

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.P. No. 8372 of 2016

in

C.M.A. SR. No. 22966 of 2016

Metropolitan Transport Corporation Ltd.,
Represented by its Managing Director,
No.2, Pallavan Salai,
Chennai - 600 002 .. Petitioner

Vs.

1.Rahmathnisha
2.Minor.A.Sahil Akthar
3.Minor.A.Lai Usha Asika
4.A.Rahima beevi
Minors are represented by their
Mother and N.F.
All are residing at:
No.3/202, Hammanllah Salai,
Nethaji Salai,
Perumbakkam, Chennai - 600 073 .. Respondents

PRAYER: C.M.P. No.8372 of 2016 is filed under Section 173(1) of Motor Vehicles Act, 1988 to condone the delay of 264 days in filing the above appeal in C.M.A.S.R.No.22966 of 2015.

C.M.A.SR.No.22966 of 2016 is filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 12.02.2015 passed in M.C.O.P.No.3 of 2012 by the Learned Chief Judge of Small Causes Court, Motor Accident Claims Tribunal, Chennai.

For Petitioner : Mr.S.S.Swaminathan

ORDER

The delay of 264 days in filing the appeal is sought to be condoned in the present Civil Miscellaneous Petition.

2. The learned counsel for the appellant /Transport Corporation seriously contended that the delay cannot be said to be enormous and this apart, the claimants' appeal is also pending before this Court and therefore, the delay is to be condoned .

3. Compromising the sound legal principles are unwarranted. The power of discretion being a sword is to be utilized with great caution. Rule of law should prevail while

exercising the power of discretion. Thus, it can never exceed nor subvert the rule of law. The power of discretion, which is normally guided and in some circumstances unguided must be exercised with full devotion so as to mitigate the injustice if any arose. However, the discretionary power cannot result in dilution of the rule of law. Statue provides discretionary power to condone the delay. Courts must have a pragmatic approach, ascertain the genuinity of the reason as well as the prejudice if any caused to the other parties to the litigation and take a decision accordingly. Misplaced sympathy cannot play a role in exercising the power of discretion. Such proposition is not only dangerous, undoubtedly, would cause injustice to either of the parties to the lis. Some other appeal is pending for long time is not a ground to condone the enormous delay. In such an event, it will be a routine affair whenever an appeal on similar is pending till the matter is disposed of any other similar appeals can be entertained. Such a practice would dilute the principles of law. The mere administrative delay, which is not substantiated, is insufficient to condone an enormous delay. Administrative delay to the extend can be condoned and abnormal cannot be condoned. Therefore, reasons must be candid, convincing and genuine. The Courts are bound to ascertain the genuinity reason so as to exercise the power of discretion in a meaningful manner. It is not as if Court is not extending sympathy to condone long delay simply because certain merits are raised in the grounds of appeal. In such an event, the law of limitation is completely watered down and the purpose and object of limitation is also to be defeated. In the present case, it is stated that there is an administrative delay in filing the appeal, in view of the fact that the copy of the decree is not forwarded to the petitioner/ Transport Corporation by the trial court advocate. Only after receipt of the notice in the execution petition, the petitioner/ Transport Corporation came to know about the decree at all. Undoubtedly, such a reason is a lapse, negligence and dereliction of duty on the part of the officials of the Transport Corporation in dealing with the legal matters. Legal departments are available in the Corporation and trained legal officials are working and getting a decent salary, while so, they are bound to perform their duties and responsibilities vigilantly and in such lapses, they must be held responsible and accountable for all losses to the petitioner/ Transport Corporation.

4. This court is of the considered opinion that in the event of any lapse, negligence or dereliction, the petitioner /Transport Corporation is duty bound to initiate action against all such responsible persons. Whether officials or the counsel engaged have committed any act of negligence or dereliction of duties, appropriate action should be initiated for the financial loss, if any occurred to the Corporation, as the corporation is a public institution and owned by the

Government of Tamil Nadu. There may not be any compromise with reference to initiation of action as these officials of the Transport Corporation are decently paid salary.

5. 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.

6. As far as the lis on hand is concerned, there is a delay of 264 days in filing the appeal is sought to be condoned in the present civil miscellaneous petition.

7. 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. Uncondonable delay cannot be condoned.

8. In the present case, the petitioner has not established any acceptable reason for the purpose of condoning the enormous delay of 264 days and therefore, this Court is not inclined to condone the delay and consequently, C.M.P. No.8372 of 2016 stands dismissed and C.M.A.SR.No.22966 of 2016 is rejected at the SR Stage itself. No costs.

Sd/-

Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

To

1.The Learned Chief Judge of Small Causes Court,
Motor Accidents Claims Tribunal
Chennai.

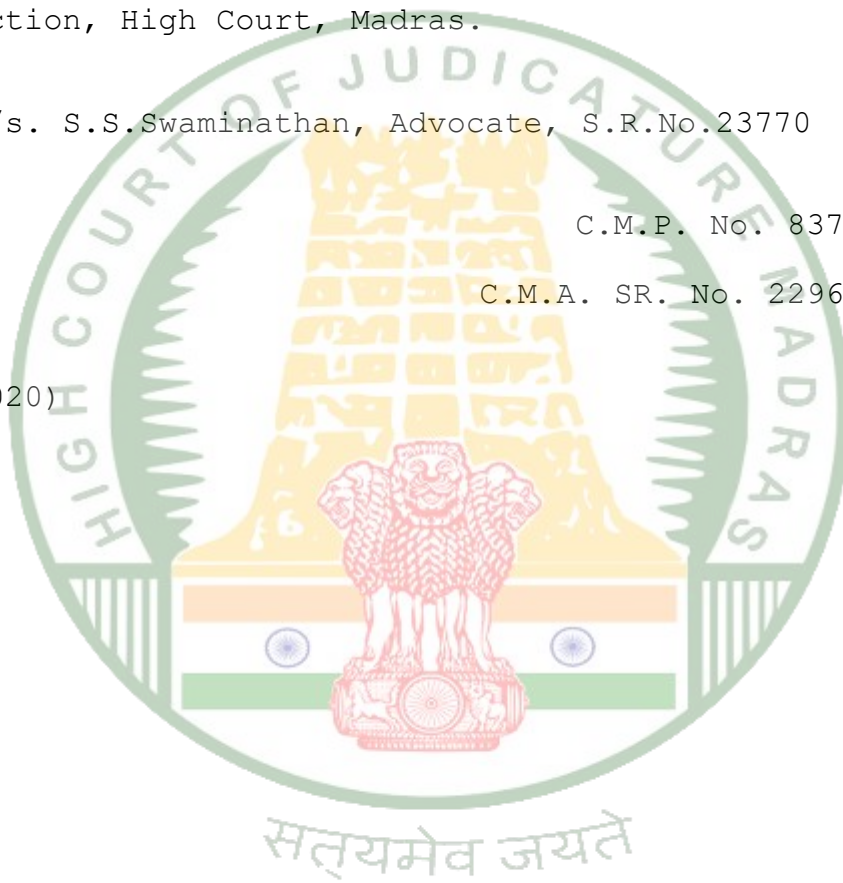
2.The Sub Assistant Registrar,
A.E.Section, High Court, Madras.

+1cc to M/s. S.S.Swaminathan, Advocate, S.R.No.23770

C.M.P. No. 8372 of 2016
in

C.M.A. SR. No. 22966 of 2016

SSV(CO)
EU(26/6/2020)



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