



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2020

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.R.P (NPD) (MD)No.1708 of 2014

and

M.P (MD)No.1 of 2014

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Subbiah Pandian

... Petitioner/Petitioner/Appellant

Vs.

1.Alexander
2.Raveendran
3.Lakshmi Ammal (died)
4.Sivakumar
5.Ananthamallika
6.Sudhakaran
7.Vellachamy
8.Thayammal
9.Vijayalakshmi
10.Chellatharasi
11.Vellathai
12.Tamilarasi
13.Kannaki
14.RManimegalai
15.Dhiravida Selvi
16.R.Annadurai

... Respondents / Respondents /
Respondents

(Respondents 12 to 16 are brought on record as LR's of the deceased 3rd respondent vide order dated 24.06.2015 made in M.P(MD)Nos.2 to 4 of 2014 in C.R.P(MD)No.1708 of 2014)

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the fair and decreetal order dated 31.10.2013, passed in I.A.No.123 of 2011 in un-registered A.S.No..... of 2011 on the file of the Sub Court, Sankarankovil.

For Petitioner	:	Mr.F.X.Eugene
For R1, R2, R4 to R6	:	Mr.R.Manimaran
For R7 & R11	:	Mr.C.Baskaran
For R9, R10, R12 to 16	:	No Appearance
R3	:	Died

O R D E R

This Civil Revision Petition is filed against the fair and decreetal order dated 31.10.2013 passed in I.A.No.123 of 2011 in un-registered A.S.No..... of 2011 on the file of the Subordinate Court, Sankarankovil.

<https://hcservices.ecourts.gov.in/hcservices/>



2. The brief facts of the case are as follows:

The petitioner is the fourth defendant in the suit in O.S.No.472 of 1981 on the file of the District Munsif Court, Sankarankovil, filed by one Paulraj and four others against the petitioner and six others, for the relief of declaration, permanent injunction and mense profits. The suit was decreed on 17.06.2002. Against which, the petitioner filed the appeal suit along with an application in I.A.No.123 of 2011, to condone the delay of 3226 days in preferring the appeal. The said application was dismissed by the Subordinate Judge, Sankarankovil, vide order dated I.A.No.123 of 201, stating that the reasons stated by the petitioner to condone the delay are not sufficient. Hence, this Civil Revision Petition.

3.The learned counsel appearing for the petitioner submitted that the petitioner is having a good case to defend and therefore, order passed by the Court below needs to be interfered with.

4. This Court heard the submissions made by the learned counsel appearing on both sides and also perused the materials placed before this Court.

5. The suit is of the year 1981 and the same was decreed on 17.06.2002 itself. However, the petitioner had chosen to file an appeal only in the year 2011 ie., after a period of nine years. In the delay condonation affidavit, the petitioner has not explained the reason for such inordinate delay. When such being the position, there is no other option left with Court except to dismiss the application. The Honourable Supreme Court in **R.B.Ramlingam v. R.B.Bhuvaneswari** reported in **2009(2) SCALE 108**, has considered the delay of 568 days in filing the Special Leave Petition and observed as follows:

"3. ... Reading the said judgment, it also becomes clear that filing of Review Petition is no impediment to the filing of the special leave petition. Large number of judgments were cited before us by learned counsel. It is not necessary at this stage to discuss each and every judgment cited before us for the simple reason that Section 5 of the Limitation Act, 1963 does not lay down any standard or objective test. The test of "sufficient cause" is purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike. The statute of Limitation has left the concept of "sufficient cause" delightfully undefined, thereby leaving to the Court a well-intentioned discretion to decide the individual cases whether circumstances exist establishing sufficient cause. There are no categories of sufficient cause. The categories of sufficient cause are never exhausted. Each case spells out a unique

<https://hcservices.courts.gov.in/hcservices> to be dealt with by the Court as such.



4. For the aforestated reasons, we hold that in each and every case the Court has to examine whether delay in filing the special leave petition stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition."

6. In **Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation** reported in (2010) 5 **Supreme Court Cases 459**, the Honourable Supreme Court considered the inordinate delay on the part of the State Corporation in filing the appeal and observed as follows:

"14. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.

15. The expression "sufficient cause" employed in Section 5 of the Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which subserves the ends of justice. Although, no hard-and-fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate—*Collector (L.A.) v. Katiji* [(1987) 2 SCC 107 : AIR 1987 SC 1353], *N. Balakrishnan v. M. Krishnamurthy* [(1998) 7 SCC 123 : JT (1998) 6 SC 242] and *Vedabai v. Shantaram Baburao Patil* [(2001) 9 SCC 106]."

7. Though the expression "sufficient cause" should receive a liberal consideration, each case is to be decided on the facts and this Court is of the view that in the absence of proper and sufficient reasons, the delay of 2143 days in filing the petition to set aside the ex-parte decree, cannot be condoned.

8. In view of the above, the fair and decreetal order dated 31.10.2013 passed in I.A.No.123 of 2011 in un-registered A.S.No..... of 2011 by the learned Subordinate Judge,



Sankarankovil, is confirmed and this Civil Revision Petition stands dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

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// True Copy //

Sd/-

Assistant Registrar (CS-III)

/ /2020

Sub Assistant Registrar(CS)

pm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Subordinate Judge,
Sankarankovil.

Copy To:-The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.

C.R.P(MD)No.1708 of 2014 (NPD)
20.11.2020

KG (CO)
AP (02/12/2020) 4P 4C