

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(NPD) No.3354 of 2018

M.Ramasamy

... Petitioner

Vs

1.K.Ponnusamy
2.Chenni
3.C.Palanisamy
4.Annapoorani

M.Manian (Died)

5.M.Thangamani STS
6.M.Karunanithi (SS)
7.A.Palaniyammal
8.R.Muthammal
9.Kamalam

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the Fair and Decretal Order dated 25.07.2018 made in I.A.No.261 of 2016 in I.A.No.255 of 2012 in I.A.No.709 of 2011 in O.S.No.201 of 2009 on the file of the Sub Court, Perundurai, Erode District.

For Petitioner : Ms.R.Shase

For Respondents : Mr.N.Manokaran

ORDER

The Civil Revision Petition is filed against the Fair and Decretal Order dated 25.07.2018 made in I.A.No.261 of 2016 in I.A.No.255 of 2012 in I.A.No.709 of 2011 in O.S.No.201 of 2009 on the file of the Sub Court, Perundurai, Erode District, thereby dismissing the petition to condone the delay.

2. The petitioner is the plaintiff and the respondents are the defendants. The petitioner filed the suit for specific performance. When the suit was posted for trial, the petitioner was examined as P.W.1 on 25.10.2010. Thereafter, he failed to appear for cross examination and as such, the suit was dismissed for default on 09.06.2011. Next day, the petitioner filed a petition to restore the suit and unfortunately, thereafter he again failed to appear before the trial Court and again it is also dismissed on 26.09.2011. Therefore, to restore the restoration petition filed with the delay of 24 days in I.A.No.255 of 2012.

3. While pending the said petition, the fifth defendant in the suit died, and as such, the Court below directed the petitioner to take steps to implead the legal heirs of the deceased fifth defendant. Since already the legal heirs of the deceased fifth defendant are on record in the plaint, the condone delay petition was dismissed by the Court below on 21.11.2012.

4. Thereafter, the petitioner suffered with Jaundice and he had taken treatment at Kerala, again thereafter, he met with an accident and admitted in private hospital at KMCH, Erode for 39 days. Therefore, there was a delay of 1175 days in filing the petition to restore the condone delay petition in filing of restore petition to restore the main suit.

5. The learned counsel for the petitioner would submit that the petitioner was examined as P.W.1 and marked Ex.P1, in respect of medical records. The Court below dismissed only for the reason that except Ex.P1 no other documents were produced to substantiate sufficient cause as stated by the petitioner. She also relied upon Section 59 of the Indian Evidence

Act, 1982 in respect of oral evidence. He categorically deposed that from time to time had taken treatment in various hospitals, and thereafter, the case bundle was also misplaced in the Advocate's Office. Therefore, there was a delay of 1175 days.

6. Without considering all the facts and also Ex.P1, the Court below dismissed the condone delay petition. She further submitted that even on factual aspects, there are totally 23 persons agreed to execute the sale deed, in which, 13 persons executed the sale deed and only remaining 10 persons have to be executed the sale deed. Therefore, the petitioner has got very good case to succeed in the suit.

7. The learned counsel for the respondent would submit that the suit itself is barred by limitation. Since the agreement dated 05.02.1995 and the time stipulated in the contract is only one year and the suit itself is clearly barred by limitation and as such the petitioner has no case to succeed before the trial Court. However, after filing the written statement, the petitioner dragging the suit for two years even for his chief examination. He was

examined in chief only on 25.10.2010 and thereafter, he failed to appear before the trial Court. Therefore, the trial Court rightly dismissed the suit for default. Thereafter, he simply drag on the proceedings till 2016 and filed a petition to condone the delay of 1175 days. The Court below rightly dismissed the petition and it does not warrant any interference by this Court.

8. In support of the contention of the petitioner, the learned counsel relied upon the Judgment reported in

1). (1988) 7 SCC 123 N.Balakrishnan -vs- M.Krishnamurthy is held as follows:

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

11. Rules of limitation are not meant to destroy the rights 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. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would

never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the Courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The 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 rights 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.

2). C.R.P.(NPD) No.2887 of 2018 in C.M.P.No.16934 of 2018 Ramesh -vs- Sadhasivamoorthy is as follows:

"11. The learned Senior counsel for the petitioner had relied upon the following judgments reported in 2001 (6) SCC 176 [M.K.Prasad V. P.Arumogam] and 2002 (3) SCC 195 [Ram Nath Sao @ Ram Nath Sahu and others V. Gobardhan Sao and others] and submitted that the expression "sufficient cause" within the manner of Section 5 of the Limitation Act or under Order 22 Rule 9 of the Civil Procedure Code should be

*given liberal construction so as to advance substantial justice. The aforesaid two judgments came to be considered by a learned Single Judge in a judgment in **Rajangam and others V. Senthamaraj and others** reported in **2016 (2) CTC 714** and this Court, while analysing the scope and Section 5 of the Limitation Act, had taken into consideration various judgments of the Hon'ble Apex Court and held as follows:-*

“8. The learned counsel for the Revision Petitioners would submit that the length of delay alone is not a criteria to dismiss the petition and the Court is expected to consider the nature of the claim made in the suit, the nature of defence taken by the defendants, the stake involved in the matter and the possibility of rendering substantial justice to the parties. It is also represented that the inconvenience caused to the other side can be compensated by costs and the defendants are ready to pay the costs, if imposed by this Court.

8.1. The learned counsel for the Revision petitioners relied upon the following decisions, in order to support the contention that the grounds, which are required to be considered by the Court, (which passed the impugned order), were not considered and if that had been done, the petition would not have resulted in dismissal:-

(i) CDJ 2014 MHC 3671 (M/S. Bharat Petroleum vs C.S.Prakasa Rao):-

14. While deciding, whether the delay has to be condoned or not, the nature of the relief claimed in the plaint, the nature of the defence taken and the benefits, that could be sought under Section 9 of the City Tenants Protection Act or in the alternative, to make a claim of compensation under Section 3 of the City Tenants' Protection Act, have to be kept in mind".

(ii) CDJ 2001 SC 404 (M.K.Prasad v. P.Arumugam):-

While deciding the application for setting aside the ex-parte decree, the court should have kept in mind the judgment impugned, the extent of the property involved and the stake of the parties. We are of the opinion that the inconvenience caused to the respondent for the delay on account of the appellant being absent from the court in this case can be compensated by awarding appropriate and exemplary costs.

(iii) CDJ 2002 SC 190 (Ram Nath Sao @ Ram Nath Sahu And ... vs Gobardhan Sao And Others):-

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.*

(iv) Order of this Court, dated 31.07.2015 in CRP No.662 of 2005 (Manimegalai : vs Panaian):-

6. The Supreme Court in *M.K.Prasad v. P.Arumugam* [2001 (6) SCC 176], while considering the question regarding delay in applying for setting aside the *exparte* decree, observed that the Court ought to keep in mind the judgment impugned in the matter, the extent of property involved and the stake of the parties, while deciding an application to set aside the *exparte* decree.

7. The Supreme Court in *Ram Nath Sao v. Gobardhan Sao* [2002(3) SCC 195], explained the expression "sufficient cause" within the meaning of Section 5 of the Limitation Act, 1963. The Supreme Court very clearly observed that

explanation for the delay should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case.

(v) Order of this Court, dated 07.01.2016 (Shri. Srijith C vs The Customs):-

(iv) Standard Treads v. Collector, reported in 1996 (83) ELT 30 (Ker):-

4. It has to be kept in the forefront that ordinarily a litigant does not stand to benefit by lodging an appeal late. He has no interest in wasting time. It has also to be borne in mind that the great possibility of disastrous results creating a situation that a meritorious matter being thrown out at the threshold causing a heavy burden to the cause of justice has to be defeated at the very start.

5. Judiciary gets its respect in the legal order not on account of its power to legalize injustice on technical grounds. But, it has the capacity and purpose to remove injustice wherever it is in sight and this is what is understood and pointed out by the Apex Court as justice-oriented approach in regard to the matters being thrown out at the threshold of the concerned proceedings.”

8.2. *Considering the dictum laid down in the above cases, it is for this Court to consider the cumulative circumstances available in this case as to the nature of the relief claimed, the stake involved and the possibility of doing substantial justice to the parties, while compensating the party who suffered inconvenience.*

8.3. *The delay involved even after entering appearance in the final decree cannot be appreciated, but, at the same time, the predicament involved in not permitting the second Revision Petitioner (8th defendant) to contest the case on merits should be taken into account, while deciding whether to condone the delay or not.*

By adopting the ratio laid down by the Hon'ble Apex Court in all the aforesaid decisions which came to be relied by the learned Single Judge of this Court, I am of the view that the reasons for the delay assigned in the application can be deemed to be a sufficient cause for condoning the delay."

9. The Hon'ble Supreme Court of India held that length of delay is no matter, acceptability of the explanation is only a criterion. Once the Court

accepts the explanation as sufficient, it is the resort of positive exercises of discretion. The condonation of delay is a matter of discretion of the Court. The Section 5 of the Limitation Act does not say that such discretion cannot be exercised only the delay is within certain limit. In the case in hand, as stated supra, the petitioner met with an accident and admitted in the hospital for 39 days. He sustained grave injuries. Even then, the Court bundle misplaced in the Advocate's Office, therefore, there was a delay of 1175 days. The petitioner was examined as P.W.1 and marked Ex.P1.

10. As pointed out by the learned counsel for the petitioner, Section 59 of the Indian Evidence Act says that all facts except the contents of documents and electronic records may be proved by oral evidence. The petitioner categorically deposed that he had taken treatment for 6 months at Kerala. Thereafter, he met with an accident and admitted in the hospital. Therefore, the above Judgment cited by the petitioner is squarely applicable to this case. That apart, the petitioner is the plaintiff who filed a suit for specific performance. Therefore, it cannot be said that the petitioner resorted to dilatory tactics to drag the proceedings.

11. The learned counsel for the respondents further submitted that though the petitioner was examined as P.W.1, his evidence has to be rejected for the reason lack of *bona-fide*. In support of his contention, he relied upon the Judgment in ***(2015) 1 Supreme Court Cases 680 H.Dohil Constructions Company Private Limited -vs- Nahar Exports Limited and another*** is extracted below:

"23. We may also usefully refer to the recent decision of this Court in Esha Bhattacharjee where several principles were culled out to be kept in mind while dealing with such applications for condonation of delay. Principles (iv), (v), (viii), (ix) and (x) of para 21 can be usefully referred to, which read as under: (SCC pp. 658-59)

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the

former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the Courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go-by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the Courts should be vigilant not to expose the other side unnecessarily to face such a litigation."

12. The Hon'ble Supreme Court of India held that while considering the condone delay petition, the conduct, behaviour and attitude of the party relating to its inaction or negligence are relevant factors to be taken into consideration. The lack of *bona-fide* equitable to a party seeking condonation of delay is sufficient and relevant fact whereas in the case in

hand, the petitioner was examined as P.W.1 and also marked Ex.P1. Admittedly, he met with an accident and admitted in the hospital for 39 days. Therefore, it cannot be said that the deposition of P.W.1 is lack of *bona-fide*, as such, the Judgment cited by the learned counsel for the respondent is not helpful to this case.

13. In view of the above descriptions, this Court is inclined to restore to condone the delay in filing the restoration petition to restore the main suit. This Court is also conscious of the fact that about prejudice caused to the respondents and defend the application before the trial Court as well as this Court. Therefore, the inconvenience caused to the respondents can be compensated by awarding appropriate costs.

14. Accordingly, Order dated 25.07.2018 made in I.A.No.261 of 2016 in I.A.No.255 of 2012 in I.A.No.709 of 2011 in O.S.No.201 of 2009 on the file of the Sub-Court, Perundurai, Erode District, is set aside and this Civil Revision Petition is allowed on condition that the petitioner is directed to pay a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) as costs to

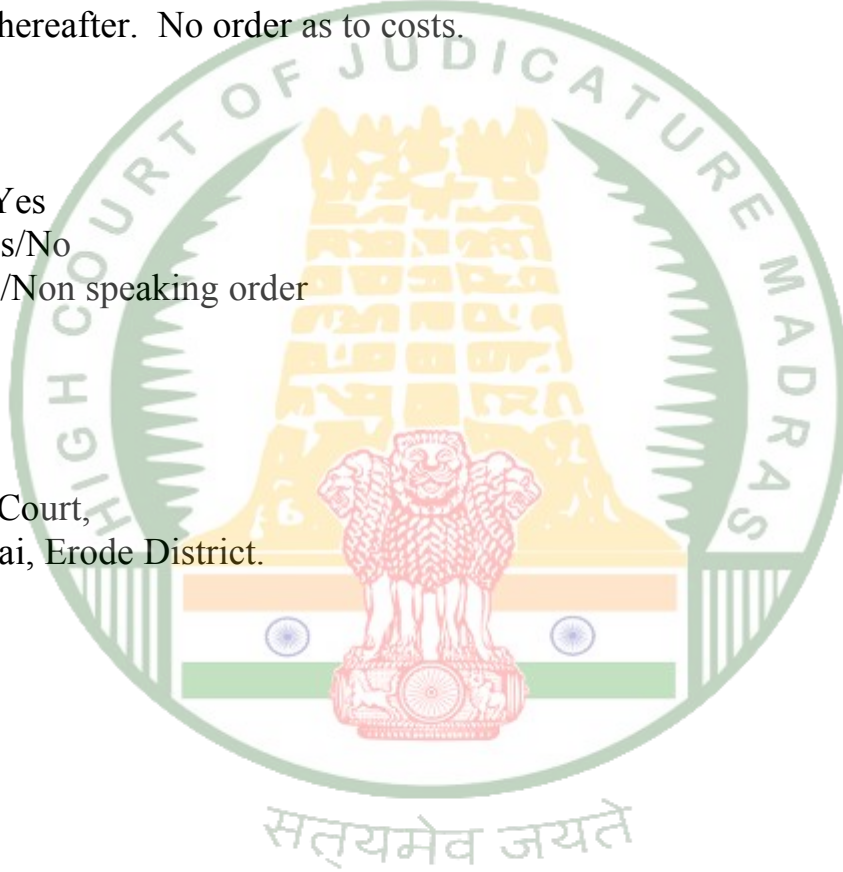
the respondents within a period of **two weeks** from the date of receipt of a copy of this order. Failing which, the order passed by this Court shall automatically stand cancelled. On such compliance, the Court below is directed to restore the suit and dispose the suit within a period of **three months** thereafter. No order as to costs.

01.07.2021

Internet:Yes
Index:Yes/No
Speaking/Non speaking order
rna

To

The Sub Court,
Perundurai, Erode District.



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G.K.ILANTHIRAIYAN. J,

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