



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2021

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.P(MD)No.815 of 2021

in

C.R.P(MD) SR.No.4315 of 2021

WEB COPY

Jayalakshmi

.. Petitioner/Petitioner

Vs.

Saraswathi

....Respondent/Respondent

Prayer in C.M.P(MD).No.815 of 2021: This petition is filed under Section 5 of Limitation Act, to condone the delay of 2577 days in filing the above Civil Revision Petition.

Prayer in C.R.P(MD) SR.No.4315 of 2021: This Civil Miscellaneous Appeal is filed under Section 115 of Code of Civil Procedure, to set aside the fair and decreetal order passed in I.A.No.558 of 2013 in O.S.No.239 of 2010 on the file of the learned District Munsif, Pudukottai, dated 19.08.2013.

For Petitioner : Mr.R.Balakrishnan

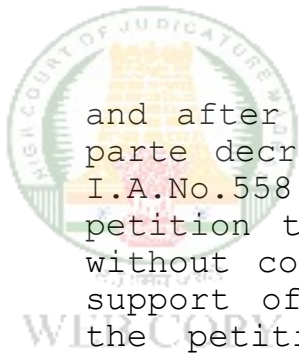
For Respondent : Unserved

ORDER

This Civil Miscellaneous Petition has been filed to condone the delay of 2577 days in preferring the above revision petition.

2. It is the case of the petitioner that the respondent herein filed the suit in O.S.No.239 of 2010 on the file of the District Munsif, Pudukottai seeking for the relief of permanent injunction restraining the defendants from interfering with her peaceful possession and enjoyment of the suit 'B' schedule property. The suit 'B' schedule property in S.No.550/2 is Government Porompoke land which was also admitted by the respondent and there are no documents on the side of the respondent/plaintiff to prove her possession over the suit 'B' schedule property. Thereafter, the Government in order to help the landless poor assigned lands to various families. By virtue of assignment in order No.10757/2006 dated 10.12.2020, the Government assigned the suit 'B' schedule property to the petitioner and he is in absolute right, title and possession over the suit 'B' schedule property.

3. Learned counsel for the petitioner would submit that due to his illness he could not file his written statement in time and hence, the lower Court has decreed the suit ex-parte on 25.02.2011



and after recovering from illness, he came to know about the ex-parte decree passed by the Court below and filed an application in I.A.No.558 of 2013 to condone the delay of 751 days in filing the petition to set aside the ex-parte decree and the learned Judge, without considering the reasons assigned in the affidavit filed in support of the application dismissed the application. Thereafter, the petitioner was on the bonafide impression that the Civil Revision Petition was filed before this Court by his earlier counsel and later, he came to know that earlier counsel has not filed the revision petition and hence, after getting the certified copy of the fair and decreetal order, he approached the present counsel only on 23.01.2021, for filing the present revision petition. Hence, the delay is neither wilful nor wanton and would pray to condone the delay of 2577 days in filing the above revision petition.

4. Heard the learned counsel for the petitioner and perused the materials available on record.

5. In **Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & others**, [2013 (5) CTC 547 (SC) : 2013 (5) LW 20], it was observed by the Supreme Court that there should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an Application for condonation of delay. The principles elucidated at paras 15 and 16 of the said judgment, are usefully extracted as follows:

"15. From the aforesaid authorities the principles that can broadly be culled out are:

(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the Courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms sufficient cause should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(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.

(v) Lack of bona fides imputable to a party seeking

<https://hcservices.courtsofindia.org/> of delay is a significant and relevant fact.



(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the Courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(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.

(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.

(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.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

(a) An Application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the Courts are required to condone delay on the bedrock of the principle that



adjudication of a lis on merits is seminal to justice dispensation system.

(b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challan manner requires to be curbed, of course, within legal parameters."

6. Admittedly, I.A.No.558 of 2013 has been filed to condone the delay of 751 days in filing the petition to set aside the exparte decree stating that the petitioner was suffering from jaundice. One cannot suffer from jaundice for 751 days and the learned Judge finding that the petitioner has not given acceptable reasons for condoning the huge delay, dismissed the condone delay petition, against which, the present revision petition has been filed and even this revision petition was not filed in time and it has been filed with huge delay of 2577 days without any sufficient cause. The present petition is an abuse of process of the Court and by applying the principles set forth in the above judgment, I am not inclined to condone the delay.

7. Accordingly, this petition is dismissed. In view of the order passed in CMP(MD)No.815 of 2021, the connected C.R.P.(MD) SR.No.4315 of 2021 is rejected at the SR stage itself. No costs.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

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the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The District Munsif, Pudukottai,
Pudukottai District.

C.M.P(MD)No.815 of 2021
in C.R.P(MD) SR.No.4315 of 2021
22.02.2021

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