

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 10.02.2021

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.1667 of 2019

and

C.M.P.No.10781 of 2019

A.Vijayamaharajan
S/o.Anbalagan

...Petitioner/Plaintiff

Vs

1.Kalai
W/o.Karikalan

...1st Respondent/3rd Party Appellant

2.Indian Oil Corporation Limited,
Rep by its Senior Area Manager,
Having its Office at IInd Floor,
Thiruvveli
B-35, Sasthri Road,
Thillai Nagar,
Thiruchirapalli.

...2nd Respondent/Defendant

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and final order dated 15.03.2019 made in I.A.No.80 of 2017 in unfiled A.S.No.-- of 2017, on the file of Sub Court, Nagapattinam and dismiss the said application.

For Petitioner	: Mr.S.Sounthar
For Respondents	: Mr.R.Suresh Kumar
	K.M.Vijayan Association for R1
	: Mr.Ravi Ramaswamy for R2

O R D E R

The present petition has been filed by the petitioner/plaintiff challenging the order passed in I.A.No.80 of 2017 in unfiled A.S.No.-- of 2017 on the file of the Sub Court, Nagapattinam, in and by which, this petition filed by the third party petitioner therein with a delay of 285 days was condoned.

2. The said I.A.No.80 of 2017 was filed by the third party petitioner containing that he has been made a party in O.S.No.123 of 2016 without impleading him as party respondent in the said suit and orders have been passed in favour of the petitioner/plaintiff, which is in detriment to the third

party/petitioner. The said application was filed with a delay of 285 days and the third party petitioner had explained the fact that the order dated 21.09.2016 passed in O.S.No.123 of 2016 by the District Munsif Court, Nagapattinam, came to his knowledge only on 12.07.2017, whereinafter, the present interlocutory application for restoring the original suit was preferred by the third party petitioner with a delay of 286 days, which needs to be condoned, otherwise the third party petitioner would be put to much hardship.

3. The contention raised on behalf of the petitioner/plaintiff is that the third party petitioner has filed the present interlocutory application without obtaining the leave of the Court and hence, the present petition is not maintainable. The Court heard the arguments of the third party petitioner before taking the interim application on file and therefore, the question of maintainability does not arise. Insofar as the contention relating to the condonation of delay in 285 days is concerned, the trial Court held that the third party petitioner have not been made as a party in O.S.No.123 of 2016 and an adverse order has been passed against him, which had come to his knowledge only on 12.03.2017 and an explanation has been given to the satisfaction of the Court to condone the delay and accordingly, the petition was allowed.

4. The present civil revision petition has been filed by the plaintiff/petitioner challenging the above said finding rendered by the Court below.

5. Even before this Court, an identical contention has been placed, as was placed before the Court below, contenting that without the leave of the Court, the interim application was filed and the same was allowed, which is illegal. Per contra, the learned counsel appearing for the first respondent submitted that a categorical submission has been rendered by the Court below to the effect that the interim application was listed for hearing initially for maintainability. Only after hearing the third party petitioner and being satisfied with the the contentions placed, the said application was taken on file for hearing. So, the question of maintainability does not arise. Further, it is submitted that the Court below, after perusing the records, has come to a categorical finding that the order passed in O.S.No.123 of 2016 had come to the knowledge of the petitioner only on 12.07.2017 and therefore, the delay from the date of order requested to be condoned in the interest of justice does not require any interference.

6. This Court heard the submissions of the learned counsel appearing on either side and perused the materials available on record.

7. As per the question of maintainability, the Court below rendered a categorical finding that only after hearing the third party petitioner on the said aspect, the matter was taken up on file for final hearing. Once the Court below has satisfied itself as to the interest of the third party petitioner to be included as a respondent in the suit and in the absence of this non inclusion, adverse order had been passed against him. Therefore, the question of maintainability canvassed by the petitioner/plaintiff does not merit acceptance.

8. Insofar as the contention relating to condonation of delay of 285 days is concerned, it has been the consistent view of the Court that the delay has to be explained and sufficient cause requires to be shown. The Hon'ble Supreme Court in *Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai*, (2012 (5) SCC 157) on the question of limitation and the underlying principle governing the law of limitation, held as under :-

"14. We have considered the respective arguments/submissions and carefully scrutinised the record. The law of limitation is founded on public policy. The Limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that they approach the court for vindication of their rights without unreasonable delay. The idea underlying the concept of limitation is that every remedy should remain alive only till the expiry of the period fixed by the legislature. At the same time, the courts are empowered to condone the delay provided that sufficient cause is shown by the applicant for not availing the remedy within the prescribed period of limitation.

15. The expression "sufficient cause" used in Section 5 of the Limitation Act, 1963 and other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which serves the ends of justice. No hard-and-fast rule has been or can be laid down for deciding the applications for condonation of delay but over the years this Court has advocated that a liberal approach should be adopted in such matters so that substantive rights of the parties are not defeated merely because of delay.

* * * * *

23. What needs to be emphasised is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of

power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.

24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay."

9. From the ratio laid down by the Hon'ble Supreme Court, it is clear that the Court has to apply its mind to find out as to whether the sufficient cause has been made out by the parties while applying the law of limitation in the case of hand. It is not in dispute that the third party petitioner was not made as party respondent in the O.S.No.123 of 2016. However, an adverse order has been passed against him only on 21.09.2016, which had came to his knowledge only on 12.07.2017. Thereafter, the third party petitioner has immediately taken steps to file the present petition for condonation of delay in 285 days from the date of the order. No material was placed by the petitioner/plaintiff to show that the third party petitioner had knowledge even prior to 12.07.2017 as to the order passed in O.S.No.123 of 2016

10. That being the factual position, this Court is of the view that the order passed condoning the delay by the Court below is in order and does not call for any interference.

11. In view of the above said reasons, this petition stands dismissed. No costs. Consequently, connected Civil Miscellaneous petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sbn

To

The Subordinate Judge,
Nagapattinam.

+1 cc to Mr.S.Sounthar, Advocate Sr No.7479

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and
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10.02.2021

CA (CO)
RG.28.04.2021 (5P/3C)