IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2021

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.P. Nos.15356, 15358, 15360, 15363, 15364 & 15369 of 2021
and W.A. SR Nos.105743, 105737, 105741, 105735, 105745 & 105739 of 2014

Chengalvarayan Co-operative Sugar Mills Ltd.,
Periyasevalai
Ulundurpet Taluk, Villupuram District
.. Petitioner/Appellant in all CMPs & W.A.SRs./5th Respondent in W.P.Nos.36202, 36203, 36205, 36206, 36207, 36209 of 2002

Vs.

1.R.S.Natarajan
.. 1st Respondent/1st Respondent/Petitioner in C.M.P. Nos.15356 & 15363 of 2021

1.A.Arokiaraj
.. 1st Respondent/1st Respondent/Petitioner in C.M.P. Nos.15358 & 15364 of 2021

1.S.Chinnamuthu
.. 1st Respondent/1st Respondent/Petitioner in C.M.P. Nos.15360 & 15369 of 2021

2. The Government of Tamil Nadu
Rep. by its Secretary, Industries Department
Fort St. George, Chennai - 600 009

3. The Commissioner of Sugar and the
Registrar of Co-operative Societies for
Co-operative Sugar Mills
474, Anna Salai, Nandanam
Chennai - 600 0035

4. The Joint Commissioner of Sugar
EVR Buildings, 474, Anna Salai
Chennai - 600 035

5. The Co-operative Sub-Registrar
(Arbitration and Execution)
474, Anna Salai Nandanam, Chennai - 600 035
.. Respondents 2 to 5/Respondents 2 to 5/ Respondents 1 to 4 in all CMPs

Prayer in CMPs : Civil Miscellaneous Petitions filed under Order IV Rule 9(4) of A.S.Rules to condone the delay of 1848 days in representing the appeal in W.A.SR Nos.105743, 105737, 105741, 105735, 105745 & 105739 of 2014.

Prayer in W.A.SRs.: Writ Appeals filed under Clause 15 of Letters Patent against the common order dated 19.10.2011 made in W.P. Nos.36202, 36203, 36205, 36206, 36207 & 36209 of 2002.

Prayer in W.P. Nos.36202, 36203, 36205 of 2002 are filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the first respondent relating to G.O.(D) No.49, Industries (MIC 2) Department, dated 19.02.2002 and quash the same.

Prayer in W.P. Nos.36206, 36207, 36209 of 2002 are filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the third respondent passed in Na.Ka.Tha.Thee.E.B./02, dated 24.07.2002 and quash the same.

For Petitioner/Appellant in all CMPs & W.A.SRs.	:	Mr.R.Balaramesh
For Respondents	:	Mr.D.Ravichander, State Govt. Counsel for R2 in all CMPs. & W.A.SRs.

COMMON ORDER

(delivered by PUSHPA SATHYANARAYANA, J.)

These civil miscellaneous petitions have been filed for condoning the delay of 1848 days in representing the appeal in W.A.SR Nos.105743, 105737, 105741, 105735, 105745 & 105739 of 2014.

2. For better appreciation of the case, few relevant facts, which are necessary for the disposal of these civil miscellaneous petitions are that, there was a complaint from Cane Growers Association of the Chengalvarayan Co-operative Sugar Mills Ltd/appellant herein, to the fifth respondent herein/Commissioner of Sugar and the Registrar of Co-operative Societies for Co-operative Sugar Mills. The said complaint was received by the Commissioner in the year 1996. Based on the same, the Commissioner of Sugar, had ordered an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as 'the Act') and the Enquiry Officer had recommended surcharge proceedings against the respondents 1 to 3 herein, who are writ petitioners.

3. The Joint Commissioner of Sugar was appointed as the Enquiry Officer, to conduct the surcharge proceedings and notice was issued. Challenging the surcharge notice, a writ petition was filed and the same was disposed of on 16.09.1998, giving a direction to the Registrar of Co-operative Societies and the Joint Commissioner of Sugar, to consider the objection raised with respect to the delay in the enquiry. Thereafter, on 19.02.2002, the Government had exempted the appellant Sugar Mill from Section 81(4) of the Act. Challenging the said exemption, the writ petitioners/respondents 1 to 3 herein, had filed W.P. Nos.36202, 36203, 36205, 36206, 36207 & 36209 of 2002, which came to be disposed of on 19.10.2011 by a common order. Against the said order, the above writ appeals are preferred by the Sugar Mill, with a delay in paying deficit court fee and the delay in re-presenting the appeals.

4. The dates that are relevant for deciding the above petitions are: On 17.04.1997, an enquiry under Section 81(4) of the Act, was ordered. The period of three months as referred in the said section, was over on 16.07.1997, before which time, neither the enquiry commenced nor an extension in terms of Rule 104 of the Tamil Nadu Co-operative Society Rules, 1988 was obtained. As no extension of time was sought beyond the period of three months, which could also not exceed beyond six months in aggregate, the proceedings automatically abated. However, the enquiry was commenced on 03.09.1997 and it was completed on 13.04.1998, which was without jurisdiction and against the provisions of the Act.

5. Pursuant to the said enquiry, notice under Section 87 of the Act, was sent to the writ petitioners. Upon challenge of the same, this court had directed to decide the issue of limitation as a preliminary issue. While so, in exercise of powers conferred by clause (a) of Section 170 of the Act, a Government Order in G.O.(D) No.49 Industries (MIC2) Department dated 19.02.2002 was passed exempting the appellant society from the provisions of Section 81(4) of the Act and to ratify the action of the Enquiry Officer. Once again the said G.O. was put to challenge in W.P. Nos.36202, 36203, 36205, 36206, 36207 & 36209 of 2002. The said writ petitions were disposed of by a common order dated 19.10.2011, quashing the above referred Government Order. The said orders are challenged in the above writ appeals, which are filed with a delay.

6. It is to be noted that the original proceedings commenced, when complaint was received from the Cane Growers Association of the appellant Sugar mill in the year 1996 and in 1997, an enquiry under Section 81 of the Act was ordered and the surcharge notice was challenged in the year 1998 and the exemption came to be granted in the year 2002. The writ petitions were filed in the year 2002, which were decided in the year 2011. The appeals are now sought to be filed in the year 2021, after 10 years, with a delay of 1848 days in representing the above appeals.

7. In the affidavit filed in support of the petition to condone delay, it is stated that only when W.P. No.28742 of 2013 was disposed of by this court on 09.12.2020 and the order copy was received by the appellant, they came to know about the disposal of the batch of writ petitions. Thereafter, it is stated that steps were taken to file the appeals. Order was passed on 19.10.2011. The appeals were filed on 08.12.2014, after a delay of more than three years. Papers were returned on 11.12.2014 and they are represented with a delay of 1848 days.

8. The Registry had granted 10 days time for representing the papers after complying with the defects pointed out. Such order passed by granting time to represent, is an administrative order and not a judicial order and therefore, it was contended that the delay not necessarily be under Section 148 and could be under Section 151 of CPC. As mentioned supra, there is a delay even in payment of the court fees and it cannot be disputed that as per Section 149 of the CPC, the Court of Law has the discretion at any stage to allow the individual to make good the defect and validate the document. Nonetheless the discretion is to be exercised by the Court of Law in accordance with the established judicial principles and the same cannot be claimed as a matter of right. In normal circumstances, discretion in this regard, should be exercised in favour of the party, except in case of mala fides or similar reasons resulting great injustice to the opposite side.

9. In the instant case, even going by the dates given, the proceedings had reached finality on the day when the G.O. (D) No.49 exempting the appellant society was passed in 2002. Prior to this, the parties were before the court from 1998. The appellant has now filed seeking re-presentation of the appeal memoranda with a delay of 1848 days. The filing of the writ appeals itself was beyond the period of three years, which is yet to be condoned. That apart, the appeals were also not presented properly, as there was a deficit in payment of court fees and also there was a delay in paying the deficit court fees. In such circumstances, it would be unfair to permit the appellant by condoning the delay at every stage, which would substantially prejudice the interest of the writ petitioners/respondents 1 to 3 herein.

10. In this regard, reliance is placed on the decision of the Hon'ble Apex Court in H.Dohil Construction Company Private Limited vs. Nahar Exports Limited and Another reported in (2015) 1 SCC 680, wherein, the Hon'ble Apex Court at paragraph Nos.19 to 21 and 24, held as under:

> 19. Having considered the respective submissions, on this question, we find that the submissions made on behalf of the appellant(s)

are forceful. It is true that the delay in filing the appeals was only of 9 days and that the longer delay was only relating to the refiling of the appeal papers. But even if it is related to refiling of the appeals, the net result is that the appeals could be taken into records only when such a delay in refiling is condoned. Therefore, if the refiling had been made within the time granted by the Registry of the High Court, no fault can be found with anyone much less with the party concerned or whomsoever was entrusted with the filing of the papers into the Registry. But when an enormous delay of nearly five years occurred in the matter of refiling, it definitely calls for a closer scrutiny as to what was the cause which prevented the party concerned from refiling the papers in time to enable the Registry to process the papers and ascertain whether the papers were in order for the purpose of numbering the appeals.

20. In the case on hand, the delay in refiling was of 1727 days. As rightly pointed out by the learned Senior Counsel for the appellant(s), the respondents paid the scrutiny charges on 11-4-2008 as disclosed in Receipt No. 73 issued by the High Court of that date. When the appeal papers were filed on 6-9-2007 and the scrutiny charges were paid on 11-4-2008, it was quite apparent that the processing of papers of the appeals for its registration did commence in the month of April 2008. Thereafter, if rectification of whatever defects were not carried out by the respondents or its counsel between April 2008 and May 2012, it is the bounden duty of the respondents to have satisfactorily explained such a long delay in refiling. When we refer to the applications filed on behalf of the appellant(s), we find that there was no convincing explanation as to how the respondents were disabled from rectifying the defects pointed out by the Registry and refiling the appeal papers within time. The respondents only attempted to throw the blame on the previous counsel to whom appeal papers were entrusted for filing in September 2007. As pointed out by the learned Senior Counsel for the appellant(s), there were no details as to whom it was entrusted and what were the steps taken to ensure that the appeals filed were duly registered for pursuing further remedy as against the said judgment of the trial court. As a matter of fact the appeal

papers were filed without payment of any court fee. This only affirms the stand of the appellant(s) that there was no bona fide in the respondents' claim and that they were seriously interested in challenging the judgment of the trial court as against the non-grant of relief of specific performance. We also fail to see as to how Respondent 1 which is a limited company involved in the business of exports, which would certainly have its own legal department, can plead that after entrusting the papers to some counsel whose name was not disclosed even before this Court did not even bother to take any follow-up action to ensure that its appeals were duly registered in the High Court. In this context the maxim vigilantibus non dormientibus jura subveniunt (law assists those who are vigilant and not those who sleep over their rights) aptly applies to the case on hand. The respondents simply by throwing the blame on the previous counsel whose identity was not disclosed claimed that irrespective of the enormous delay of 1727 days in refiling the same should be condoned as a matter of course as there was only 9 days' delay involved in filing the appeals.

21. We express our total disinclination to countenance such a stand made on behalf of the respondents. In this respect, the claim of the appellant(s) that serious prejudice would be caused to the appellant(s) merits acceptance. In the rejoinder filed by the appellant(s) to the respondents' counter, the appellant(s) has explained as to how they had to spend a huge amount to upkeep the property by approaching the authorities of Delhi Municipal Corporation, the enormous amount spent to the tune of Rs 28,00,000 by way of house tax from the year 2004 up to this date and various other improvements made in the property during the period wherein the delay in the matter of filing of the appeals and refiling was made by the respondents. Therefore, the principle that the law of limitation is based on a sound public policy and therefore in the absence of bona fide reasons the applications for condonation of delay should be strictly construed assumes significance.

24. When we apply those principles of Bhattacharjee case [Esha Bhattacharjee v. Raghunathpur Nafar Academy, (2013) 12 SCC 649 : (2014) 1 SCC (Civ) 713 : (2014) 4 SCC (Cri) 450

: (2014) 2 SCC (L&S) 595] to the case on hand, it has to be stated that the failure of the respondents in not showing due diligence in filing of the appeals and the enormous time taken in the refiling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bona fides as displayed on the part of the respondents. Further, when the respondents have not come forward with proper details as regards the date when the papers were returned for refiling, the non-furnishing of satisfactory reasons for not refiling of papers in time and the failure to pay the court fee at the time of the filing of appeal papers on 6-9-2007, the reasons which prevented the respondents from not paying the court fee along with the appeal papers and the failure to furnish the details as to who was their counsel who was previously entrusted with the filing of the appeals cumulatively considered, disclose that there was total lack of bona fides in its approach. It also requires to be stated that in the case on hand, not refiling the appeal papers within the time prescribed and by allowing the delay to the extent of nearly 1727 days, definitely calls for a stringent scrutiny and cannot be accepted as having been explained without proper reasons. As has been laid down by this Court, courts are required to weigh the scale of balance of justice in respect of both the parties and the same principle cannot be given a go-by under the guise of liberal approach even if it pertains to refiling. The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the respondents not deserving any indulgence by the court in the matter of condonation of delay. The respondents had filed the suit for specific performance and when the trial court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered."

In the above judgment, it has been held that for applicability of Section 149 CPC, the appeal papers ought to have been filed within the due date for accepting a deficit court fees.

11. In the instant case, as the appeals have been filed beyond three years and the court fees was also not paid and it was paid only at the time of re-presenting, the delay cannot be condoned. Even in the affidavit filed in support of the delay petitions, there is no sufficient cause shown for preferring the appeals beyond the limitation and also for re-presenting the appeal memoranda beyond five years. As has been held in a catenae of cases, lack of bona fides imputable to a party seeking condonation of delay, is significant and relevant fact. In this case, the delay is inordinate, the conduct and attitude of the appellant also clearly reveals that there is totally inaction and negligence on its part. The prejudice that may be caused to the writ petitioners by allowing these applications, would outweigh the permission that may be granted to the appellant. In such circumstances, the appellant does not deserve any indulgence from this court, as we find total lack of bona fides in its approach. The common order passed by the writ court had already become final. Therefore, these civil miscellaneous petitions filed for condonation of delay, do not deserve any merit and they deserve to be dismissed.

12. Accordingly, the miscellaneous petitions are dismissed. Consequently, the writ appeals are rejected at the SR stage itself. Registry is directed to return the papers. However, there is no order as to costs in these petitions and the appeals.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

Asr

To

1.The Secretary,
The Government of Tamil Nadu,
Industries Department,
Fort St. George, Chennai - 600 009.

2.The Commissioner of Sugar and the
Registrar of Co-operative Societies for
Co-operative Sugar Mills,
474, Anna Salai, Nandanam,
Chennai - 600 035.

3.The Joint Commissioner of Sugar
EVR Buildings, 474, Anna Salai,
Chennai - 600 035.

4.The Co-operative Sub-Registrar,
(Arbitration and Execution)
474, Anna Salai,
Nandanam, Chennai - 600 035.

+5ccs to Mr.R.Balaramesh, Advocate SR. Nos.49862, 49857, 49858, 49859, 49860

C.M.P. Nos.15356, 15358, 15360,
15363, 15364 & 15369 of 2021 and
W.A. SR Nos.105743, 105737, 105741,
105735, 105745 & 105739 of 2014

NMI (CO)
PR (06/12/2021)