

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(NPD) Nos.240 & 321 of 2018

1. P.Ram Babu
2. P. Amani Ram Bau ... Petitioners in both CRPs

Vs

K.M.Abdul Wahab (Deceased)
1. Noorjahan
2. Mymoon Nisha
3. Mohammed Mustafa
4. Meharunnisha
5. Faritha Begaum ... Respondents in both CRPs

Common Prayer :- Civil Revision Petitions are filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 28.08.2017 made in I.A.Nos.99 & 100 of 2016 in I.A.No. 831 of 2011 in O.S.No.325 of 2006 on the file of the Principal District Munsif, Alandur.

For Petitioners in both CRPs : Mr.S.R.Sundar
For Respondents in both CRPs : Mr.Chandrasekaran

ORDER

The CRP (NPD) No.240 of 2018 is filed against the fair and decreetal order dated 28.08.2017 made in I.A.No.99 of 2016 in I.A.No. 831 of 2011 in O.S.No.325 of 2006 on the file of the Principal District

Munsif, Alandur, thereby dismissing the petition to condone the delay in filing the application for setting aside the abatement.

The CRP (NPD) No.321 of 2018 is filed against the fair and decreetal order dated 28.08.2017 made in I.A.No.100 of 2016 in I.A.No. 831 of 2011 in O.S.No.325 of 2006 on the file of the Principal District Munsif, Alandur, thereby dismissing the petition to condone the delay in filing the petition for restoration of the I.A.No.831 of 2011.

2. In both the Civil Revision Petitions, the petitioners are the defendants and the respondents are the plaintiffs. The respondents filed a suit for declaration and consequential injunction in respect of the suit property. When the suit was posted for cross-examination of P.W.1 on 27.01.2011, the petitioners' counsel failed to cross-examine the P.W.1 and as such, they were set ex-parte and ex-parte decree was passed on 27.01.2011. Immediately, the petitioners filed a petition to set aside the ex-parte decree.

3. A perusal of the affidavit filed in support of the said petitions reveals that the junior counsel engaged by the petitioners represented to pass over the suit for cross-examination. Unfortunately,

without passing over the suit, they were set ex-parte. While, petition for setting aside the ex-parte decree was pending, the original plaintiff died. Thereafter, the petitioners failed to bring the legal representatives of the deceased plaintiff on record and as such, the application for setting aside the ex-parte decree was abated. Therefore, the petitioners filed a petition to condone the delay in filing the petition setting aside the abatement and also filed a petition to condone the delay in restore the petition to set aside the ex-parte decree.

4. On perusal of the affidavit filed in support of the condone delay petition, it is clear that when the application was posted to take steps to bring the legal representatives of the deceased plaintiff on record, the learned counsel for the plaintiff did not inform the particulars of the legal representatives of the deceased plaintiff. At that juncture, the application was also dismissed for not taking steps on 07.07.2012.

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5. Further, it is averred that their counsel, who appeared on behalf of the petitioners, one Mrs.Kanimozhi, who was in-charge of Alandur Court left from the office and handed over all the bundles to the legal manager of their firm and unfortunately, the present case bundle

was not handed over to their legal manager. Therefore, they could not file a petition to restore the petition to set aside the ex-parte decree and also they could not able to file a petition to bring the legal representatives of the deceased plaintiff on record in time. Hence, there was a delay of 1380 days in filing the application for setting aside the abatement in I.A.No.831 of 2011 and there was a delay of 1190 days in filing the petition to restore the application in I.A.No.831 of 2011.

6. The Court below dismissed both the petitions for the reason that the delay is very huge and the petitioners failed to prove with sufficient evidence adduced by them. Further stated the reason that in the era of e-court, it is highly impossible to let to know about case details or through convention method of verifying 'A' Diary. In this regard, the learned counsel for the petitioners relied upon the following Judgments :-

(i) 1972 (1) SCC 366 – The State of West Bengal Vs. The Administrator, Howrah Municipality and others, the relevant paragraphs are extracted hereunder :

“26. The legal position when a question arises under Section 5 of the Limitation Act is fairly well-settled. It is not possible to lay down precisely as to what

facts or matters would constitute “sufficient cause” under Section 5 of the Limitation Act. But it may be safely stated that the delay in filing an appeal should not have been for reasons which indicate the party's negligence in not taking necessary steps, which he could have or should have taken. Here again, what would be such necessary steps will again depend upon the circumstances of a particular case and each case will have to be decided by the courts on the facts and circumstances of the case. Any observation of an illustrative circumstance or fact, will only tend to be a curb on the free exercise of the judicial mind by the Court in determining whether the facts and circumstances of a particular case amount to “sufficient cause” or not. It is needless to emphasise that courts have to use their judicial discretion in the matter soundly in the interest of justice.

28. *In the case before us, it must be stated in fairness to the learned Solicitor General that he has contended that the State must be treated differently. On the other hand, his contention is that the reasons given by the appellant, which, according to him will establish “sufficient cause” have not at all been adverted to, much less, considered by the High Court. In our opinion, the contention of the learned Solicitor General is perfectly*

justified in the circumstances of this case. The High Court, certainly, was not bound to accept readily whatever has been stated on behalf of the State to explain the delay. But, it was the duty of the High Court to have scrutinised the reasons given by the State and considered the same on merits and expressed an opinion, one way or the other. That, unfortunately, is lacking in this cases.

(i) 1998 (7) SCC 123 – N.Balakrishnan Vs.

M.Krishnamurthy, the relevant paragraphs are extracted hereunder :

“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 uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a 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 revision 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.

12. *A court knows that refusal to condone delay would result in foreclosing the 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 W.B. V.Administrator Howrah Municipality.*

13. *It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to thin that the delay was occasioned by the party deliberate to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court*

should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.”

In the above Judgments, the Hon'ble Supreme Court of India held that the length of delay is no matter, acceptability of the explanation is the only criterion. The word “sufficient cause” present in Section 5 of the Limitation Act needs to be considered by the application of judicial mind with respect to the fact and circumstances of that particular case.

7. In the case on hand, as stated supra, only because of the counsel's mistake, the petitioners could not able to file a petition to restore the application to set aside the ex-parte decree in time. Simultaneously, they could not able to file a petition to set aside the abatement caused due to death of the sole plaintiff. Therefore, the petitioners may be given one more opportunity to defend the suit filed by the respondents.

8. In view of the above, the order dated 28.08.2017 made in

I.A.Nos.99 & 100 of 2016 in I.A.No. 831 of 2011 in O.S.No.325 of 2006 on the file of the Principal District Munsif, Alandur, is hereby set aside and these Civil Revision Petitions are allowed, on condition that the petitioners in both Civil Revision Petitions shall pay a sum of Rs.5,000/- each, within a period of two weeks from the date of receipt of copy of this order, failing which the order passed by this Court shall stand automatically cancelled. Thereafter, after restoration of the petition to set aside the ex-parte order and after bringing the legal representatives on record in the suit, the Trial Court is directed to dispose of the suit within a period of three months. No costs.

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Index:Yes/No

Internet:Yes/No

Speaking Order: Yes/No

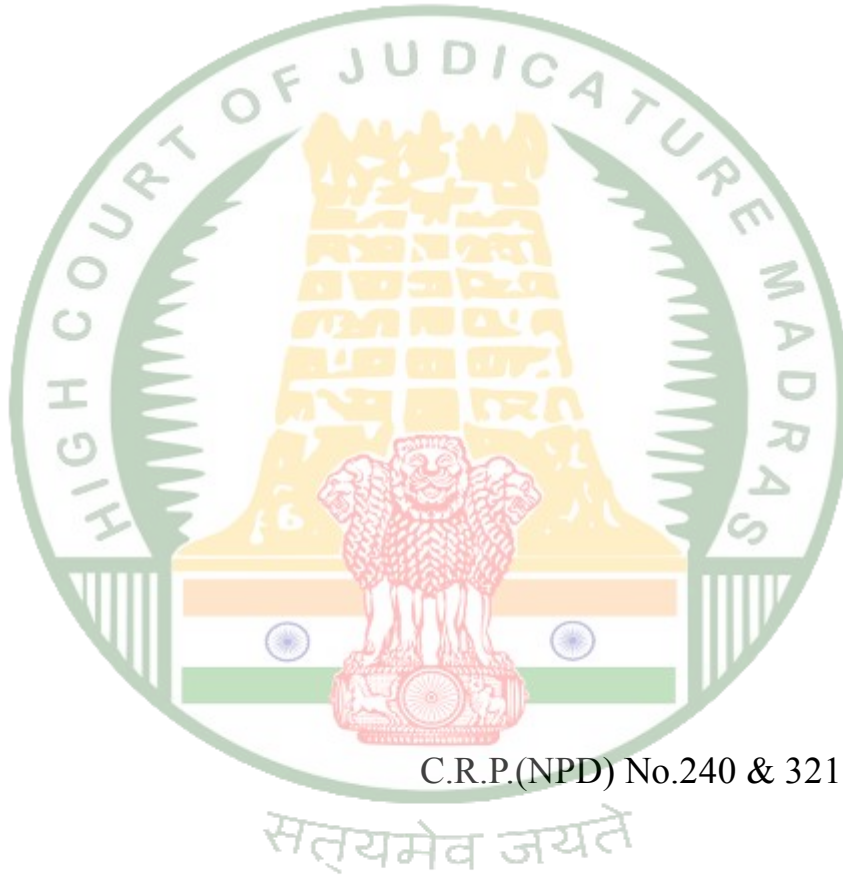
To

The Principal District Munsif,
Alandur.

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G.K.ILANTHIRAIYAN,J.

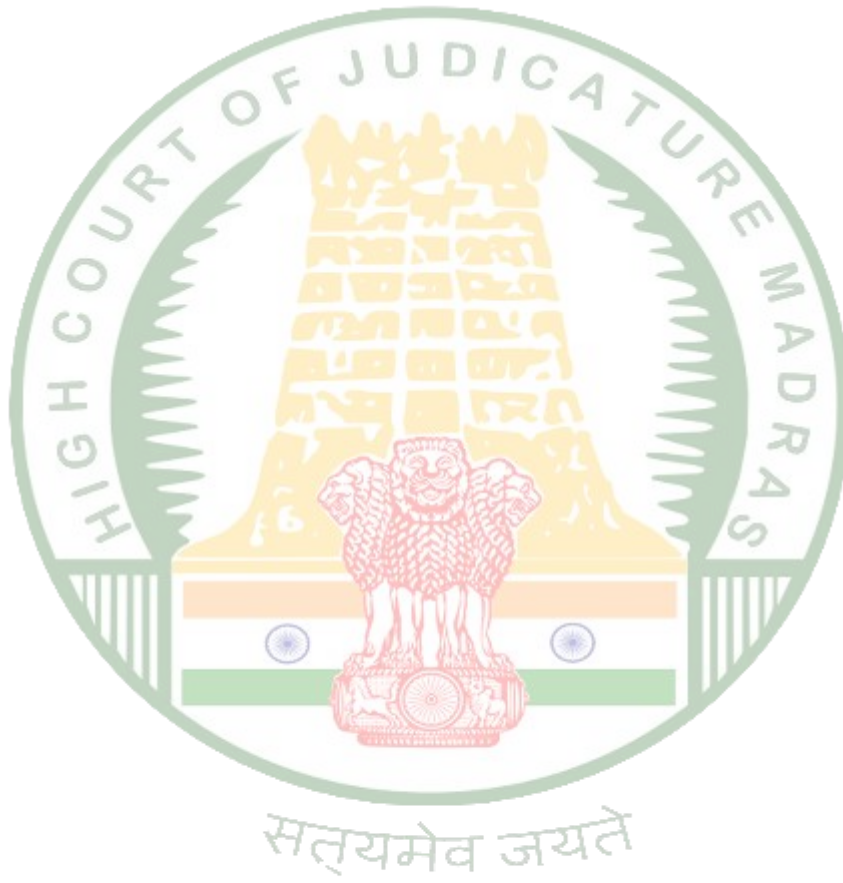
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