s Bapalal and Company, filed suit in O.S.No.9548 of 1995 before the City Civil Court, Chennai, to (1) declare defendants 1 to 5 are not the partners of the said firm, (2) restrain the defendants from interfering the affairs and assets of the said firm and further describing and claiming themselves as partners of the said firm, by an order of permanent injunction. The defendants were the four partners who agreed to retire from the partnership firm.

3.The suit was initially filed on the original side of the High Court and taken on file as C.S.No.933/1995. Later, transferred to Assistant City Civil Court and re numbered as O.S.No.9548/1995. The suit was contested on the ground that though on principle, the defendants agreed to retire and agreement was drawn, the settlement of accounts between the parties did not take place due to differences of opinion among the partners, on valuation and distribution of assets and properties of various partners.

4.After contest, the suit was dismissed on 09/07/2001. The plaintiff Pranav H. Mehta filed statutory appeal under Section 96 of the Code of Civil Procedure, before the Additional City Civil Court. His appeal suit in A.S.No.240/2001 was also dismissed vide, judgment dated 04/07/2003. Thereafter, the second appeal filed in time, but defectively. To rectify the defects and represent the papers, there was 318 days delay. The said delay was condoned on payment of costs Rs.300/- to Tamil Nadu State Legal Services Authority, as per the order passed in C.M.P.No. 13564/2005. The second appeal was numbered as S.A.No.1077/2005.

5.Pending second appeal, interim relief of Injunction sought in C.M.P. No.14707/2005, this Court ordered interim stay and notice by order dated 02/09/2005. The respondents filed vacate stay petition in V.C.M.P.No.47/2006 since the interim stay cause delay in distribution of the assets among the partners. Pending adjudication in the interim stay order and vacate stay petition, the second respondent Tushaar Mehta died on 27/09/2005 and his legal representatives were brought on

record as respondents 5 to 7 by order dated 24/03/2006 in C.M.P.No. 18443/2005.

6. When the second appeal came up for hearing on 21/01/2020, the learned counsel for the sole appellant reported the demise of the sole appellant and sought time to file necessary applications. He also reported, respondents 1 and 4 also died. Accordingly, time was granted till 10/02/2020. The case was again listed on 25/02/2020, further time sought to bring the legal representatives of the sole appellant. Hence, time extended till 09/03/2020.

7. Then the pandemic broke, the Courts were closed for physical hearing. The matter was again listed for hearing after 6 months on 22/09/2020 and heard virtually. The learned counsel reported that, the petitions filed on 25/02/2020 to bring the legal representative of the deceased sole appellant along with petitions to set aside abatement and condone delay bearing S.R.Nos.26259/2020 to 26262/2020 returned for defective filing on 17/03/2020. Due to the pandemic situation, those papers gone untraceable, to avoid technical objection, fresh petitions are filed. Taking note of the submission made by the learned counsel for the proposed appellants, this Court directed the Registry to number the applications filed, after serving it to the learned counsel representing for the respondents and adjourned the matter to 06/10/2020.

8. When the matter taken up for hearing on 06/10/2020 the learned counsel appearing for third respondent submitted that, the proposed appellant is not the legal representative of the deceased sole appellant. She is the sister of deceased sole appellant Pranav H.Mehta. The said Pranav H.Mehta died five years ago on 07/07/2015 leaving behind his widowed mother Praveena H.Mehta. She alone is his legal representative. She did not pursue the second appeal for the past five years. The second appeal got abated, after the expiry of 90 days from the death of sole appellant. The said Praveena H.Mehta also died on 12/02/2019. On the death of the sole legal heir of Pranav H.Mehta and his legal representative, the second appeal suffers abatement. Further more, in the year 2017, this petitioner was impleaded as a party in the proceedings relating to distribution of partnership firm's assets, which is pending in the Sub-Court at Tambaram in C.M.A.No.4/2015. She was the power agent of Praveena H.Mehta during her life time. Therefore, this petitioner was well aware of the pendency of the second appeal. The cause for not getting impleaded, immediately after the demise of Pranav H.Mehta is not properly explained in the affidavit. Hence, the delay should not be condoned.

9. In view of the serious objection, the matter was adjourned with direction to serve the other respondents 5 to 7. Meanwhile, the learned counsels exchanged their counter and rejoinders.

10.The 7th respondent entered appearance through his counsel. On 02/12/2020, learned counsel for the petitioner and the learned counsel for respondents 1, 3 and 5 and the learned counsel for respondents 6 and 7 made their respective submissions.

11.Records perused. Heard the learned counsels on both sides.

12.In the condone delay petition, the reason stated for delay are:

a) The sole appellant died on 07/07/2015. He died issueless as a bachelor leaving behind his mother Praveena H. Mehta was the sole first class legal heir. The said Praveena H. Mehta was extremely unwell, due to age related ailment and died on 12/02/2019. She was taking care of her ailing brother and mother and other issues related to her family properties. She was helpless and not aware of the second appeal. (b)The petitioner came to know about the pendency of the second appeal only recently from her uncle Mr.Sreekant Mehta, a resident of Salem. On his advice, she contacted her brother's Advocate and started collecting details and then, filed the petition to set aside abatement with a delay of 1761 days.

13.In the counter filed by the 3rd respondent, Naresh M.Mehta, he has listed out the activity of the petitioner along with her mother during and after the demise of the sole appellant, to show that the petitioner was neither helpless nor ignorant of the appeal pending. Taking advantage of the pendency of second appeal, they effected partition of the firm property between the deceased sole appellant, and Sreekanth Mehta as if it is their family property. The assets of M/s Bapalal & Co were alienated by the petitioner and her mother. She as the power agent of her mother, was managing the estate of the deceased Pranav H Mehta. In C.M.A.No.4/2015, pending on the file of Tambaram Sub-Court, filed in connection with alienation of the partnership firm property, the petitioner herein has been impleaded as an appellant. This petitioner though fully aware of the pendency of the second appeal, falsely plea as if she came to know about the second appeal only recently.

14.In the counter of the 3rd respondent, the details of activities in connection with the firm property is tabulated as below:

Sl No	Date	Property S.No.	Doc.No	Parties	Transactio n
1.	23/6/2005		3669/200 5	Pranav Mehta his 1/3 share to Pravina H.Mehta	Settlement deed

S1 . No .	Date	Property S.No.	Doc.No	Parties	Transactio n
2.	23/6/2005		3670/200 5	Pravina Mehta her share to Neeta H.Mehta	Settlement deed
3.	23/4/2018	S.No.1/65 Plot No.58A, S.No.1/73 Plot No.84, S.No.1/74 Plot No.85, S.No.1/75 Plot No.86	2723/201 8	Pravina Mehta to Neeta Mehta	GPA
4.	28/8/2018	S.No.1/73 Plot No.84	6083/201 8, 7082/201 8, for sale agreemtn s 2601/199 5 2604/199 5	Neeta Mehta POA of Pravina Mehta to Kanakasabapathi	Cancellati on of sale agreement
5.	28/8/2018	S.No.1/74 Plot No.85	6080/201 8 6079/201 8 for sale agreemen ts 2603/199 5, 2605/199 5	Neeta Mehta to V.S.Baskar	Cancellati on of Sale agreements

Sl No.	Date	Property S.No.	Doc.No	Parties	Transactio n
6.	28/8/2018	S.No.1/67 & 1/73 Plot No.86	6081/201 8 6084/201 8 for sale agreements 2602/199 5 2606/199 5	Neeta Mehta to Bharat K Mehta	Cancellati on of sale agreement

15.It is specifically averred in the counter that, the late Pranav H.Mehta and his family members including the petitioner herein illegally carried out a family partition in respect of the properties belonging to the Partnership Firm and distributed the same among themselves, in an attempt to defeat the order passed by the Court. Thus, it is apparent that the sole appellate, the petitioner herein, her mother and Sreekanth Mehta are trying to illegally dispose of the assets of the Firm from 2005 onwards, with the intention of creating third party rights and defeat the respondents rights ascertained in terms of the judgment passed by the Courts below.

16.To the said counter, the petitioner has filed rejoinder, stating that,

"my mother died when she was 89 years old, was bedridden and was not able to undertake to do anything during the last few years of her life prior to the year 2019. In fact she was even unable to execute any document/instrument with respect to the various assets which were left behind by her father (who died in 1991) and her brother (who died in 2015) and hence, I was appointed as her Power of Attorney to execute certain documents on her behalf of the Sub-Registrar who came to our house where her mother was residing. She had to look after some family interests in Salem, Yercaud and at Chennai all by herself even when her brother was alive and her mother was alive during their last years of existence. Thus, she had to look after two sick persons in her house apart from the various properties etc."

17.The learned counsel for respondents 6 and 7, alleging that the petition suffers suppression of material facts. The petitioner was not come with clean hands. Hence, sought for dismissal of the condone delay petition.

18.Both the learned counsels representing the respondents particularly urged this Court that the petition is bereft of truth. The petitioner in her affidavit had falsely sworn that she was sick and came to know about the pendency of the appeal only recently. Contrarily, she was actively participating in alienation of the partnership property and also contesting the connected matter in C.M.A.No.4/2015. She was the power agent of the mother of the deceased appellant. Either her mother should have filed the implead petition within a reasonable period, after the demise of the sole appellant or the petitioner should have filed the petition immediately after she became the power agent of Pravina H. Mehta or atleast soon after the demise of Parvina Mehta on 12/02/2019.

19.Per contra, the learned counsel appearing for the petitioner submitted that, the petitioner is 55 years old. She was taking care of her ailing brother and mother till their lifetime. She had no external help and she was moving from one place to another in respect of the estate of her brother, due to which she suffer mental and physical setback. By opposing the condone delay petition, the respondents want to snatch an order without due process of law.

20.The sole appellant died on 07/07/2015. The 90 days period to set aside abatement expired on 06/10/2015. From the given facts, the mother of the sole appellant being the class I heir ought to have filed the petition to set aside abatement. She till her life time did not care to file petition to get herself impleaded in the appeal. The subject matter of the appeal is the partnership firm and its property. During the life time of Pranav. H.Mehta, the sole appellant had dealt with the properties against the interest of the decree holders. After the dismissal of the first appeal in A.S.No.240/2001 and before filing this second appeal in S.A.No.1077/2005, under a deed of settlement dated 23/06/2005 Pranav.H.Metha had gifted a portion of the partnership firm property to this petitioner. In C.M.A.No.4/2015, the petitioner herein later impleaded as one of the respondents in the year 2017 and she is contesting the case and matter is pending before the Sub Court at Tambaram. While the facts being so, the plea of the petitioner that she came to know about the pendency of the second appeal only recently from her uncle residing at Salem, is a ranked lie. Her plea that her mother was old and sick to pursue the case during her life time is contrary to the events and activities carried by her mother on her own and through her power of attorney, the petitioner herein during her life time.

21.In Ajit Singh Thakur Singh -vs- State of Gujarat reported in [1981 (1) SCC 495] the Hon'ble Supreme Court has observed,

"6.it is true that a party is entitled to wait until the last day of limitation for filing an appeal. But, when it allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstances arising before limitation expired it was not possible to file the appeal within time. No event or circumstances arising after the expiry of limitation can constitute sufficient cause".(emphasis supplied)

22.The length of delay is never a criterion for condoning the delay. The cause explained for delay always the criterion. If the explanation is reasonable and not smack of malafide or falsehood, usually in a pending second appeal, if any of the contesting party die, it is the practise of this Court to condone the delay in filing the petition to set aside abatement and allow the petition to bring the legal representative on record to provide them an opportunity to contest the case on merit.

23.In the instant case, the scheme of dilatory tactics to keep the litigation pending as far as possible to deprive the respondents from their rightful share in the firm asset is palpable seen. After entering into a deed of dissolution with specific undertaking that the assets of the firm will be apportioned in a particular manner, the suit is filed to declare the plaintiff as sole proprietor of the firm without delivery of possession of the properties to the respective parties as per the terms of dissolution.

24.In N.Balakrishnan -vs- M.Krishnamorthy reported in [1998 (7) SCC 123], the Supreme Court observed:-

"11.....It is enshrined in the maxim interest reipublicae ut 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"

25.Unless there is proof of sufficient cause, application

under Section 5 of the Limitation Act, cannot be entertained. Further, the cause so pleaded must be a bonafide cause and not tainted with malafide and falsehood.

26. In this case, the respondents have placed before this Court materials to infer the cause for delay shown is not true and the petitioner intention is to delay the inevitable and meanwhile to create as much as encumbrance to the property of the firm. The Court cannot be a privy to such malafide design.

27. In Ramlal -vs- Rewa Coalfields Ltd. reported in [AIR (1962) SC 361], the Supreme Court observed:-

".....It is further necessary to emphasise that even if the sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the Court by Section 5. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage the diligence of the party or its bona fides may fall for consideration."

28. In Pundlik Jalam Patil -vs- Jalgoan Medium Project reported in [2008(17) SCC 448], the Hon'ble Supreme Court set aside the order of the High Court condoning delay of 1724 days. In the said judgment, the Hon'ble Supreme Court has extracted the policy of the limitation Act as defined in Halsbury's Law of England. It is appropriate for this Court to extract the same and follow the dictum.

"605. Policy of the Limitation Acts---
The Courts have expressed at least three differing reasons supporting the existence of statutes of limitation, namely (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove the stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence".

29. For the reasons stated above, this Court finds that the inordinate delay of 1761 days is not sufficiently explained and the cause as stated is not true. The petitioner cannot take advantage of her voluntary in-diligence at the costs of respondents interest. As said in the Halsbury's Law of England, the long dormant claims have more of cruelty than justice in them.

30.As a result, C.M.P.No. 11197/2020 is dismissed. Since the delay of 1761 days is not condoned, the consequential C.M.Ps are dismissed.

31.In view of the order passed in C.M.P.No.11197 of 2020 filed to condone the delay of 1761 days in filing the petition to set aside the abatement of the sole appellant in the second appeal, this Second Appeal is dismissed as abated. No order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

1.IV Additional Judge,
City Civil Court, Chennai.

2.XV Assistant Judge,
City Civil Court, Chennai.

Copy To

The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.Roshan Balasubramaniam, Advocate, S.R.No. 40039

+1cc to Mr.B.Ravi Raja, Advocate, S.R.No.40013

+1cc to Mr.B.Ravi Raja, Advocate, S.R.No.40013 (22/01/2021)

S.A.No.1077 of 2005

and

C.M.P.No.11197 of 2020

and

C.M.P.No.11199, 11202, 12223 & 12224 of 2020

AJS (CO)

GN(21/12/2020)

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