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C.M.P.(MD)No.5305 of 2018
in S.A(MD)SR.No.14888 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.P. (MD)No.5305 of 2018

in S.A. (MD)SR.No.14888 of 2018

P.K.Vinees

... Petitioner/Appellant

Vs.

1.Mohammed Makthum

2.Alimal Beevi

3.Amanulla

... Respondents/Respondents

Prayer in C.M.P. (MD)No.5305 of 2018 : Petition filed under Section 5 of the Limitation Act, praying to condone the delay of 4441 days in preferring the above second appeal.

Prayer in S.A. (MD)No.SR 14888 of 2018: Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 14.11.2005 passed in A.S.No.62 of 2004 on the file of the Principal Subordinate Judge, Tenkasi, confirming the judgment and decree dated 03.04.2003 passed in O.S.No.174 of 1995 on the file of the Principal District Munsif, Tenkasi.

For Petitioner

: Mr.P.Ganapathi Subramanian

ORDER

This Miscellaneous Petition has been filed seeking to condone the delay of 4441 days in preferring the above Second Appeal.

2. The reason stated by the petitioner in the affidavit filed in support of this petition is that his father entrusted this case and presented the same before this Court and thereafter, his father was died and when he traced out the bundle, he came to know that the bundle was not returned and he is in difficulty to trace out the lawyer with whom his father entrusted the case and therefore, there had occurred a delay of 4441 days in preferring the Second Appeal.

3. I have considered the submissions made by the learned counsel appearing for the petitioner and I have also perused the materials available on record.



4. The petitioner mainly contended that due to the reasons stated above, the delay of 4441 days had occurred and it is neither wilful nor wanton.

5. Though the appeal has been filed in the year 2018, no steps have been taken even for a period of two years, and therefore, such a huge delay cannot be condoned.

6. 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 experience 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."

7. 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]."

8. 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 4441 days in preferring the Second Appeal cannot be condoned.

9. In the result, this Miscellaneous Petition is dismissed. Consequently, S.A(MD)SR.No.14888 of 2018 is rejected. No costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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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 responsibility of the advocate/litigant concerned.



*C.M.P.(MD)No.5305 of 2018
in S.A(MD)SR.No.14888 of 2018*

To

1. The Principal Subordinate Judge,
Tenkasi.

2. The Principal District Munsif,
Tenkasi.

C.M.P. (MD)No.5305 of 2018
in S.A. (MD)SR.No.14888 of 2018
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