

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.01.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

CMP.No.13791 of 2020 in STA SR.No.60460 of 2019

K.C.Hussain

... Petitioner

-vs-

1. The State of Tamil Nadu
rep. by the Collector of Nilgiris,
Collectorate, Ootacamund,
The Nilgiris.
2. Settlement Officer
(Gudalur Janmam Lands),
Gudalur, Gudalur Bazaar Post,
The Nilgiris.
3. The District Forest Officer,
Gudalur Division, Gudalur,
The Nilgiris.
4. The Tahsildar,
Taluk Office, Gudalur,
The Nilgiris.
5. The Joint Receiver,
T.N.Godavarman Thirumalpad,
Nilambur Kovilakam, Nilambur,
Malapuram District, Kerala State.

... Respondents

Civil Miscellaneous Petition filed under Order 4 Rule 9 (4)
of A.S. Rules praying to condone the delay of 309 days in
representation of STA.SR.No.60460 of 2019.

For Petitioner : Mr.John Zachariah

For Respondents : ...
1 to 4

ORDER

The present Civil Miscellaneous Petition has been filed
seeking to condone the huge and unexplained delay of 309 days in
representing the STA.SR.No.60460 of 2019.

2. Mr. John Zachariah, learned Counsel appearing for the petitioner would submit that after the Settlement Officer, Gudalur Janmam Lands, Collectorate, Ootacamund, The Nilgiris, the 2nd respondent herein, passed an order dated 30.05.2011 rejecting the request of the petitioner to grant Ryotwari Patta under Section 9 of the Tamil Nadu Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 24/69 in respect of O.S.No.40/1Cpt having an extent of 10 acres in O' Valley Village, Gudalur Taluk, The Nilgiris District under Section 12 (1) of the Act, an appeal was filed within time before the District Judge of Nilgiris and the Jenmam Estate Abolition Tribunal at Ootacamund, The Nilgiris, who also after considering the case of the petitioner, while confirming the order dated 30.05.2011 passed by the 2nd respondent Settlement Officer, dismissed the appeal filed by the petitioner herein by the impugned judgment and decree dated 25.01.2019. Aggrieved thereby, the petitioner has been advised to file further appeal before this Court. Accordingly, the present Statutory Appeal was filed before this Court.

3. Learned Counsel for the petitioner would further submit that after the dismissal of the appeal by the District Judge of Nilgiris and the Jenmam Estate Abolition Tribunal at Ootacamund, The Nilgiris, a Statutory Appeal has to be filed within 90 days. Accordingly, this STA.SR.60460/2019 has been filed on 30.04.2019 before this Court, but the same was returned by the Registry on 10.05.2019 which has to be represented curing of the defects on or before 20.05.2019. However, since the issue regarding the lands falling within the ambit of Section 17 of Gudalur Jenmam Estates (Abolition and Conversion into Ryotwari) Act, 1969 is being agitated by the Association in which the petitioner is also one of the members before the Apex Court in W.P.(C) No.202/1995 and the issue was also pending before the Apex Court, it was felt that the orders passed by the Apex Court would have a direct bearing on any appeal that may be filed before this Court, therefore, the petitioner did not take any steps to cure the defects and bring the matter for hearing before this Court. In the meanwhile, 309 days in representing the appeal has occurred. Therefore, the delay is neither willful nor wanton, but only due to the aforesaid reason. Hence, the delay of 309 days in representing the appeal before this Court may be condoned, it is pleaded. Learned Counsel would also submit that if this Court feels that with any terms, the delay may be condoned, the petitioner would also abide by the same.

4. But we are unable to find any sufficient cause to condone the huge and unexplained delay of 309 days in representing the above appeal. The reason being that if it is a simple or reasonable delay in representing the appeal, this Court, in usual course always condones the delay. Delay in

representation is also equivalent to delay in filing appeal, therefore, sufficient cause shall be given in the affidavit for condoning the delay. This Court also invariably by mere asking, condones the delay in representation, if it is a reasonable delay of 100 days or even 200 days. But beyond limit, we cannot condone any huge and unexplained delay. The Hon'ble Apex Court in Municipal Council, Ahmednagar vs. Shah Hyder Baig [1999 Supp (5) SCR 197], held that the doctrine of 'delay defeats justice and equity' in the matter of grant of relief shall be borne in mind while entertaining the application for delay, for, discretionary relief can be provided to the deserving parties who do not sleep over their rights. Equity favours a vigilant rather than an indolent citizen. This being the tenet of law, condoning the huge delay of 309 days would cause prejustice to other side. Therefore, in the present case, when no sufficient cause has been shown to condone the huge and unexplained delay of 309 days in representing the above appeal, we are not inclined to condone the long delay.

5. In the result, the Civil Miscellaneous Petition fails and the same is accordingly dismissed. Consequently, connected STA.SR.No.60460 of 2019 is rejected.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To,

- 1.The District Judge of Nilgiris and the Jenmam Estate Abolition Tribunal at Ootacamund, The Nilgiris
- 2.The Settlement Officer
(Gudalur Janmam Lands),
Gudalur, Gudalur Bazaar Post,
The Nilgiris.

+1cc to M/s.Fox Mandal Associates , Advocate SR.No. 1410

CMP.No.13791 of 2020 in
STA SR.No.60460 of 2019

A.SK(16.02.2021) .