

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.P.No.13362 of 2019
in
A.S.SR.No.62333 of 2019

N.Masilamani

.. Appellant

Vs.

1.M/s.Premier Benefit Fund(India) Ltd.,
Rep.by its Chairman,
Having Registered Office at
No.297, Mint Street, Park Town
Chennai – 3 and Administrative Office,
At No.144, Trunk Road, Poonamalle,
Chennai – 56, through its Chairman and
Managing Director.

2.R.Arun Kumar

3. A.J.Chandrasekar

.. Respondents

PRAYER: Civil Miscellaneous Petition is filed under Section 5 and Section 14 of Limitation Act, 1963, to condone the delay of 753 days in filing the above Appeal in SR.No.62333 of 2019 in O.S.No.3114 of 2010.

A.S.SR.No.62333 of 2019 is filed under Section 96 of Civil Procedure Code, against the judgment and decree dated 07.04.2016 on the file of the learned Additional Judge, XVII Additional City Civil Court in O.S.No.3114 of 2010.

For Appellants : Mr.S.Kumar
For M/s.G.Vijayan and Associates

For Respondents : M/s.V.Raghavachari

J U D G M E N T

The Civil Miscellaneous Petition is filed to condone the delay of 753 days in filing the appeal suit against the judgment and decree passed in O.S.No.3114 of 2010.

2. The learned counsel appearing on behalf of the petitioner made a submission that the reason for such a huge delay is explained as the petitioner had preferred a Review Petition in Review Petition No.225 of 2016 before the trial Court, challenging

the decree and judgment passed.

3. It is contended that the auction of the suit property was done without proper notice to the petitioner and the trial Court also not considered certain grounds and a review petition was filed by the petitioner to review the judgment and decree passed in O.S.No.3114 of 2010. The Review Petition was pending for about three years and after the dismissal of the Review Petition, the present first appeal is filed and therefore, the delay is to be condoned and the delay is neither willful nor wanton and on account of the pendency of the Review petition before the trial Court.

4. In support of the contentions, the learned counsel for the petitioner cited the judgment of the Hon'ble Supreme Court of India in the case of **DSR Steel (Private) Limited., Vs. State of Rajasthan and others, reported in (2012) 6 SCC 782**. Referring the footnote in the above judgment, the learned counsel had made a submission that though the pendency of the Review Petition would

not save the limitation, the pendency can be considered as a condonable delay.

5. This Court is of an opinion that the Hon'ble Supreme Court of India clarified that mere pendency of a review petition cannot be a ground to condone the long delay perse. However, the factors leading to filing of the Review Petition can be considered for the purpose of condoning the delay. In other words, the pendency of the Review Petition can be raised as a ground for condoning the delay. However, the Courts are bound to consider the entire facts and circumstances and the conduct of the parties for the purpose of condoning such an enormous delay. Thus, condonation of delay cannot be done in a routine manner and only in the presence of valid and acceptable reason, the long delay in filing the appeal suit can be condoned and not otherwise. In normal circumstances, short span of delay can be condoned by the Courts by exercising the power of discretion. While exercising the power of discretion, Courts must be cautious and ensure that while condoning the long delay,

adequate reasons are recorded. The power of discretion is to be exercised judiciously and by recording reasons. It is not as if the discretionary powers can be exercised without recording reasons. In the absence of any valid reasons, such exercise of discretionary power is to be construed as bad in law. Therefore, condonation of delay is not an automatic affair and the power of discretion to condone such huge delay cannot be exercised in a mechanical manner. The facts and circumstances as well as the conduct of the parties and the other factors raised are also to be considered for the purpose of condonation of long delay.

6. In this context, this Court is of an opinion that the petitioner filed the suit for declaration. The said suit was dismissed and he filed a review petition in Review Petition No.225 of 2016 and thereafter, the present appeal is filed with a delay of 753 days.

7. The learned counsel appearing on behalf of the respondents vehemently opposed the contentions by stating that the 3rd

respondent is the bonafide third party auction purchaser and he purchased the property for a valid consideration and in spite of that the 3rd respondent is unable to take possession of the property for the past about 17 years. The auction was conducted during the year 2003 and even now, the petitioner is in possession of the suit schedule property and the 3rd respondent as an auction purchaser, is unable to take possession of the property in view of the fact that the petitioner is prolonging and protracting the issues by filing the petitions after petition and therefore, the present petition is to be rejected.

8. To substantiate the said contentions, the learned counsel for the 3rd respondent made a submission that O.S.No.11074 of 2010 was decreed by Hon'ble XVII Additional City Civil Court at Madras on 07.04.2016 and the suit filed by the petitioner in O.S.No.3114 of 2010 was dismissed by the Hon'ble XVII Additional City Civil Court at Madras on 07.04.2016. The 3rd respondent filed the Execution Petition in E.P.No.1650 of 2016 before the X Assistant

City Civil Court, Chennai seeking delivery of possession. The petitioner refused notice in the Execution Petition and in view of the same, when the EP is set for orders, the petitioner had filed application to set aside the exparte order in EP and the same was allowed on cost. Subsequently, the execution petition is set for hearing. Whenever the execution petition is set for hearing, the petitioner had played delay tactics before the execution Court, by filing frivolous applications in the form of stay applications one after other, memos, change of vakalat, transfer petition etc.,

9. It is contended that in the counter filed before the Executing Court, the petitioner had reported that he had filed appeal in A.S.SR.No.48685 of 2016, belatedly and sought repeated adjournment on such score. Similarly, the petitioner had stated that the C.R.P.No.2506 of 2011 will have bearing effect on the proceedings and on such score, the petitioner had protracted the execution proceedings by referring to the Review Petition filed before the XVII Additional City Civil Court at Madras, wherein, a

detailed counter was filed by the 3rd respondent in the Review Petition and it was categorically mentioned before the Court that the Review Petition is not maintainable and the Court cannot sit over the decree as appellate authority as it had become *functus officio*.

10. It is further contended that in the interregnum, this Court had allowed Revision petition of the 3rd respondent in C.R.P.No.2506 of 2011 by order dated 29.10.2018, holding that the decree in O.S.No.4752 of 2003 as nullity. This factor was brought to the knowledge of the executing Court. Even thereafter, the petitioner had protracted the proceedings by frivolous petitions. In view of the same, aggrieved by the delay tactics being adopted by the petitioner, the 3rd respondent is constrained to approach this Court for remedy, vide, C.R.P.No.1602 of 2019. Wherein taking into consideration that the earlier C.R.P.No.2506 of 2011 was allowed by this Court and there is no impediment in the form of stay application, by order dated 21.03.2019 in C.R.P.No.1602 of 2019, this Court had directed the execution Court to conclude the

execution process on or before 19.06.2019. Pursuant to which, after hearing both parties, the execution Court had ordered delivery by order in E.P.1650 of 2016 dated 10.07.2019. Pursuant to the orders of delivery, bailiff was taken to the premises, by then, the petitioner had locked the premises and hindered with the process of execution. As such, the bailiff had returned the warrant for want of break open and police aid. That when necessary applications were filed for want of break open and police aid, the petitioner had served notice on the respondents in this petition and moved C.R.P.No.2342 of 2019. A bare reading of the affidavit would reveal that the petitioner had concealed the above happening and filed application as if on the dismissal of review the appeal is in time however since the office sought for application, the petition to condone delay is filed. Absolutely, no reasons much less plausible cause is stated for the delay of 753 days in filing the appeal.

11. Citing the above facts and circumstances, the learned counsel for the 3rd respondent reiterated that the petitioner is

having the habit of prolonging and protracting the issues by filing petitions after petitions one way or other. The petitioner filed the review application and kept it pending for about three years wantonly with a view to delay the issue and maintain the possession. Even now, the petitioner is in possession and the 3rd respondent having purchased the suit schedule property in the year 2003, is unable to take possession for the past about 17 years.

12. This Court is of the considered opinion that undoubtedly, the delay of 753 days is enormous. The reasons stated for condoning such a delay is that the petitioner had filed a Review Petition. Mere filing of a review petition cannot be considered as a ground for the purpose of condoning such a delay.

13. Considering the entire facts and circumstances narrated by the parties to the petition, this Court is of an opinion that the petitioner has adopted a daily tactics with a view to continue the possession in the suit property. Under these circumstances, this

Court is of an opinion that by condoning such a huge delay, the Court cannot encourage prolongation of litigation at the instance of the parties.

14. The parties to the lis, must always prudent enough in pursuing the matter for the purpose of establishing their right. The litigations cannot be abused for the purpose of prolongation and protraction. Litigants are approaching the Court for establishing their legal rights. While doing so, they are expected to be vigilant and proper in disposal of the cases. Unnecessary adjournments, filing of unwarranted petitions and prolonging the matter cannot be encouraged nor be a ground to condone such a huge delay. Therefore, the conduct of the parties in this regard are of paramount importance. The conduct, if not satisfactory and various actions, omissions or commissions, litigants are identified as a delay tactics, then the Court must refuse to condone such a huge delay in filing the appeal suit.

15. In the present case, the delay is willful on account of the fact that the petitioner has instituted several proceedings and he was aware of all the facts and circumstances and in spite of that, he waited till the disposal of the review petition before the trial Court and thereafter, filed the appeal suit before this Court with a delay of 753 days. This being the facts and circumstances, this Court is of an opinion that the petitioner has not established any sufficient grounds to condone the delay.

16. The legal principles to be followed for condoning the delay is well settled and this Court also considered the said principles in C.M.P.Nos.8358 & 8359 of 2018 in AS.SR.No.32087 of 2018 dated 09.12.2019 and the relevant paragraphs are extracted as under:

*"10. In respect of said contentions, the learned counsel appearing on behalf of the respondent cited the judgment of this Court in the case of **Zulaiha Syed Mohideen Vs. D.Visalakshi Ammal & Others** reported in*

MANU/TN/2222/2013, wherein the Court made following observations;

"5.Before going into the merits of the case, first of all, it should be stated that in a case of this nature for condonation of delay, it is well settled that length of delay is not material, but the reasons stated thereof for condonation of delay. In other words, for condonation of delay, the reasons adduced must be properly pleaded, convincing and acceptable and explanation should be offered for condonation of the delay. Unless proper explanation is offered, the Courts could not exercise its discretion in the proper perspective to advance substantial justice. It is also settled that when a court has exercised its discretionary power to condone the delay, the appellate Court, in exercise of its discretion, should not ordinarily interfere with such decision unless the discretion exercised is arbitrary and overlooking the interest accrued to another party to the dispute. The appellate Court should also see whether the trial court has taken into consideration all the aspects of the matter, the advantage or disadvantage that may be caused to the other side while condoning the delay inasmuch as during the interregnum, the other party could have asserted a vested right. With this background, let us

analyse the merits of the rival contentions urged by the counsel for both sides.

6 to 11.....

12.On behalf of the revision petitioner, several decisions were cited. The learned counsel for the respondents objected for relying on the decisions by stating that they relate to condonation of delay in filing a petition and not with respect to condonation of delay in representing a petition. Such an argument of the counsel for the respondents cannot be countenanced. Each and every case depends on the facts and circumstances of that case. Further, the issue involved in this case is whether the delay in filing a petition has been properly explained and sufficient cause has been shown for the delay or not and in support of the same, the learned counsel for the revision petitioner has relied on the following decisions:-

(i) In (Kandaswamy and four others vs. Krishnamandiram Trust, Karur, by its Trustees and 33 others) 2001 (4) CTC 722 this Court took note of the fact that the conduct of the revision petitioner in keeping quiet for over two years only on account of inability to mobilise other petitioner evidences would amount to gross negligence, irresponsible inactive attitude and therefore the

petitioner lacks bonafides. Under those circumstances, this Court refused to condone the delay of 797 days in filing a petition to set aside the exparte decree. In the above case, this Court also referred to the decision of the Honourable Supreme Court reported in (M.K Prasad vs. P. Arumugam) (2001) 6 Supreme Court Cases 176, which was relied on by the learned counsel for the respondents

(ii) In (Sundar Gnanaolivu rep. by his power of attorney agent Mr. Rukmini vs. Rajendran Gnanavolivu, rep. by its power of attorney agent Veina Gnanavalivu) 2003 1 Law Weekly 585, the Division Bench of this Court held that when the averments in the affidavit are untrue, lacks bona fides, then the case falls within the exception to the Rule of Liberal approach and it does not deserve the liberal approach formula in matters relating to condonation of delay. In this case also, the Division Bench of this Court followed the decision of the Honourable Supreme Court reported in (M.K Prasad vs. P. Arumugam) (2001) 6 Supreme Court Cases 176, which was relied on by the learned counsel for the respondents. In Para Nos. 14-A and 15, the Division Bench of this Court held thus:-

14-A. In yet another Division Bench Judgment reported in (1990) 1 LLN 457 (Tamil Nadu Mercantile Bank

Limited, Tuticorin versus Appellate Authority under the Tamil Nadu Shops and Establishments Act, Madurai and another) the principles relating to Rule of limitation have been discussed and the legal position has been stated by His Lordship Mr. Justice M. Srinivasan, as he then was, in paragraphs 14 and 17, which read as under:-

"14.If a litigant chooses to approach the Court long after the time prescribed under the relevant provisions of the law, he cannot say that no prejudice would be caused to the other side by the delay being condoned. The other side would have in all probability destroyed the records thinking that the records would not be relevant as there was no further proceeding in the matter. Hence, to view a matter of condonation of delay, with a presupposition that no prejudice will be caused by the condonation of delay to the respondent in that application will be fallacious. In our view, each has to be decided on the facts and circumstances of the case. Length of the delay is a relevant matter to be taken into account, while considering whether the delay should be condoned or not. It is not open to any litigant to fix his own period of limitation for instituting proceedings for which law has

prescribed periods of limitation.

"17.Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long time, it cannot be presumed to be non-deliberate delay, and in such circumstances of the case, he cannot be heard to plead that substantial justice deserved to be preferred as against technical considerations. WE are of the view that the question of limitation is not merely a technical consideration. Rules of limitation are based on principles of sound public policy and principles of equity. Is a litigant liable to have a Damocles' sword hanging over his head indefinitely for a period to be determined at the whims and fancies of the opponent (underlining is ours)

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 of 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 delays 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."

(iii) In the decision of this Court reported in (G. Jayaraman vs. Devarajan) 2007 (2) CTC 643, this Court held in a case where there was a delay of 553 days in filing an application to set aside the decree that discretion must not be exercised in an arbitrary or vague manner but must be exercised with vigilance and circumspection. It was further held that delay cannot be condoned as a matter of judicial generosity and the right accrued to the other side ought to be kept in view while considering the plea relating to affording opportunity to advance substantial justice. The facts involved in that case is identical to the facts of the case on hand. In that case, the decree holder was prevented from enjoying the fruits of the decree for about

8 years because of the filing of one petition after the other by the defendants to successfully stall the execution of the decree. In that context, this Court held that liberal approach theory would cause prejudice to the plaintiff/decreed holder and the discretion exercised by the trial court to condone the delay of 553 days cannot be sustained. In Para Nos. 9, 10 and 16, this Court held as follows:-

"9. Of course, it is the consistent view taken by the Supreme Court in various decisions that "sufficient cause" appearing in Section 5 of the Limitation Act should be liberally considered and the Court should be slow in shutting the door of justice to a litigant on the score of limitation. When the reason for the delay is properly explained, the Court is to adopt a pragmatic approach to condone the delay when there is no negligence, inaction or want of bona fide on the part of the Applicant.

10. At the same time, the discretion must be exercised in any arbitrary or vague or fanciful manner, but must be exercised like any other judicial discretion with vigilance and circumspection. Delay cannot be condoned as a matter of judicial generosity. Where delay could have been avoided by due care and caution, the Court may not

exercise the discretion to condone the delay.

16. As stated earlier, delay cannot be excused as a matter of judicial generosity. Rendering substantial justice is not to cause prejudice to the opposite party. Money suit was filed way back in 1998 and Revision petitioner/plaintiff has been pursuing the matter for nearly 7 to 8 years. The matter could not reach finality because of one Application or other filed by the respondent/Defendant. The party claiming indulgence must prove that he is reasonably diligent in prosecuting the matter. This test for condoning the delay is not satisfied in this case. Liberal exercise of jurisdiction under Section 5 of the Act would cause prejudice to the plaintiff/Decree holder, who has been pursuing the money suit for quite a long time. In condoning the delay, there is improper exercise of discretion, and therefore, the impugned order cannot be sustained."

(iv) In (Shanmugam vs. Chokkalingam) 2009 (5) CTC 48 this Court held that the petitioner therein do not deserve indulgence inasmuch as the averments made by him in the affidavit are false and untrue. Under those circumstances, this Court refused to condone the delay of 332 days in filing a petition to set aside the exparte decree.

(v) In (Oriental Aroma Chemical Industries Limited

vs. Gujarat Industrial Development Corporation and another) 2010 AIR SCW 1788 the Honourable Supreme Court rejected an application for condonation of delay of 4 years in filing an application to set aside an ex parte decree on the ground that the explanation offered for condonation of delay is found to be not satisfied.

(vi) In the decision of this Court reported in (K.M. Balasubramaniam vs. C. Loganathan and another) 2011 (2) MWN (Civil) 741 this Court had an occasion to consider a case for condonation of delay of 1581 days in re-presenting an application to set aside the ex parte decree. In that case, the suit was filed for recovery of money which was decreed ex parte and the Execution Petition filed by the decree holder was also ordered ex parte. Thereafter, the decree holder obtained sale certificate also and at the time of taking delivery of the property, the petitioner therein filed the application to condone the delay of 1581 days in setting aside the ex parte decree. In that case also, a Petition under Section 47 of the CPC was filed stating that the decree is not executable. In the above facts and circumstances, this Court held that the delay offered for condonation of delay is not proper and acceptable. In Para Nos. 18 and 19, it was held as follows:-

18. It is not in dispute that the suit was filed based on a pro-note dated 01.08.1999 and the ex parte decree was passed on 08.09.2004, nearly 7 years back. It is an admitted fact that the Petitioner appeared in the suit as well as in the earlier E.P. No. 87 of 2005 through Counsel, however, the alleged petition filed under Order 9, Rule 13, C.P.C. to set aside the ex parte decree was not represented for more than four years and four months. Though arrest was ordered in the earlier E.P., however, as the petitioner evaded service, the E.P. was closed, then the present Execution Petition in E.P. No. 292 of 2006 was filed against the property belongs to the petitioner. Notice was served properly on the petitioner/judgment debtor and after proclamation of sale, property was sold in public auction. The successful bidder, a third party to the Suit paid the entire amount. As the sale was confirmed and Sale certificate was also issued, the amount deposited by the auction purchaser was withdrawn by the decree-holder by filing a petition before the Court below and full satisfaction was recorded. At this stage, the petitioner is not entitled to seek an order to condone the inordinate delay of 1581 days in representing an unnumbered Application, seeking an order to set aside the ex parte. It cannot be disputed

that the length of delay is not a matter for deciding the petition filed under Section 5 of Limitation Act and rendering substantial justice is the paramount consideration.

19. In the instant case, it is clear that the Petitioner/Judgment Debtor has deliberately adopted delay tactics at various stages. Having appeared through Counsel in the earlier Execution Petition in E.P. No. 87 of 2005, evaded arrest and has not challenged various orders passed in the Execution Petitions has casually filed the Application before the court below to condone the delay in representing an Application filed under Order 9, Rule 13, C.P.C. and also filed a Petition under Section 47, C.P.C. which would show that it is an abuse of process of law, as argued by the learned counsel for the Respondents. On the aforesaid circumstances, I could find no merit in favour of the petitioner to allow the inordinate delay of 1581 days in representing an unnumbered Application, seeking an order to set aside the ex parte decree. As found by the Court below, the inordinate delay has not been satisfactorily explained by the Petitioner herein. While deciding the Petition, this Court has to consider the substantial justice. I am of the view that allowing the petition would render only

injustice to the Second respondent/auction purchaser, who was impleaded by the order of this Court in this Revision and the first respondent/decreed holder, hence, to meet the ends of justice, the Civil Revision Petition is liable to be dismissed, as an abuse of process of law by the Petitioner herein."

(vii) In (Postmaster General and others vs. Living Media India Limited and another) (2012) 3 SCC 563, the Honourable Supreme Court, while dismissing the application for condonation of delay of 427 days in filing the Special Leave Petition, held condonation of delay is not an exception and it should not be used as an anticipated benefit for the government departments. In that case, the Honourable Supreme Court held that unless the Department has reasonable and acceptable reason for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process cannot be accepted. In Para Nos. 25, 26, 27, 28, and 29, the Honourable Supreme Court dealt with the scope of 'sufficient cause' and held as follows:-

25. We have already extracted the reasons as

mentioned in the "better affidavit" sworn by Mr. Aparajeet Pattanayak, SSRM, Air Mail Sorting Division, New Delhi. It is relevant to note that in the said affidavit, the Department has itself mentioned and is aware of the date of the judgment of the Division Bench of the High Court in Office of the Chief Postmaster vs. Living Media Limited as 11.09.2009. Even according to the deponent, their counsel had applied for the certified copy of the said judgment only on 08.01.2010 and the same was received by the Department on the very same day. There is no explanation for not applying for the certified copy of the impugned judgment on 11.09.2009 or at least within a reasonable time. The fact remains that the certified copy was applied for only on 08.01.2010 i.e., after a period of nearly four months.

26. In spite of affording another opportunity to file better affidavit by placing adequate material, neither the Deponent nor the person-in-charge has filed any explanation for not applying the certified copy within the prescribed period. The other dates mentioned in the affidavit which we have already extracted, clearly show that there was delay at every stage and except mentioning the dates of receipt of the file and the decision taken, there

is no explanation as to why such delay had occasioned. Though it was stated by the Department that the delay was due to unavoidable circumstances and genuine difficulties, the fact remains that from day one the Department or the person/persons concerned have not evinced diligence in prosecuting the matter to this Court by taking appropriate steps.

27. It is not in dispute that the person (s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and

circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few."

11.In the case of Sundar Gnanaolivu Vs. Rajendran

Gnanavolivu reported in **MANU/TN/2123/2003**, the Division Bench made following observations;

"8. In the judgment reported in MANU/SC/0573/1998 : 1998 (2) CTC 533 (N. Balakrishnan versus M. Krishnamurthy), the position has been set out as under in para 14:

14. It must be remembered that in every case of delay there can be some lapse 'on the part of the litigant concerned.

That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is put-forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation....

(Underlining is ours)

9. In the Judgment reported in MANU/SC/0398/2001 : 2001(6) SCC 176 M.K. Prasad versus P. Arumugam), it has been held as under in para 9.

9. Again in State of W.B. v. Administrator, Howrah Municipality and G. Ramegowda Major v. Special Land

Acquisition Officer this Court observed that the expression "sufficient cause" in Section 5 of the Limitation Act must receive a liberal construction so as to advance substantial justice and generally delays be condoned in the interest of justice where gross negligence or deliberate inaction or lack of bona fides is not imputable to the party seeking condonation of delay. Law of limitation has been enacted to serve the interests of justice and not to defeat it. Again in *N. Balakrishnan v. M. Krishnamurthy* this Court held that acceptability of explanation for the delay is the sole criterion and length of delay is not relevant, in the absence of anything showing mala fide or deliberate delay as a dilatory tactic, the court should normally condone the delay....

(Underlining is ours)

10. In a recent Judgment of the Honourable Supreme Court reported in MANU/SC/0135/2002 : 2002(3) SCC 195 = 2002-3-L.W.417 (*Ram Nath Sao @ Ram Sahu & Others versus 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....

(Underlining is ours)

11. In the Division Bench Judgment of our High Court, in the Judgment reported in MANU/TN/0252/2000 : 2000 (3) CTC 727 = 2000 3 L.W. 938 (C. Subraniam versus Tamil Nadu Housing Board rep. by its Chairman And Managing Director), the position has been stated as under in para 31: 31. To turn up the legal position, (1) the work "sufficient cause" should receive liberal construction to do substantial justice; (2) what is "sufficient cause" is a question of fact in a given circumstances of the case; (3) it is axiomatic that condonation of delay is discretion of the Court; (4) length of delay is no matter, but acceptability of the explanation is the only criterion' (5) once the Court accepts the explanation as "sufficient", it is the result of positive exercise of discretion and normally the superior court should not disturb in such finding unless the discretion was exercised on wholly untenable or perverse; (6) The rules of limitation are not meant to destroy the rights of the parties

but they are meant to see that the parties do not resort to dilatory tactics to seek their remedy promptly; (7) Unless a party shows that he/she is put to manifest injustice or hardship, the' discretion exercised by the lower Court is not liable to be revised; (8) If the explanation does not smack of mala fides or it is put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor; (9). If the delay was occasioned by party deliberately to gain time, then the court should lean against acceptance of the explanation and while condoning the delay, the Court should not forget the opposite party altogether.

13. In yet another Division Bench Judgment reported in 1990 (1) LLN 457 (Tamil Nadu Mercantile Bank Ltd. Tuticorin versus Appellate Authority Under The Tamil Nadu Shops And Establishments Act, Madurai And Another), the principles relating to rule of limitation have been discussed and the legal position has been stated by His Lordship Mr. Justice M. Srinivasan, as he then was, in paragraphs 14 and 17 which read as under:

14. ...If a litigant chooses to approach the Court long after the time prescribed under the relevant provisions of the law, he cannot say that no prejudice would be caused to the other side by the delay being condoned. The other side

would have in all probability destroyed the records thinking that the records would not be relevant as there was no further proceeding in the matter. Hence to view a matter of condonation of delay with a presupposition that no prejudice will be caused by the condonation of delay to the respondent in that application will be fallacious. In our view, each case has to be decided on the facts and circumstances of the case. Length of the delay is a relevant matter to be taken into account while considering whether the delay should be condoned or not. It is not open to any litigant to fix his own period of limitation for instituting proceedings for which law has prescribed periods of limitation.

17. ...Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long time, it cannot be presumed to be non-deliberate delay, and in such circumstances of the case, he cannot be heard to plead that substantial justice deserved to be preferred as against technical considerations. We are of the view that the question of limitation is not merely a technical consideration. Rules of limitation are based on principles of sound public policy and principles of equity. Is a litigant liable to have a Damocles' sword hanging over his

head indefinitely for a period to be determined at the whims and fancies of the opponent?

(Underlining is ours)

14. 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 favorably ordered.

The Division Bench in the above said case made an observation 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 a lack of bonafides or attempt to hoodwink 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 observed 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 Damocles' sword hanging over his head indefinitely for a period to be determined at the whims and fancies of the opponent.

12. Thus, the Courts have taken a clear view that the intention of the parties in filing appeal belatedly after causing prejudice to the interest of the other parties, then

also the delay cannot be condoned by exercising the power of discretion. Therefore all these aspects are to be considered. Mechanical or routine approach is impermissible, may be permissible in respect of the delay of short span and not otherwise.

13. In the case of **Lanka Venkateswarlu (D) by L.R.s Vs. State of A.P. & others** reported in **MANU/SC/0153/2011**, the Hon'ble Supreme Court made an observation as follows;

"20. In the case of M. Balakrishnan (supra), this Court again reiterated the principle that rules of limitation are not meant to destroy the rights of parties. They are meant to see that the parties do not resort to dilatory tactics, but seek their remedy promptly.

21 to 25.....

26. We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as "liberal approach", "justice oriented

approach", "substantial justice" can not be employed to jettison the substantial law of limitation. Especially, in cases where the Court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any lis between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms.

The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. Whilst considering applications for condonation of delay under Section 5 of the Limitation Act, the Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections can not and should not form the basis of exercising discretionary powers."

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14. In the case of **Pundlik Jalam Patil (D) by Lrs. Vs. Exe.Eng.Jalgaon Medium Project & others** reported in **MANU/SC/4694/2004**, the Hon'ble Supreme Court held as follows:

"15. In *Ajit Singh Thakur Singh and anr. vs. State of Gujarat* [(1981) 1 SCC 495] this court observed :

"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 circumstance arising before limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute sufficient cause."

(Emphasis supplied) This judgment squarely applies to the facts in hand.

17. Shri Mohta, learned senior counsel relying on the decision of this court in *N. Balakrishnan vs. M.Krishnamurthy* [(1998) 7 SCC 123] submitted that length of delay is no matter, acceptability of explanation is the only criterion. It was submitted that if the explanation offered does not smack of mala fides or it is not put forth

as part of dilatory tactics the court must show utmost consideration to the suitor. The very said decision upon which reliance has been placed holds that the law of limitation fixes a life span for every legal remedy for the redress of the legal injury suffered. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of Limitation is thus founded on public policy. The decision does not lay down that a lethargic litigant can leisurely choose his own time in preferring appeal or application as the case may be. On the other hand, in the said judgment it is said that court should not forget the opposite party altogether. It is observed:

"It is enshrined in the maxim interest reipublicae up 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."

18. In *Ramlal and others vs. Rewa Coalfields Ltd.* [AIR 1962 SC 361], this court held that: "in construing Section 5 of the Limitation Act, it is relevant to bear in

mind two important considerations. The first consideration is that the expiration of period of limitation prescribed for making an appeal gives rise to right in favour of the decree holder to treat the decree as binding between the parties and this legal right which has accrued to the decree holder by lapse of time should not be light heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause of excusing delay is shown discretion is given to the court to condone the delay and admit the appeal. 'It is further necessary to emphasis 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 of its bona fides may fall for consideration.'" On the facts and in the circumstances, we are of the opinion that the respondent beneficiary was not diligent in availing the remedy of appeal. The averments made in the application seeking condonation of delay in filing appeals do not show any acceptable cause much less sufficient cause to exercise

courts' discretion in its favour."

15. In the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & Others** reported in **MANU/SC/0932/2013**, the Hon'ble Apex Court of India made an observation as follows:

"15. From the aforesaid authorities the principles that can broadly be culled out are:

- i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.
- ii) The terms *sufficient cause* should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.
- iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.
- 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.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

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

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that

adjudication of a lis on merits is seminal to justice dispensation system.

b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters."

*It is very important to consider the judgement of the Hon'ble Supreme Court in the case of **Esha Bhattacharjee**, wherein the Hon'ble Apex Court laid down certain principles which were culled out particularly and*

those principles are the guiding principles for the purpose of deciding the petitions filed to condone the delay. The above principles, cited supra reveals that the concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed totally to unfettered free play.

16. The concepts such as "liberal approach", "justice oriented approach", "substantial justice" cannot be employed in jettison the substantial law of limitation. The law of limitation is substantial and therefore the principles laid down is to be scrupulously followed while condoning the delay under the law of limitation. The limitation has got a specific purpose and object and more specifically to avoid prejudice to the respective parties. In the event of prolongation or protraction of the litigation, undoubtedly and for an unspecified period when the specific law of limitation has got a specific purpose and object, then the

power of discretion is to be exercised cautiously. Power of discretion cannot be exercised in the absence of any valid reason. In other words, powers can be exercised for the purpose of passing orders only by recording reasons which must be candid and convincing and must be passed on certain sound legal principles. Therefore, recording of reasons for exercising discretionary powers is one of the elementary principles of law. In the event of exercising discretionary powers without recording reasons, undoubtedly the same would cause not only prejudice and will set a bad principle and therefore, the Courts must be cautious while exercising power of discretion more specifically in such matters where the law of Limitation is substantial."

17. In view of the above factum, this Court has no hesitation in arriving a conclusion that the petitioner has not established any acceptable ground for the purpose of condoning the enormous delay

of 753 days and accordingly, the civil miscellaneous petition in C.M.P.No.13362 of 2019 stands dismissed. Consequently, AS.SR.No.62333 of 2019 is rejected at the SR Stage itself. No costs.

07.01.2020

ssb

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

To

The Additional Judge,
XVII Additional City Civil Court.

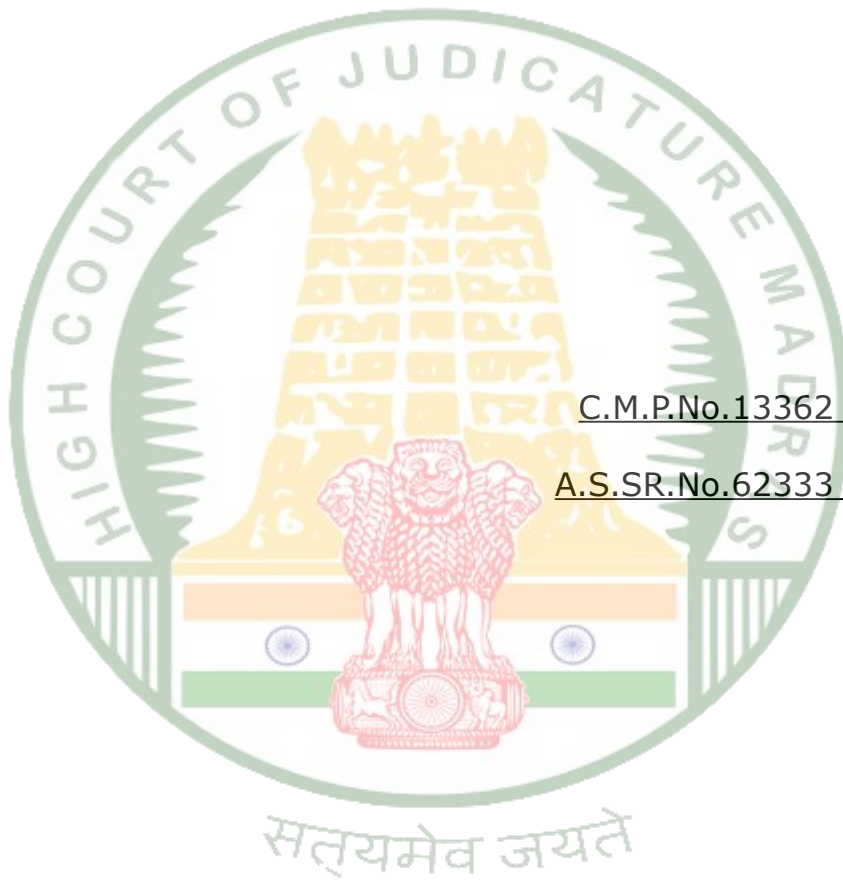


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C.M.P.No.13362 of 2019 in
A.S.SR.No.62333 of 2019

S.M.SUBRAMANIAM, J.

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C.M.P.No.13362 of 2019
in
A.S.SR.No.62333 of 2019

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