

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18-01-2021

Coram

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

CMP No.13806 of 2017
in
CMA SR No.90140 of 2016

R.Badrayyan .. Petitioner/Appellant

vs.

- 1.T.S.Rajendran
- 2.Smt.S.Vijaya Rani
- 3.Smt.S.Chanthini
- 4.T.S.Devarajan
- 5.Mrs.Manickam
- 6.Divya
- 7.Kausalya
- 8.Mallikerjun
- 9.Badrammal
- 10.Rajammal
- 11.Kanaga Rathinam
- 12.Iyyappan
- 13.Sundaraj
- 14.Hari
- 15.Alagirisamy

.. Respondents/Respondents

PRAYER: CMP No.13806 of 2017 is filed under Section 5 of the Limitation Act, to condone the delay of 1,453 days in filing the above Civil Miscellaneous Appeal.

CMA SR No.90140 of 2016 is preferred against the judgment and decree passed in A.S.No.48 of 2011 passed by the Learned I Additional District Judge, Coimbatore dated 31.08.2012 by remanding the matter back after setting aside the judgment and decree passed by the Learned II Additional Sub Judge, Coimbatore in O.S.No.606 of 2005 dated 22.12.2010.

For Petitioner : Mr.C.R.Prasanan

For Respondents : No Appearance

ORDER

Unconardonable 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.

2. 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.

3. 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.

4. 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”.

5. 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.

6. 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.

7. 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.

8. Based on the above principles, let us now consider the reasons stated in the affidavit filed in respect of the present civil miscellaneous appeal. The petitioner, in the present case, has stated that the judgment and decree in A.S.No.48 of 2011 was delivered on 31.08.2012. The counsel for

the petitioner filed copy application to obtain judgment and decree in A.S.No.48 of 2011, soon after the judgment and decree were delivered. The judgment copies could not be obtained immediately. After one year, the judgment and decree were made ready. The Advocate Clerk of the petitioner had received the judgment and decree and asked the petitioners, including the fifth respondent to come over to his office. The petitioner went to the office of the Advocate in the first week of December 2013. The petitioners had discussion with their counsel. The fifth respondent told us that she would file a CMA on her behalf and on behalf of petitioners also before this Court and that she was prepared to accept contribution from all the petitioners towards expenses and fees involved in filing such a CMA before this Court. She received some of the papers, including the judgment and decree from the counsel for the petitioner. The pleadings and some other papers, which were kept by the Advocate, were not traceable during the said point of time. The fifth respondent assured that she would come on some other day and collect those papers from the counsel for the petitioner. She told us that she knew some of the Advocates at Chennai and make suitable arrangements for filing the appeal within two months thereafter. She has got

the signatures of the petitioner in the High Court Vakalat for the purpose of filing the above appeal.

9. Presuming that the reasons stated are true, this Court is of the considered opinion that the judgment copies were admittedly received in the year 2012. However, the petitioner has stated that the papers were not traceable during the relevant point of time. Further, it is stated that the fifth respondent agreed to file CMA on behalf of the petitioner also. Even such statements are truthful, this Court is of the opinion that one party giving some promise to other party or other party agreeing for such promise would not be a ground to condone the delay of 1,453 days in filing the appeal.

10. A person can trust another litigant for a reasonable period of time. For instance, if the period of limitation is 90 days, then they are expected to wait for some more time and thereafter immediately institute the appeal. Contrarily, one cannot come to Court after 5 years and say that with the fond hope that the fifth respondent would file CMA on behalf of the petitioner and therefore, had waited and instituted the appeal after the delay

of 1,453 days. If at all such statements are true, they are not acceptable for the purpose of condoning the huge delay of 1,453 days. This is exactly what this Court has stated in the abovementioned paragraph that the uncondonable delay cannot be condoned.

11. Learned counsel for the petitioner further contended that the petitioner has got a good case on merits as the First Appellate Court has erroneously arrived at a conclusion by remanding the matter back to the Trial Court. However, this Court is of the considered opinion that considering the merits and demerits of appeal in the condonation of delay petition is not preferable. If the delay is meager, undoubtedly, this Court can take a lenient view in the matter of condonation of delay. However, if the delay is enormous, then no other option but to decline the grant of relief. Contrarily, if the Courts have decided the merits and demerits of the judgment and decree passed by the Appellate Court for the purpose of condoning the delay, then the very purpose and the object of condonation of delay stands defeated. Therefore, such an approach may be impracticable and not preferable.

12. 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.

13. The learned counsel for the petitioner states that the order of remand is contrary to the settled principles of law. The order of remand by the First Appellate Court is unwarranted. However, these facts are irrelevant as far as condone delay petition filed before this Court is concerned or to condone the delay of 1453 days. This Court, at this juncture, cannot adjudicate the merits of the judgments as well as the findings made.

14. However, the Appellate Court on remand, shall consider whether remand is necessary or not. Order 41 Rule 23A stipulates remand of cases. Rule 24 contemplates that the First Appellate Court has to decide the issues finally, if the documents and evidences are available. Thus, certain lapses by the trial Court or non-appreciation of evidence or documents may not be a good ground for remanding the matter back to the trial Court as such remand would cause longevity to litigations, further, would cause inconvenience. Thus, the Courts are expected to remand the matter only when it is absolutely required and it is not possible for the Appellate Court to decide the issues finally or the suit was decided on preliminary issues. The Trial Court is also expected to decide the issues uninfluenced by the observations made by the Appellate Court after remand. Equally the Courts are not expected to record unnecessary findings if a decision is taken to remand the matter back to the trial Court, as such findings would affect or influence the trial Court, while dealing with the matter independently.

15. In view of the reasons stated above, this Court has no hesitation in arriving a conclusion that the reasons stated by the petitioner for condoning the long delay of 1,453 days are neither candid nor convincing and consequently, the Civil Miscellaneous Petition in C.M.P.No.13806 of 2017 stands dismissed and consequently, C.M.A.SR.No.90140 of 2016 is rejected at the SR Stage itself. However, there shall be no order as to costs.

18-01-2021

Speaking Order/Non-Speaking Order.

Internet : Yes/No.

Index: Yes/No.

Svn/Kak

To

1.The I Additional District Judge,
Coimbatore.

2.The II Additional Sub Judge,
Coimbatore.

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S.M.SUBRAMANIAM, J.
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