

CMP.No.25771 of 2019
in
SA.No.SR62851 of 2007

K.KALYANASUNDARAM, J.,

This Miscellaneous Petition has been filed to condone the delay of 4442 days in re-presenting the Second Appeal.

2. In the affidavit filed in support of the petition, it has been stated that the petitioner purchased 5 cents out of 7 ½ cents in S.No.14/1 through a registered Sale Deed dated 05.03.1990. Since then she has been in possession and enjoyment of the property. The Suit in OS.No.134 of 1998 came to be filed since the defendants 1 to 3 have been giving troubles to the plaintiff's possession in the suit property. The defendants have made counter claim seeking declaration of title and delivery of possession. The Trial Court rejected both the suit as well as the counter claim. Though the plaintiff preferred an appeal in AS.No.3 of 2006, the respondents have not filed an appeal for rejection of the counter claim. The Appellate Court dismissed the appeal, against which, the present appeal has been preferred.

3. Mr.C.T.Mohan, learned counsel for the petitioner would submit that in pursuance of the Sale Deed dated 05.03.1990, the petitioner has been in possession and enjoyment of the property and the same was accepted by the defendants in their written statement. It is further contended that though the

appeal was filed in time, there is a delay in re-presentation and it has been explained in the affidavit. It is further contended that the petitioner is having chance to succeed in the Second Appeal.

4. Per contra, Mr.D.Manimaran, learned counsel for the respondents would submit that the petitioner has not shown sufficient cause for condoning the enormous delay. It is further argued that the plea of the petitioner that there was an oral partition and on the basis of oral partition, the petitioner purchased the property in the year 1990, was disbelieved by both the Courts below. By placing reliance on the decision of the Hon'ble Supreme Court in the case of **H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and another** reported in (2015) 1 SCC 680, the learned counsel submitted that by simply throwing the blame on the previous counsel, the parties are not entitled to seek condonation of enormous delay.

5. In the matter on hand, though there is a delay of 4442 days, it is not disputed that the suit property of 7½ cents in S.No.14/1 was originally owned by the father of the first respondent and the vendors of the petitioner viz., Domappa and Muniasamy. It is the case of the petitioner that in the oral partition, the vendors of the petitioner viz., Domappa and Muniasamy were allotted 5 cents and based on the oral partition, she purchased the property in the year 1990 through the registered Sale Deed.

6. It is the case of the respondents that in the oral partition, the entire extent of 7 ½ cents in S.No.14/1 was allotted in favour of the first respondent. The plea of oral partition was disbelieved by both the Courts below, and in that event the brothers of the first respondent would be entitled for 2/3rd share in the suit property. In the written statement, it has been admitted the petitioner is in possession of the suit property and hence, the respondent sought for recovery of possession. In the affidavit paragraphs 11 and 12, it has been stated that the petitioner had been regularly following it up with the erstwhile counsel and she was informed that the appeal papers were in the process of numbering, eventually after having lost her patience, and changed her counsel and found out appeal papers were not represented in time and original papers were missing.

7. It is settled law that the length of delay is immaterial, if the explanation is acceptable. In support of the above contention, the learned counsel relied upon the decision of the Division Bench in the case of **Y.Cusbar Vs. K.Subbarayan** reported in [1993 TLNJ 375] and the relevant portion of the order reads as follows:-

"However, due to certain defects, it was returned as there were defects in the presentation of the appeal. The appeal was not numbered and it was only given Appeal S.R.No.76802 of 1998. After the return of the records of the appeal, the same was not represented within the time allowed for representation. There was a delay of 1191 days in representation of the papers. For

condoning the delay in representation of the papers an application was filed and in support of that an affidavit of the advocate's clerk was filed. In the affidavit, it has been stated in detail as to how the delay took place in representing the papers. Whenever there is a delay in representing the papers, the Court has to see that the substantial justice does not suffer.

This is not a case where in the appeal has been filed out of time. This is a case in which the appeal is filed in time. Therefore, it cannot be said that the decree under appeal has assumed finality and the right has been accrued to the respondent. The delay in representation of the papers in the instant case, cannot be put to the account of the party. Several times, it happens due to the mistake on the part of the advocate's clerk or the advocates in presenting the appeal. Therefore, the Court has to take care to see that the justice does not suffer in such cases. If there is any undue delay in representation of the papers it can be compensated by awarding costs. Therefore, we are of the view that when the appeal has been filed in time, but there is inordinate delay in representation of the papers returned for rectification of the defects, by the appellate Court, the delay can be condoned on taking a lenient view by compensating the other side on payment of costs."

8. The Hon'ble Supreme Court in **N.Balakrishnan v. M.Krishnamurthy** [1998 (7) SCC 123], has held as follows:-

" 9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a

certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncontainable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. 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 such finding, much less in regional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer

causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis Mum (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right 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.

12. A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" Under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain v. Kuntal Kumari*, and *State of West Bengal v. The Administrator, Howrah Municipality*."

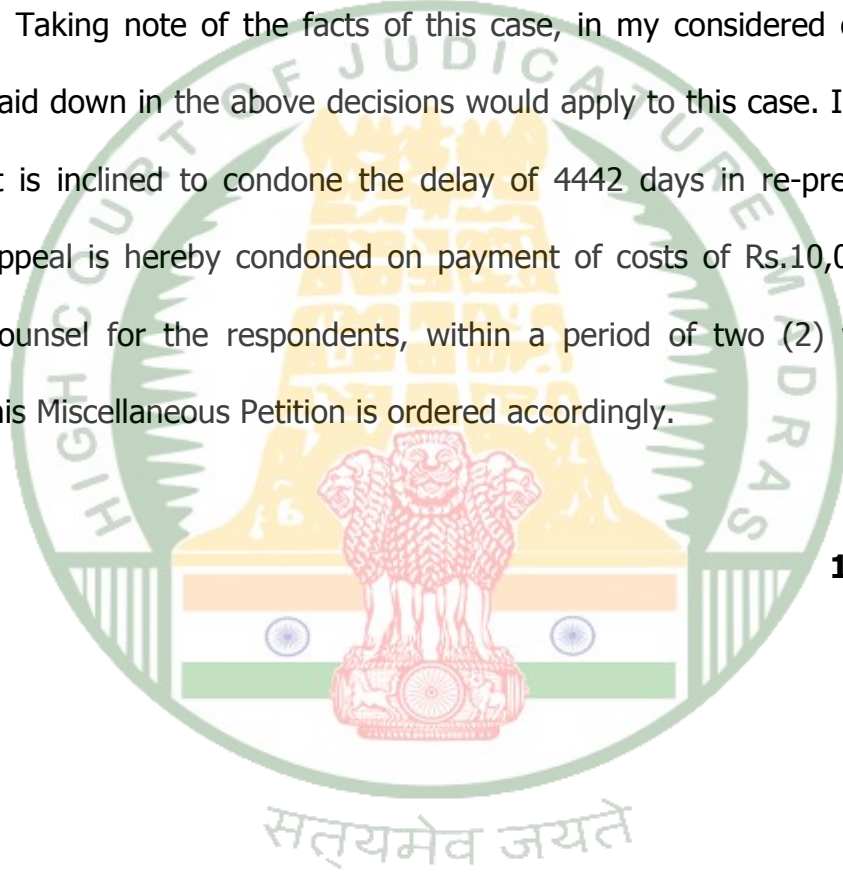
9. In similar facts, this Court in **N.Sengoda Gounder Vs. R.Manickam** [<http://indiankanoon.org/doc/833706/>], following the judgment of the Hon'ble Apex Court in **N.Balakrishnan v. M.Krishnamurthy** (*supra*), condoned the delay of 1452 days in re-presentation of the application on payment of cost of Rs.3,000/-.

10. In the judgment cited by the learned counsel for the respondents, the appeal was filed with a delay and the delay was not properly explained. So, in my considered opinion, the judgment has no application to the case on hand.

11. Taking note of the facts of this case, in my considered opinion, the principle laid down in the above decisions would apply to this case. In that view, this Court is inclined to condone the delay of 4442 days in re-presenting the Second Appeal is hereby condoned on payment of costs of Rs.10,000/- to the learned counsel for the respondents, within a period of two (2) weeks from today. This Miscellaneous Petition is ordered accordingly.

10.02.2020

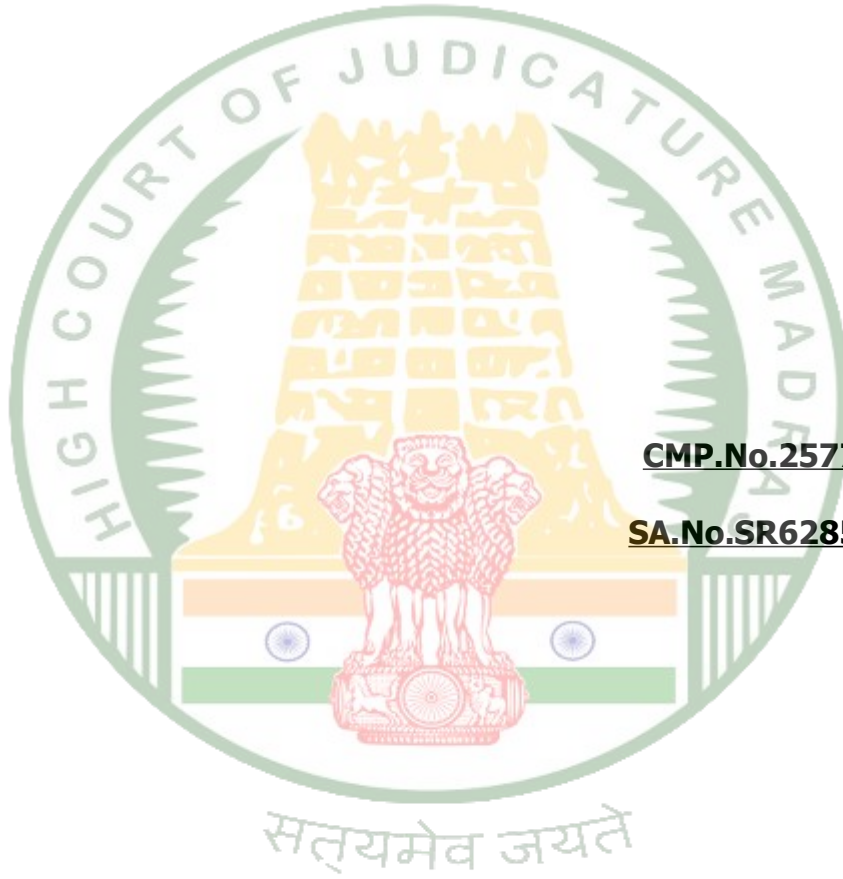
kmi



WEB COPY

K.KALYANASUNDARAM, J.,

kmi



CMP.No.25771 of 2019
in
SA.No.SR62851 of 2007

WEB COPY

10.02.2020