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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.P.NO.13082 OF 2021
IN
C.M.A.SR.NO.70242 OF 2021

The Managing Director
Tamil Nadu State Transport
Corporation (Salem) Limited,
Division No.II (Salem),
No.12, Ramakrishna Road,
Regional Office at Dharmapuri,
Bharathipuram, Dharmapuri.

...Appellant

Vs.

Velmurugan

...Respondent

Prayer : C.M.P.No.13082 of 2021 is filed to condone the delay of 1788 days in filing the above appeal C.M.A.SR.No.70242 of 2021.

C.M.A.SR.No.70242 of 2021 is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 23.01.2015 made in M.C.O.P.No.317 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Dharmapuri.

For Appellant : Ms.Rajathi for
Mr.D.Raghu

J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed to condone the delay of 1788 days in filing the C.M.A.SR No. 70242 of 2021 against judgment dated 23.01.2015 made in M.C.O.P.No.317 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Dharmapuri.

2. The petitioner has come forward condoning the delay of 1788 days in filing the C.M.A.SR No. 70242 of 2021 and the reasons given by the petitioner at Paragraph No. 7 of the affidavit are extracted below:-

" I submit that the decree was passed on 23.01.2015. The copy application was made on



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12.01.2017 and the same was made ready on 21.02.2017 delivered on 21.02.2017. Thereafter, we have sent the Judgment to our panel advocate for getting opinion. After getting opinion from our advocate, it has placed before the appeal committee for getting approval. There is some delay in convene appeal committee. In between the Decree and judgment certified copy went missing. Thereafter we made a fresh copy application on 20.7.2021 and the same was ready and delivered on 23.07.2021. After complying all the administrative formalities the papers were forwarded with the office of the present Counsel and without any further delay the appeal has been made and presented before the Hon'ble Court by today. In the above said process there has been a delay of 1788 days caused in filing the appeal. Which is neither wilful nor wanton but due to the bonafide reasons stated above. No prejudice whatsoever would be caused to the respondent if this petition is allowed. On the other hand this petition would be put to irreparable lose and immense hardship if this petition is not allowed."

3. The Hon'ble Supreme Court, while dealing with the issue of delay in extenso in the case of N.Balakrishnan V. M.Krishnamurthy reported in (1998) 7 SCC observed as under:

"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 want of acceptable explanation whereas in certain other cases delay of 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 reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first cut refuses to condone the delay. In such cases, the superior cut 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.

10.The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance



substantial justice. Time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

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11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim *Interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result in foreclosing a 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 Vs. Kuntal Kumari* [AIR 1969 SC 575] and *State of West Bengal Vs. The Administrator, Howrah Municipality* [AIR 1972 SC 749].

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 think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne



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in mind that he is a looser and he too would have incurred quiet a 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."

4. The judgment of the Hon'ble Supreme Court (cited supra) has been followed by the Division Bench of this Court, in which I was one of the parties in the case of M/s.Ruskim sea Foods Limited, Stafford Park 15, Teleford Shropshire TF33BB United Kingdom rep. By their Power of Attorney Agent Mr.Abdur Rahman No.42, Sindur Plaza Montieth Lane, Egmore, Chennai 600 008 vs. M/s Evergreen Sea Foods Pvt.,Ltd., rep. By its Managing Director, Mr.T.Loganathan, No.29, Kummalamankoil Street, Tondiarpet, Chennai 600 081 and others [C.M.P.Nos.21784 and 21785 of 2017 in OSA No.SR79476 of 2017] decided on 15.02.2018, wherein it was held as follows:

"36. The Petitioner has come with unclean hands and the Hon'ble Supreme Court in the decisions, which were cited by the Petitioner, had categorically held that the 'length of delay is not a matter, but the acceptance of explanation is only criteria and length of delay may be long, but if there is justification, long delay can also condoned'. If there is a short delay and the explanation is not satisfactory and if it is on account of smack or malafide or on account of dilatory strategy, this Court cannot help the persons, who come before this Court to condone the delay and protract the proceedings."

5. If the present case on hand is analyzed on par with the judgments of the Supreme Court as well as this Court, it is obvious that even if the delay is long, the delay can be condoned, provided it is supported by sufficient reasons and justifications to exercise the discretion of the Court.

6. In this case, the reasons given for condoning the delay of 1788 days are not acceptable in filing the appeal and the delay has not been properly explained. Hence, this Civil Miscellaneous Petition is dismissed and the Civil Miscellaneous Appeal is rejected at the SR stage itself. No costs.

Sd/-
Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

dpq



To

The Motor Accidents Claims Tribunal,
Special Subordinate Judge,
Dharmapuri.

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+1cc to Mr.D.Raghu, Advocate SR.No.42910

C.M.P.No.13082 of 2021

in

C.M.A.SR.No.70242 of 2021

RLD (CO)

RVM(07/12/2021)