

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

Reserved on : 08.02.2021

Pronounced on : 15.02.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Application No.3219 of 2020 in
Civil Suit No.491 of 2019 &
Application No.6055 of 2019

Raj Yamaha,
A registered Partnership Firm,
rep. by its Partners,

1.A.Jagadish,
S/o.Arunachalam,

2.J.Loga,
W/o.A.Jagadish,
Having one of the office at
S4, Besant Avenue, Adyar,
Chennai - 600 020.

... Applicants /
Defendants

versus

Rajkumar,
Proprietor, Raj Yamaha,
S/o.Harichand,
No.6, T.Villa, M.G.R.Salai,
Palavakkam, Chennai - 600 041.

... Respondent /
Plaintiff

Prayer: Application filed under Order XIV Rule 10(xi) of Original Side Rules read with Section 5 of the Limitation Act and Section 151 of C.P.C., to condone the delay of 270 days in filing the appeal against the order passed by the learned Master dated 10.03.2020 in A.No.8907 of 2019 in C.S.No.491 of 2019.

For Applicants / Defendants : Mr.K.Bijai Sundar
for Mr.A.Balasingh Ramanujam

For Respondent / Plaintiff : Mr.K.V.Babu

ORDER

The defendants in C.S.No.491 of 2019 has filed this application under Order XIV Rule 10(xi) of Original Side Rules read with Section 5 of the Limitation Act, seeking the relief to condone the delay of 270 days in filing the appeal against the order dated 10.03.2020 in A.No.8907 of 2019 in C.S.No.491 of 2019 passed by the learned Master.

2. Heard Mr.K.Bijai Sundar, learned counsel representing Mr.A.Balasingh Ramanujam for the applicants / defendants and Mr.K.V.Babu, learned counsel appearing for the respondent / plaintiff through Video Conferencing.

3. The respondent / plaintiff in this application has filed the above referred suit under Order XXXVII Rule 1 of C.P.C. for a recovery of a sum of Rs.4,59,50,225/- (Rupees Four Crores Fifty Nine Lakhs Fifty Thousand Two Hundred and Twenty Five Only) together with interest @ 25% per annum, on the principal sum of Rs.4,18,00,000/- from the date of plaint to till the date of realisation. When at the time, the proceedings are pending before the learned Master in respect to leave to defend, on 10.03.2020, the learned Master allowed the said application, with a condition directing the applicants / defendants to furnish security for a sum of Rs.4.50 crores on or before 24.03.2020.

4. Aggrieved over the same, the applicants / defendants, are decided to file an appeal before this Court but the same could not be done, within a period of limitation as stipulated in the Original Side Rules. Therefore, the applicants / defendants herein filed this application for the relief to condone the delay of 270 days in filing the said appeal.

5. The learned counsel appearing for the applicants / defendants would contend that though the time for filing the appeal expires on 18.03.2020, due to the running temperature, the 1st applicant / 1st defendant had been advised to take some tests to identify the corona virus. Therefore, he was advised to be quarantined and could not leave the house to contact anybody. In the meantime, national lock down was announced on 22.03.2020 and therefore, he was not in a position to file the appeal, within a period as stipulated in the Rules.

6. Further case of the applicants is that, after recovering from his illness, when at the time he has contacted his Advocate, it was found out that the certified copy of the order passed by the learned Master was ready on 01.12.2020 only. Further, the learned counsel for the applicants was also informed to the applicants that he was not attending the physical hearing and therefore, the applicants are not in a position to file the appeal, within a time and therefore, condoning the delay of 270 days in filing the appeal is necessary for enabling the applicants to project their case for better appreciation.

7. In response to the contention raised by the learned counsel appearing for the applicants / defendants, the learned counsel appearing for the respondent / plaintiff filed a counter affidavit and opposed the application filed by the applicants in manifolds.

8. The learned counsel appearing for the respondent would contend that the provision under which, the present application has been filed for condoning the delay of 270 days is applicable to the Master Court only. But without appreciating the same, the applicants herein filed this application after quoting a wrong provision.

9. The learned counsel would further contend that for filing appeal against the order passed by the learned Master, the certified copy of the order is not required under law, but the applicants herein, after suppressing the same, preferred this application. Further, the same has not been represented before the learned Master on 27.11.2020 wherein the case was posted for reporting compliance. The main contention raised by the learned counsel for the respondent is that after granting leave to defend the

suit, the question of appeal does not arise. Therefore, the reasons stated by the applicants for condoning the delay, is not at all having any merits and accordingly, the application filed by the applicants, is liable to be dismissed.

10. I have considered the rival submissions made on either side and perused the records carefully.

11. It is settled preposition that quoting wrong provision in the application is not a ground for rejecting the entire application. Therefore, the first ground raised by the learned counsel appearing for the respondent for dismissing this application is not having any force.

12. Secondly, in respect to the non-availability of the certified copy, no substantial evidence has been produced on the side of the applicants to prove his *bona fide*, in fact to find out the truth the date, on which the copy application has filed is necessary. However, it is an admitted fact that the learned Master has passed the order on 10.03.2020. Subsequent to that, due to the spread of Covid-19, national lock down has been

announced on 22.03.2020, before that, some of the persons are suffering from fevers and advised to keep in quarantine. Though the certificate now produced by the applicants did not have any substantial particulars, that alone is not sufficient to throw away the entire certificate issued by the Doctor.

13. More than that, after the announcement of lock down, our Hon'ble Apex Court had extended the period of limitation time and again. Therefore, technical defect now pointed out by the respondent is not at all taken into account for considering the application filed by the applicants. However, an important aspect to be decided in this application is, before the Master Court, the application filed by the applicants for leave to defend the suit was allowed in their favour. But the said leave was granted by the learned Master with some condition, directing the applicants to furnish security for a sum of Rs.4.50 crores.

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14. Now, according to the contention raised by the learned counsel for the applicants the condition imposed by the learned Master is

onerous one. In this occasion, it is necessary to see the impugned order wherein at the time of allowing the leave to defend the application, the learned Master has categorically held that triable issues are raised in the suit filed by the respondent. Since the suit has been filed for a recovery of money, after coming to the conclusion that the triable issues are arisen in respect to the claim, it is not necessary for the learned Master to impose this type of condition. However, the same has to be decided only during the time of deciding the appeal.

15. As far as this application is concerned, the learned counsel appearing for the respondent relied on the two decisions rendered by our Hon'ble Apex Court in *N.BALAKRISHNAN vs. M.KRISHNAMURTHY* reported in *MANU/SC/0573/1998* and in *P.K.RAMACHANDRAN vs. STATE OF KERALA & ANOTHER* reported in *1997 (72) ECR 785 (SC)*.

In those decisions, our Hon'ble Apex Court has held that the condonation of delay is a matter of discretion of the Court. Further, it was held that law of limitation may harshly affect a particular party but it has to be applied with

all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds.

16. The decisions rendered by our Hon'ble Apex Court may be in favour of the respondent, but here it is a case, from the month of March 2020 to till date, the entire nation is affected due to Covid-19 pandemic. Therefore, as far as these types of cases, applying the rigid law is not necessary for enforcing the right of either side party.

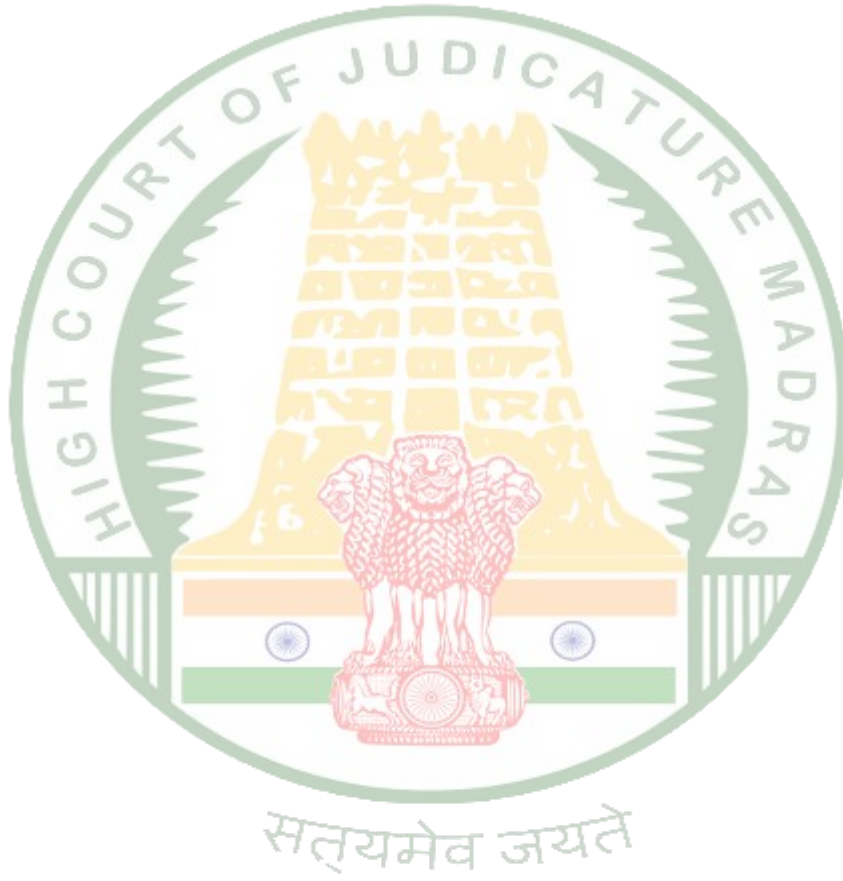
17. Therefore, I am of the considered opinion that the application filed by the applicants is having merits and accordingly, the application is allowed and the delay of 270 days in filing the appeal against the order dated 10.03.2020 in A.No.8907 of 2019 in C.S.No.491 of 2019 passed by the learned Master, is condoned.

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Note : Registry is directed to number the appeal, if it is otherwise in order.

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R.PONGIAPPAN, J.

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Pre-delivery order in
Application No.3219 of 2020 in
Civil Suit No.491 of 2019 &
Application No.6055 of 2019

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