

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.P.No.3425 of 2018

in

C.M.A.SR.No.36774 of 2017

Arulmighu Marriamman Temple,
Veerappanchatram, Erode,
Rep.by its Executive Officer

.. Petitioner

Vs.

Karuppayammal

.. Respondent

PRAYER: **C.M.P.No.3425 of 2018** is filed under Section 5 of the Limitation Act, to condone the delay of 763 days in filing the appeal.

C.M.A.SR.No.36774 of 2017 is filed under Order 43 Rule 1(u) of the Code of Civil Procedure, against the judgment and decree of the learned III Additional Subordinate Judge, Erode dated 19.12.2014 passed in A.S.No.81 of 2014, wherein set aside the judgment and decree dated 04.01.2014, passed in I.A.No.726 of 2013 in O.S.No.119 of 2012 and remanded the matter to the trial Court for deciding the suit.

For Petitioner : Mr.R.Parthasarathy

ORDER

The Civil Miscellaneous Petition on hand is filed under Section 5 of the Limitation Act, to condone the delay of 763 days in filing the Civil Miscellaneous Appeal, against the judgment and decree of the learned III Additional Subordinate Judge, Erode dated 19.12.2014 passed in A.S.No.81 of 2014.

2. The petitioner is Arulmighu Marriamman Temple, Veerappanchatram, Erode. The appeal is filed against the order of remand passed by the First Appellate Court.

3. The delay in filing the appeal is 763 days. The reason stated is that lower court counsel informed Executive officer that he will applied for certified copy. In view of the urgency, the Executive officer contacted his counsel and enquired about the certified copy. However, he was informed that order has not been received. Thereafter, the Executive officer checked that the order copy section and found that the copy application for issuing certified copy of the order was not even filed by

the Lower Court counsel. The petitioner thereafter filed an application on 24.02.2017 and received the order copy.

4. This Court is of the considered opinion that the Executive officer is expected to be vigilant. Even if some professional negligence has been committed by the counsel, the Executive officer is bound to initiate appropriate action against the counsel, who committed such negligence or lapses. Contrarily, he cannot simply say that the copy application was filed by the learned counsel and therefore, there is a delay of 763 days in filing. The delay is enormous and the reasons stated is unacceptable. This apart, even notice has not been served to the respondent for the past 5 years.

5. Perusal of the affidavit shows that there is absolutely no acceptable reason for the purpose of condoning the enormous delay of 763 days in filing the appeal. The reasons stated in the affidavit must be convincing, enabling this Court to consider the condonation of delay. Huge delay cannot be condoned in a routine manner. Law of Limitation

is substantive. Condonation of delay is an exception. Only on genuine reasons, delay can be condoned by exercising the power of discretion.

6. Mechanical way of condoning delay is undoubtedly impermissible. The condonation of delay can never be a mechanical affair and the High Court cannot condone the delay in a routine manner. Courts are bound to ensure that the reasons for condoning such delays are recorded, so as to set out a precedent and to avoid mechanical way of condonation of delay. When the law provides limitation for preferring an appeal and the proviso clause as contemplates the power of discretion to the Court to condone the delay, then such discretionary powers are to be exercised judiciously and by recording reasons. It is not as if, the High Courts can condone the delay in a routine manner, so as to dilute the law of limitation as contemplated under the Statutes. Thus, in all cases, where there is an enormous delay in filing an appeal, the Courts are bound to ascertain the reasons and its genuinity and the acceptability of such reasons. Every litigant is expected to prefer an appeal within the period of limitation stipulated in the statute. On account of certain unavoidable

reasons, if the appeal is filed with some delay, then the Courts are vested with the discretionary power to condone such a delay. Rule is to file an appeal in time and condonation is an exception, which is to be exercised discreetly and by recording reasons. Recording of reasons are of paramount importance in order to maintain consistency in the matter of condonation of delay.

7. Discretionary powers are expected to be exercised by the Courts judiciously. Any reasonable delay or the reasons, which all are valid and acceptable alone can form an opinion for exercising the power of discretion in the matter of condonation of delay. Thus, uncondonable delay cannot be condoned and what all are the condonable delay and the reasons stated and its validity, which all are important, so as to exercise the power of discretion. The very purpose and object of providing discretionary powers to the Courts are to ensure that the justice is done in an appropriate manner. Because of some genuine delay, the rights of the litigants cannot be neutralized and they should not be deprived of remedy from the Court of law. Therefore, the power of discretion, which is

provided with genuine intention, cannot be diluted nor be neutralized by condoning the delay in a casual manner. Thus, while exercising the power of discretion, Courts are expected to be cautious and the reasons for condonation must be recorded and in the absence of recording any reasons, the Courts are not considering the substantive law of limitation. Therefore, the law must prevail in all circumstances and discretion must be exercised discreetly and with caution.

8. Unconardonable delay cannot be condoned. Law expects that every such delay is to be explained. Unexplained delay cannot be condoned. Such unexplained delay is to be construed as unconardonable. Thus, delay under what circumstances, would be condonable is the relevant point to be considered by the Courts, while condoning such enormous delay.

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9. Parties are expected to file their respective appeals within the period of limitation stipulated in the statute. Undoubtedly, certain unforeseen circumstances may be the reason for delay. However, such

unforeseen circumstances or reasons, which all are genuine, must be clearly and truthfully explained in the affidavit filed in support of the miscellaneous petition. In the present case, reading of the affidavit reveals that there is no valid and acceptable reason for the purpose of condoning the enormous delay of 763 days in filing an appeal. In the event of condoning such a long delay, undoubtedly, the same will set a wrong precedent and every such delay is to be condoned in other circumstances. Therefore, in the absence of any valid reasons, the Courts would not condone such an enormous delay. Undoubtedly, meagre delay can be condoned by taking a lenient view. Even to condone such a small delay, Court has to find out, whether there is any sensible reason for such delay. Therefore, the Courts have to adopt a liberal approach only in small delays and certainly not in the cases of enormous delay. Thus, this Court has no hesitation in arriving a conclusion that the reasons stated in the affidavit filed in support of the miscellaneous petition are neither candid nor convincing and therefore, the delay is to be construed as uncondonable.

S.M.SUBRAMANIAM, J.

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10. In view of the reasons stated above, this Court has no hesitation in arriving a conclusion that the reasons stated by the petitioner for condoning the long delay of 763 days are neither candid nor convincing and consequently, the Civil Miscellaneous Petition in C.M.P.No.3425 of 2018 stands dismissed and consequently, C.M.A.SR.No.36774 of 2017 is rejected at the SR Stage itself. No costs.

25.01.2021

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Index: Yes
Speaking order

To

1. The III Additional Subordinate Judge,
Erode.

2. The Sub Assistant Registrar,
A.E. Section,
High Court, Madras.

C.M.P.No.3425 of 2018
in
C.M.A.SR.No.36774 of 2017