

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD).No.3445 of 2015

and

M.P.No.1 of 2015

The Tamil Radhasoami Satsang Assn.,
Rep. by Madras Branch Secretary,
No.13, Kenneth Lane, Chennai – 600 008.

.. Petitioner

Vs.

The Sports Development Authority
of Tamil Nadu rep. by Member Secretary,
116-A, Periyar EVR High Road,
Nehru Park, Chennai – 600 084.

.. Respondent

Prayer: This Civil Revision Petition is filed under Section 115 of Civil Procedure Code, against the fair and decretal order dated 20.04.2015 made in I.A.No.97 of 2014 in O.S.No.11071 of 2010 on the file of the XVII Additional City Civil Court, Chennai.

For Petitioner : Mr.K.S.V.Prasad

For Respondent : Mr.K.Azhagu Raman

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).

This Civil Revision Petition is filed against the fair and decretal order dated 20.04.2015 made in I.A.No.97 of 2014 in O.S.No.11071 of 2010 on the file of the XVII Additional City Civil Court, Chennai.

2.The petitioner who is the plaintiff in O.S.No.11071 of 2010 on the file of the XVII Additional City Civil Court, Chennai, filed the said suit against the respondent for perpetual injunction and mandatory injunction. The respondent remained exparte and exparte decree was passed on 29.02.2012 in O.S.No.11071 of 2010. The respondent filed I.A.No.97 of 2014 to condone the delay of 873 days in filing the petition to set aside the exparte decree.

3.According to the respondent, he filed written statement and the suit was decreed exparte earlier and the set aside petition was filed during the period of predecessors through the earlier counsel. The respondent was under the impression that set aside petition was pending. Meanwhile, there was change of officers and counsel and there was no proper communication in the matter. The petitioner filed E.P. and only after receipt of notice in the E.P.,

the respondent came to know about the exparte decree passed in the suit on 29.02.2012. The delay is neither wilful nor wanton and prayed for allowing the I.A.

4.The petitioner herein filed counter affidavit and submitted that the reason given by the respondent is not genuine and it is unbelievable that the respondent was under the impression that earlier petition filed to set aside the previous exparte decree was pending years together. The respondent has not given any details of change of officers and details of the previous persons who handled the matter. Further, the respondent has not stated when the respondent received notice in the E.P. and when they entered appearance. Even after taking number of adjournments after entering appearance in the E.P., they did not file counter. After six months of entering appearance in the E.P., they have filed the present petition. The reason given by the respondent is not valid and prayed for dismissal of the application.

5.The learned Judge considering the averments in the affidavit and counter affidavit, allowed the I.A. on payment of cost of Rs.5,000/- (Rupees Five Thousand Only).

6. Against the said order dated 20.04.2015 made in I.A.No.97 of 2014, the petitioner has come out with the present Civil Revision Petition.

7. The learned counsel appearing for the petitioner reiterated the averments in the counter affidavit and submitted that respondent was continuously negligent and delay was condoned by showing sympathy to the respondent. According to the respondent, they came to know about the exparte decree after receiving notice in the E.P. proceedings. Notice in the E.P. proceedings was served on the respondent on 24.01.2014, but, the respondent filed the present I.A. only on 22.07.2014, after 6 months of knowledge. The learned Judge having held that reason given by the respondent is not sufficient and acceptable, erroneously allowed the I.A., holding that relief claimed in the suit is for mandatory injunction and also the respondent is an organised body. The finding of the learned Judge is illegal and contrary to the judgment of the Hon'ble Apex Court and this Court. The learned counsel in support of his contention, relied on the following judgements and prayed for setting aside the order of the learned Judge passed in I.A.No.97 of 2014 and for allowing this Civil Revision Petition.

(i) A Division Bench judgment of the Hon'ble Apex Court reported in **2012 (3) SCC 563, (Office of the Chief Post Master General & Others Vs. Living Media India Limited & Another)**, wherein, the Hon'ble Apex Court in paragraph Nos.12 & 13, has held as follows:

“...12) 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. 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 bonafide, 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.

13) 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 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. 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 government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered

by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.”

(ii) A Division Bench judgment of the Hon'ble Apex Court reported in **2013 (4) SCC 52, (Amalendu Kumar Bera & Others Vs. The State of West Bengal)**, wherein, the Hon'ble Apex Court in paragraph Nos.8 & 10, has held as follows:

“...8. On 3.2.2011, the Limitation Petition filed by the respondent under Section 5 of the Limitation Act for condoning the delay in filing the Revision Petition was taken up for hearing. Although, the District Judge in its order dated 3.2.2012 noticed that the Courts do not have unlimited and unbridled discretionary powers to condone the delay and the discretion has to be exercised within reasonable bounds, known to law. Even then the Court allowed the Limitation Petition and condoned the delay in filing the revision Petition. Aggrieved by the said order the appellant-decree holder moved the Calcutta High Court by filing a revision petition being C.O.

No.602 of 2012. The High Court by impugned order dated 23.3.2012 dismissed the revision petition on the ground inter- alia that a liberal attitude should be adopted in the matter of condonation of delay when there is no gross negligence or deliberate inaction or lack of bona-fide on the part of the State. Hence, this appeal by the appellant-decree holder challenging the aforesaid order passed by the High Court in Revision Petition.

10. Merely because the Respondent is the State, delay in filing the appeal or revision cannot and shall not be mechanically considered and in absence of 'sufficient cause' delay shall not be condoned."

(iii) A Division Bench judgment of the Hon'ble Apex Court reported in **2014 (11) SCC 351, (Brijesh Kumar & Others Vs. State of Haryana & Others)**, wherein, the Hon'ble Apex Court in paragraph Nos.9 to 11, has held as follows:

“...9. In *P.K. Ramachandran v. State of Kerala & Anr.*, AIR 1998 SC 2276, the Apex Court while considering a case of condonation of delay

of 565 days, wherein no explanation much less a reasonable or satisfactory explanation for condonation of delay had been given, held as under:—

“Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds.”

10. While considering a similar issue, this court in [Esha Bhattacharjee v. Raghunathpur Nafar Academy & Ors.](#) (2013) 12 SCC 649 laid down various principles inter alia:

V) lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact

...

ix) The conduct, behavior 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.

...

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

11. ... However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. ... This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone."

(iv) A Division Bench judgment of the Hon'ble Apex Court reported in **CDJ 2020 SC 790, (The State of Madhya Pradesh & Others Vs. Bherulal)**, wherein, the Hon'ble Apex Court in paragraph Nos.4 to 6, has held as follows:

“...4. A reading of the aforesaid application shows that the reason for such an inordinate delay is stated to be only “due to unavailability of the documents and the process of arranging the documents”. In paragraph 4 a reference has been made to “bureaucratic process works, it is inadvertent that delay occurs”.

5. A preposterous proposition is sought to be propounded that if there is some merit in the case, the period of delay is to be given a go-by. If a case is good on merits, it will succeed in any case. It is really a bar of limitation which can even shut out good cases. This does not, of course, take away the jurisdiction of the Court in an appropriate case to condone the delay.

6. We are also of the view that the aforesaid approach is being adopted in what we have categorized earlier as “certificate cases”. The object appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal. It is to complete this formality and save the skin of officers who may be at default that such a process is followed. We have on earlier

occasions also strongly deprecated such a practice and process. There seems to be no improvement. The purpose of coming to this Court is not to obtain such certificates and if the Government suffers losses, it is time when the concerned officer responsible for the same bears the consequences. The irony is that in none of the cases any action is taken against the officers, who sit on the files and do nothing. It is presumed that this Court will condone the delay and even in making submissions, straight away counsels appear to address on merits without referring even to the aspect of limitation as happened in this case till we pointed out to the counsel that he must first address us on the question of limitation.”

(v) A Full Bench judgment of the Hon'ble Apex Court reported in **CDJ 2021 SC 055 (FB), (Union of India & Others Vs. Radhey Shyam)**, wherein, the Hon'ble Apex Court in paragraph No.2, has held as follows:

“...2.The aforesaid itself shows the casual manner in which the petitioners have approached this Court without any cogent or plausible ground for condonation of delay. In fact, other than the lethargy and incompetence of the petitioners,

*there is nothing which has been put on record. We have repeatedly discouraged Central Government/State Governments and public authorities in adopting an approach that they can walk in to the Supreme Court as and when they please ignoring the period of limitation prescribed by the Statutes, as if the Limitation statute does not apply to them. In this behalf, suffice to refer to our judgment in the State of Madhya Pradesh & Ors. v. Bheru Lal [SLP [C] Diary No.9217/2020 decided on 15.10.2020] and The State of Odisha & Ors. v. Sunanda Mahakuda [SLP [C] Diary No.22605/2020 decided on 11.01.2021]. The leeway which was given to the Government/public authorities on account of innate inefficiencies was the result of certain orders of this Court which came at a time when technology had not advanced and thus, greater indulgence was shown. This position is no more prevalent and the current legal position has been elucidated by the judgment of this Court in *Office of the Chief Post Master General & Ors. v. Living Media India Ltd. & Anr.* – (2012) 3 SCC 563. Despite this, there seems to be a little change in the approach of the Government and public authorities.”*

(vi) A Full Bench judgment of the Hon'ble Apex Court reported in ***CDJ 2021 SC 059 (FB), (State of Uttar Pradesh & Others Vs. Sabha Narain & Others)***, wherein, the Hon'ble Apex Court in paragraph Nos.2 to 4, has held as follows:

“...2.The aforesaid itself shows the casual manner in which the petitioners have approached this Court without any cogent or plausible ground for condonation of delay. In fact, other than the lethargy and incompetence of the petitioners, there is nothing which has been put on record. We have repeatedly discouraged Central Government/State Governments and public authorities in adopting an approach that they can walk in to the Supreme Court as and when they please ignoring the period of limitation prescribed by the Statutes, as if the Limitation statute does not apply to them. In this behalf, suffice to refer to our judgment in the State of Madhya Pradesh & Ors. v. Bheru Lal [SLP [C] Diary No.9217/2020 decided on 15.10.2020] and The State of Odisha & Ors. v. Sunanda Mahakuda [SLP [C] Diary No.22605/2020 decided on 11.01.2021]. The leeway which was given to the Government/public

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3. We have also categorized such kind of cases as “certificate cases” filed with the only object to obtain a quietus from the Supreme Court on the ground that nothing could be done because the highest Court has dismissed the appeal. The objective is to complete a mere formality and save the skin of the officers who may be in default in following the due process or may have done it deliberately. We have deprecated such practice and process and we do so again. We refuse to grant such certificates and if the Government/public authorities suffer losses, it is time when concerned officers responsible for the same, bear the consequences. The irony,

emphasized by us repeatedly, is that no action is ever taken against the officers and if the Court pushes it, some mild warning is all that happens.

4.Looking to the period of delay and the casual manner in which the application has been worded, we consider appropriate to impose costs on the petitioner(s) of Rs.25,000/- for wastage of judicial time which has its own value and the same be deposited with the Supreme Court Advocates on Record Welfare Fund within four weeks. The amount be recovered from the officers responsible for the delay in filing the Special Leave Petition and a certificate of recovery of the said amount be also filed in this Court within the same period of time.”

8.The learned counsel appearing for the respondent contended that the respondent is a Government Organisation and due to change of persons in the office in-charge of the respondent, the respondent could not follow up the application filed to set aside the earlier exparte decree and previous counsel also did not inform about the said application which was filed earlier. Only when the notice was served on the respondent in the E.P., the respondent engaged the present counsel and on verification, the respondent came to

know about the exparte decree and filed the present I.A.No.97 of 2014. The respondent has given valid and sufficient reason to condone the delay in filing the petition. The learned Judge has allowed the I.A. by considering the relief sought for in the suit and prayed for dismissal of the Civil Revision Petition.

9.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent and perused the entire materials on record.

10.From the materials available on record, it is seen that the petitioner has filed suit for permanent injunction and for mandatory injunction to demolish the wall already put up by the respondent. Earlier an exparte decree was passed on 16.05.2011 in O.S.No.11071 of 2010. The said exparte decree was set aside by the application filed by the respondent. According to respondent, due to change of officers and counsels, there was some communication gap and the respondent was under the impression that I.A. filed to set aside the exparte decree earlier was pending. According to the respondent, only after receiving notice in the E.P. filed by the petitioner, they

came to know about the exparte decree and filed the present I.A. to condone the delay in filing the petition to set aside the exparte decree dated 29.02.2012 on 10.07.2014.

11.From the materials on record, it is seen that the respondent received notice in the E.P. filed by the petitioner on 24.01.2014 and the respondent filed the present I.A. on 22.07.2014 and the reason given by the respondent for the delay is that respondent was under the impression that earlier application filed to set aside the exparte decree was pending and they came to know the exparte decree only after receipt of notice in E.P. From the above materials, it is seen that the respondent after filing the application to set aside the earlier exparte decree, did not follow up the case. The contention of the respondent that their earlier counsel did not inform the stage of the case is not a valid reason. The litigant must contact their advocate to follow up the case filed against them. Similarly, the respondent has not given any details as to when there is change in officers and also whether the concerned Section Assistant continued in his post or not. It is further to be noted that the respondent received notice in the E.P. on 24.01.2014 and they entered appearance on 30.01.2014. Even after entering appearance through counsel in

the E.P., the respondent did not file the present petition immediately. On the other hand, he filed the present application only on 22.07.2014 after 6 months of receiving notice in the E.P. The respondent has not explained as to why they have not filed the present I.A. immediately after receiving notice and entering appearance in the E.P. In the judgments relied on by the learned counsel for the petitioner, the Hon'ble Apex Court has categorically held that administrative reason given by the officials of the Government or Government Organisations cannot be accepted as valid reason. The Hon'ble Apex Court has held that law of Limitation applies to all including Government and Government Organisations. The ratio in the said judgment is squarely applicable to the facts of the present case. In addition to that, the respondent has not taken any steps even after 6 months of knowing about the exparte decree, when they received notice in E.P. The learned Judge considering the materials placed before her, held that the respondent has not given sufficient reason to condone the delay and the delay is not satisfactorily explained. Having held so, the learned Judge erroneously allowed the I.A. on the ground that relief sought for by the petitioner in the suit is for mandatory injunction and respondent must be given an opportunity to put forth their case. The respondent was not vigilant enough to follow up the case and the

reason given by the respondent for condoning the delay is not acceptable. The learned Judge has committed an error by allowing the I.A.

12.For the above reason, the order of the learned Judge is liable to be set aside and it is hereby set aside. I.A.No.97 of 2014 is set aside. Accordingly, this Civil Revision Petition is allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

20.09.2021

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Index : Yes
Internet : Yes / No

To

The Sports Development Authority
of Tamil Nadu rep. by Member Secretary,
116-A, Periyar EVR High Road,
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V.M.VELUMANI, J.
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