

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2892 of 2017

1.Mahendra Tarai
2.Mrs.Santilata Tarai

...Appellants

Vs.

Union of India
Owning Southern Railway
Rep.by its General Manager,
Chennai.

..Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 23(1) of Railway Claims Tribunal Act, against the order dated 09.06.2017 passed by the Railway Claims Tribunal, Chennai Bench, in I.A.No18/2017 in Diary No.040/2017.

For Appellant : Mr.T.Rajamohan
For Respondent : Mr.S.R.Sundaram

J U D G M E N T

The order dated 09.06.2017 passed in I.A.No18/2017 in Diary No.040/2017 is under challenge in the present Civil Miscellaneous Appeal.

2. The appellant filed a Claim Petition before the Railway Claims

Tribunal and along with the Claim Petition, the Interlocutory Application filed in I.A.No.18 of 2017 is filed to condone the delay of 437 days in filing the claim petition. The reason stated by the appellant in the affidavit filed in support of the Interlocutory Application is that he searched and discovered the police records, Death certificate, Legal Heir certificate etc., and thereafter, submitted the same to the counsel and therefore, the delay occurred in filing the Claim Petition. The Railway Claims Tribunal adjudicated the issues with reference to the documents and evidences produced by the appellant for condoning such a long delay. The application was dismissed relying on the judgments of the Hon'ble Supreme Court of India. Thus, the appellant is constrained to move the present appeal.

3. This Court is of the considered opinion that uncondonable delay cannot be condoned in a routine manner. Law of limitation is substantive. Litigations / appeals are expected to be filed within the period of limitation as contemplated under the Statutes. Rule is to follow limitation. Condonation of delay is an exception. Exceptions are to be

exercised discreetly, if the reasons furnished are genuine and acceptable. The Courts are vested with the discretion to condone the delay. This does not mean that enormous delay are to be condoned mechanically. Undoubtedly, if the reasons are candid and convincing, then the Courts are empowered to exercise its power of discretion so as to condone the delay. Power of discretion is a double-edged weapon. Thus, the discretionary powers are to be exercised cautiously and uniformly. Exercise of power of discretion if made excessively, would defeat the purpose and object of the law of limitation. The Courts are expected not to travel beyond the permissible extent, so as to condone the enormous delay in a routine or mechanical manner. Power of discretion is to be exercised to mitigate the injustice, if any occurred to the litigants.

4. A fine distinction is to be drawn in respect of 'acceptability' and 'unacceptability' as far as the condonation of delay is concerned. The reasons and its genuinity are important for condoning the delay. It became unnecessary that the Courts have to consider the precedents and condone the delay thereafter or reject the same. There are judgments far

and against, but predominantly the facts, circumstances and the genuinity of the reasons of each case plays a pivotal role in considering the relief of condonation of delay.

5. Question may arise the purpose and object of the law of limitation as refusal of condonation of delay sometime causes denial of rights to the litigants. However, there is a definite purpose for prescription of period of limitation for institution of litigations. Different time limits are prescribed for different kinds of litigations. However, there is a strong reason for such prescription of limitation in various statutes. The litigants are always expected to be vigilant over their rights and liabilities, duties and responsibilities. If any citizen of our great nation is allowed to exercise his right at his whims and fancies without reference to the law of limitation, circumstances may arise that the rights of other fellow citizens are prejudiced or affected. Rights cannot be exercised unguidedly. All rights including fundamental rights under the Constitution of India is certainly qualified and subject to various restrictions under other laws. Thus, the rights of citizen and

corresponding duty towards the other fellow citizen are to be balanced in such a manner without causing any prejudice, which resulted prescription of law of limitation. Exercise of right by a citizen cannot infringe the right of other fellow citizen. Rights and duties are corresponding and therefore, the law require a limitation for institution of litigations.

6. Any citizen slept over his right, cannot wake up one fine morning and knock the doors of the Court for redressal of his grievances. The person, who slept over, has to loose his right and efflux of time results expiry of the cause. In the event of institution of litigation after a prolonged period, the other person, who has to defend the litigation will not only suffer, but would lead to harassment. These all are the mitigating factors, which all are to be considered, while dealing with the law of limitation as contemplated under various statutes. Thus, the law of limitation has got a definite reasoning, logic and various time limitations are prescribed under various statutes by adopting the principles of “Doctrine of Reasonableness”.

7. The principles of reasonableness would be adopted with reference to the nature of litigations to be instituted. Various time limits are prescribed for Civil litigations, Appeals and other kind of litigations, considering various factors and by applying the Doctrine of reasonableness. Thus, the law of limitation became substantive and to be followed scrupulously in all circumstances and on exceptional cases, delay is to be condoned, if the reasons are genuine and acceptable.

8. Exceptions can never be adopted as a rule. Exceptions are to be exercised exceptionally and the power discretion is to be exercised discreetly, so as to mitigate the injustice if any occurred. Condoning long delay in a routine or mechanical manner is not a good practice by the Courts. It would result to an injustice in respect of the opposite parties, who are expected to defend the litigations. Thus, the power of discretion is to be exercised cautiously and delay has to be condoned by recording reasons and such reasons must be based on sound legal principles.

9. It is a trend in the Bar that whenever the petition for condonation of enormous delay is filed, requests are made to impose heavy costs and condone the delay. This Court also witnesses many number of such submissions made by the learned counsel appearing on behalf of the petitioners that they are prepared to pay the costs. This Court is of the humble opinion that by imposing heavy costs, long delay cannot be condoned. In the event of condoning enormous delay by imposing heavy costs, undoubtedly, the legal principles are not only compromised, but 'justice' is not done. The Courts are not supposed to compromise on the legal principles under the guise of imposing certain costs. Costs are imposed on certain circumstances, when the Court forms an opinion that lapses are minor and on account of such minor lapses, the parties should not suffer or their rights cannot be denied. However, costs cannot be in terms with the number days of delay. It is not an arithmetic principle, where long delay is to be condoned with heavy costs and for meagre delay, minimum costs is to be imposed. Such a principle is opposed to public policy and this Court is not prepared to

accept such concept of imposing heavy costs for condoning enormous delay by violating the Law of Limitation, which is substantive and the legal principles.

10. Once the delay petition is filed, the same is to be dealt with independently by scrutinising the reasons stated. For condoning such huge delay, if the Courts are convinced with the reasons stated by the litigant for the purpose of condoning the delay, then the Courts are expected to go into the merits. Contrarily, condonation of delay cannot be allowed based on the merits of the main appeal. Of course, it is not a trite law to follow. However, in certain circumstances, Courts can take a lenient view if the reasons are genuine. For instance, if the delay is about 3 months or six months, the Courts can take a lenient view, but not otherwise.

11. In view of the principles discussed above, this Court is of the considered opinion that the order passed by the Railway Claims Tribunal is in consonance with the established principles and there is no

perversity as such. Accordingly, the order dated 09.06.2017 passed in I.A.No18/2017 in Diary No.040/2017 stands confirmed and consequently, the Civil Miscellaneous Appeal in C.M.A.No.2892 of 2017 stands dismissed. No costs.

05.02.2021

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Index: Yes/No

Internet: Yes/No

Speaking order/Non-Speaking Order

To

The Railway Claims Tribunal,
Chennai Bench.

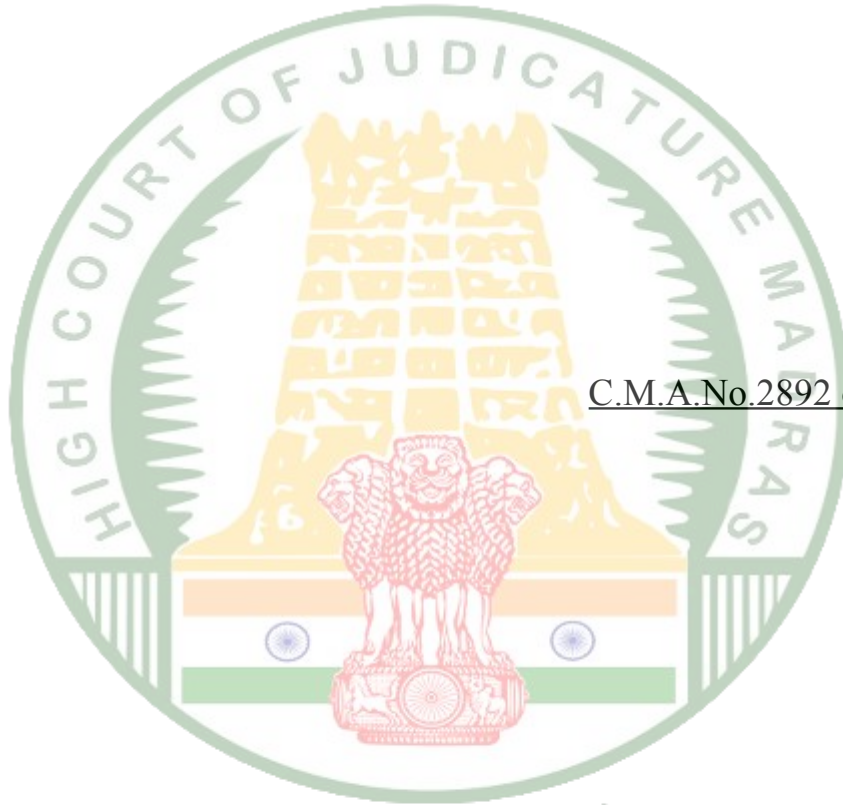


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S.M.SUBRAMANIAM, J.

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