

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-07-2020

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

M.P.No.7409 of 2020
in
C.M.A.SR No.37053 of 2018

1.N.Premkumar (Minor)

2.N.Keerthivasan (Minor)

(Petitioners 1 and 2 are represented
by their Grand Mother M.Jaya)

... Petitioners/Appellants

Vs.

1.The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan Salai,
Chennai-2.

2.T.Nedunchezian

... Respondents/Respondents

Prayer : This Miscellaneous Petition is filed by the petitioner under Section 173(1) of Motor Vehicles Act, 1988, to condone the delay of 1,169 days in filing the CMA SR No.37053 of 2018 against the judgment and decree dated 15.10.2014 passed by the learned III Judge, Small Causes Court-cum-Motor Accidents Claims Tribunal, Chennai in MCOP No.2434 of 2012.

For Petitioners : Ms.Ramya V.Rao

ORDER

The present Miscellaneous Petition is filed to condone the delay of 1,169 days in filing the appeal, challenging the judgment and decree dated 15.10.2014 passed by the learned III Judge, Small Causes Court-cum-Motor Accidents Claims Tribunal, Chennai in MCOP No.2434 of 2012.

2. The learned counsel appearing on behalf of the petitioners mainly contended that some settlement process was going on between the parties and further the two claimants are minors and therefore, the appeal was not filed within the period of limitation.

3. The Tribunal has committed an error in not granting the future prospects to the claimants. Therefore, the delay is to be condoned and the appeal is to be decided on merits.

4. It is further contended by the learned counsel appearing on

behalf of the petitioners the delay is on account of the fact that the grandmother of the minor children misplaced the decree copy and therefore, the appeal was unable to be filed in time.

5. Every appeal is to be filed, within the period of limitation. Condonation of delay is a discretionary power and an exception while exercising the power of discretion, the Courts are also bound to act judiciously and the reasons for such condonations are also to be recorded. In the absence of any valid and acceptable reasons, the Court would not condone the enormous delay in filing the appeal.

6. The condone delay petition is filed under Section 173 (1) of the Motor Vehicles Act, 1988. The appeal is to be filed within the period of limitation prescribed under Section 173 (1) of the said Act. Accordingly, 90 days time limit is contemplated. The Proviso Clause to Section 173 (1) stipulates that the High Court may entertain the appeal after the expiry of the said period of 90 days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time. Thus, there must be

sufficient cause for delay and the reasons stated for such an enormous delay in filing the appeal is also to be explained and must be an acceptable one.

7. Law of Limitation as contemplated under Section 173 (1) of the Motor Vehicles Act is the law. The condonation of delay is an exception under the proviso clause. Thus, the condonation of delay can never be a mechanical affair and the High Court cannot condone the delay in a routine manner. When the law provides limitation for preferring an appeal and the proviso clause as contemplates the power of discretion to the Court to condone the delay, then such discretionary powers are to be exercised judiciously and by recording reasons. It is not as if, the High Courts can condone the delay in a routine manner, so as to dilute the law of limitation as contemplated under the said Act. Thus, in all cases, where there is an enormous delay in filing an appeal, the Courts are bound to ascertain the reasons and its genuinity and the acceptability of such reasons. The reasons must be candid and the Courts are bound to record such reasons, while condoning long delay.

8. In all such delay, the reasons must be candid, enabling this Court to exercise the power of discretion under the Proviso Clause to Section 173 (1) of the Motor Vehicles Act. In the absence of any such convincing reasons, the Courts would not condone the huge delay in a routine manner, which would defeat the very purpose of law of limitation as contemplated under the statute.

9. Power of discretion and the exception clauses are to be exercised properly and in order to mitigate certain circumstances arising on account of the certain events or incidents, which must be an acceptable one. Contrarily, certain reasons, which are flimsy and routine, cannot be a ground to condone the huge delay.

10. This Court is of the considered opinion that the delay is enormous, more specifically, 1,169 days. The reasons stated for condoning the huge delay of 1,169 days is neither candid nor convincing and therefore, this Court is not inclined to condone the delay. Accordingly, C,M.P.No.7409 of 2020 stands dismissed and C.M.A.SR.No.37053 of 2018

is rejected at the SR Stage itself. However, there shall be no order as to costs.

23-07-2020

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

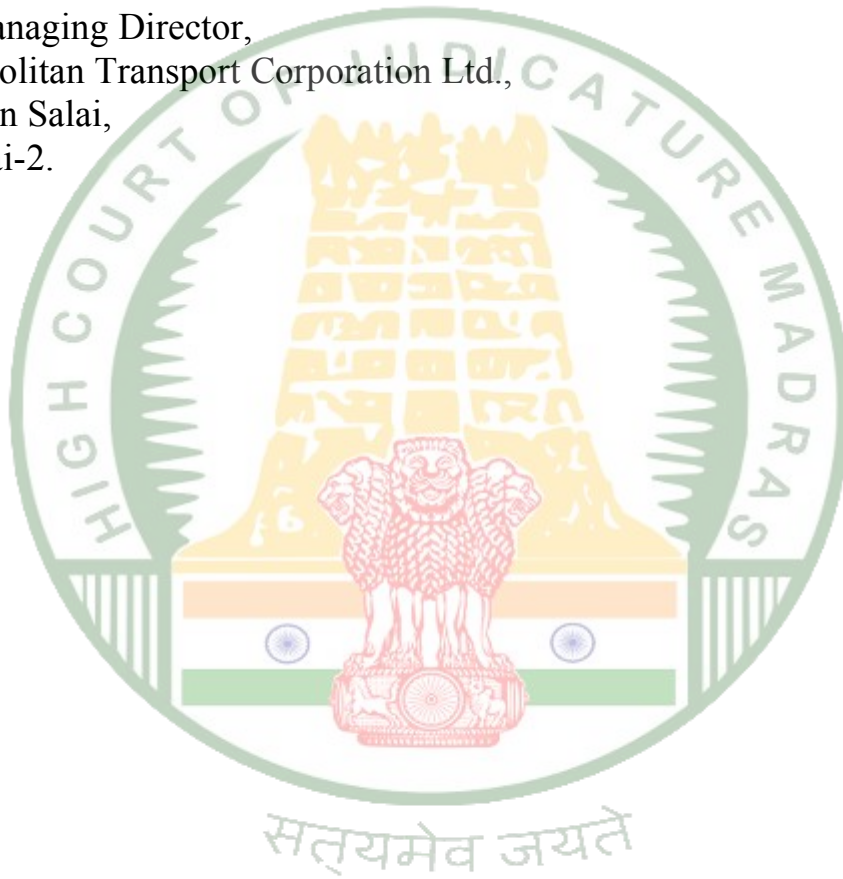
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To

1. The III Judge,
Small Causes Court-cum-Motor Accidents Claims Tribunal,
Chennai.
2. The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan Salai,
Chennai-2.



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S.M.SUBRAMANIAM, J.

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