



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 05.01.2021

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (NPD) (MD)Nos.1071 and 1129 of 2020
and
C.M.P (MD) .Nos.6969 and 7247 of 2020

K.Sundaram

... Petitioner/Petitioner/Defendant
[in both Civil Revision Petitions]

Vs.

1. K.Natchimuthu

... Respondent/Respondent/Plaintiff
[Respondent in CRP(MD) No.1071 of 2020]

Pasupatheeswaran (died)

1. Kalaiarasi
2. Rajadivya
3. Ponraj Kumar

... Respondents 1-3/
Respondents 2-4/Plaintiffs
[Respondents in CRP(MD) No.1129 of 2020]

Common Prayer: Civil Revision Petitions filed under Section 115 of Code of Civil Procedure, against the order dated 29.11.2019 made in I.A.Nos.198 and 199 of 2014 in O.S.Nos.593 and 594 of 2003, on the file of the Principal Subordinate Court, Karur, is liable to be set aside and the CRP is to be allowed.

For Petitioner : Mr.R.Devaraj, Advocate

COMMON ORDER

Challenging the order dated 29.11.2019 passed by the learned Principal Subordinate Judge, Karur, in I.A.Nos.198 and 199 of 2014 in O.S.Nos.593 and 594 of 2003, these Civil Revision Petitions came to be filed by the petitioner.

2. The revision petitioner is the defendant in both the suits in O.S.No.593 and 594 of 2003 and the respondent in CRP(MD) No.1071 of 2020 is the plaintiff in O.S.No.593 of 2003 and the respondents in CRP(MD) No.1129 of 2020 are the legal heirs of the deceased plaintiff in O.S.No.594 of 2003, on the file of the Principal Subordinate Court, Karur.



3.Both the money suits are filed against the petitioner/defendant seeking a direction to the defendant to pay the respective suit amount with subsequent interest from the date of plaint till date of realisation and recover the cost to be incurred for the same from the defendant. Since, in both the suits, the petitioner/defendant did not appear before the lower Court, he was set ex-parte and ex-parte decrees were passed on 18.10.2005 and 21.09.2005 respectively. Thereafter, the revision petitioner filed interlocutory applications in I.A.Nos.198 and 199 of 2014 in O.S.Nos.593 and 594 of 2003, before the Principal Subordinate Court, Karur, seeking to condone the delay of 3082 days in filing the application to set aside the orders dated 18.10.2005 and 21.09.2005 passed in the suits. However, the Court below dismissed the said application, by order dated 29.11.2019, which is impugned herein.

4.The learned counsel for the revision petitioner submitted that the petitioner was suffering from viral fever right from 10.09.2005 and hence, he was not able to meet his advocate to get on with the cases; and only when the petitioner meet his advocate, he came to know about the ex-parte decrees passed in the respective suits, owing to his non-appearance; immediately, he filed Section 5 applications seeking to condone the delay of 3020 and 3082 days in filing the applications to set aside the orders passed in O.S.Nos.593 and 594 of 2003 respectively. According to the learned counsel for the petitioner, the delay occurred in filing the set aside applications is neither willful nor wanton, but only due to the said bonafide reasons, however, without considering the reasons stated by the petitioner, the Court below dismissed the condone delay applications. The learned counsel further submitted that it is settled law that the merits of the matter should be looked into, instead throwing it on the aspect of delay and hence, the order impugned herein is liable to be set aside and these Civil Revision Petitions be allowed.

5.Heard the learned counsel appearing for the revision petitioner and also perused the materials available on record.

6.The facts remain undisputed are that in both the suits, the petitioner/defendant did not appear before the lower Court, he was set ex-parte and ex-parte decrees were passed on 18.10.2005 and 21.09.2005 respectively. The revision petitioner filed interlocutory applications to set aside the said orders passed in the suits, along with Section 5 applications to condone the delay of 3020 and 3082 days in filing the same, on 01.03.2014. The Court below dismissed the said condone delay applications, by the order impugned herein.

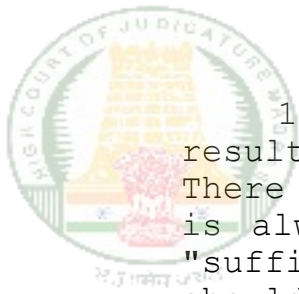
7. At the outset, it is apropos to note down the legal position on the aspect of limitation. (i) In **N.Balakrishnan v. M.Krishnamurthy, [(1998) 7 SCC 123]**, it was held by the Supreme



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 want of acceptable explanation whereas in certain other cases delay of 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 reversional jurisdiction, unless the exercise of discretion was on whole 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. 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. Rule of limitation are not meant to destroy the right 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. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. 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 right 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.

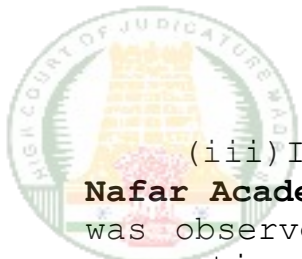


12.A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain Vs. Kuntal Kumari* [AIR 1969 SC 575] and *State of West Bengal Vs. The Administrator, Howrah Municipality* [AIR 1972 SC 749].

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. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."

(ii) In **G. Ramegowda, Major and others v. Special Land Acquisition Officer, Bangalore** [1988 (2) SCC 142], the Supreme Court opined thus:-

"The contours of the area of discretion of the courts in the matter of condonation of delays in filing appeals are set out in a number of pronouncements of this Court. See : *Ramlal, Motilal and Chhotelal v. Rewa Coalfield Ltd.* [AIR 1962 SC 361]... etc. There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fide on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression 'sufficient cause' in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay."



(iii) 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.

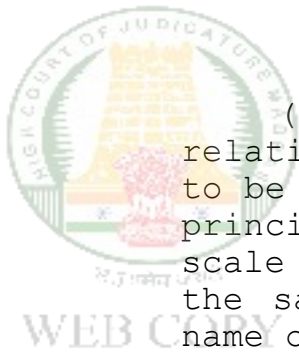
(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the Counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation 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 en capsule 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 approach.



(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.

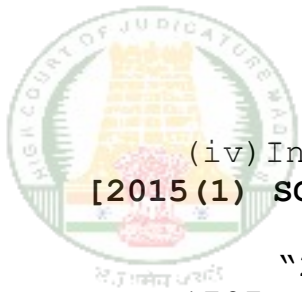
16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

(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.

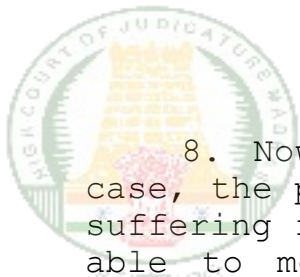
(c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(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."



(iv) In **H. Dohil Constructions Co Pvt Ltd vs Nahar Exports Ltd** [2015(1) SCC 680], it was held as follows:

"20. In the case on hand, the delay in refiling was 1727 days. As rightly pointed out by the learned Senior Counsel for the Appellant(s), the Respondents paid the scrutiny charges on 11.04.2008 as disclosed in the Receipt No. 73 issued by the High Court of that date. When the appeal papers were filed on 06.09.2007 and the scrutiny charges were paid on 11.04.2008, it was quite apparent that the processing of papers of the appeals for its registration did commence in the month of April 2008. Thereafter, if rectification of whatever defects were not carried out by the Respondents or its counsel between April 2008 and May 2012, it is the bounden duty of the Respondents to have satisfactorily explained such a long delay in refiling. When we refer to the applications filed on behalf of the Appellant(s), we find that there was no convincing explanation as to how the Respondents were disabled from rectifying the defects pointed out by the Registry and refiling the appeal papers within time. The Respondents only attempted to throw the blame on the previous counsel to whom appeal papers were entrusted for filing in September 2007. As pointed out by the learned Senior Counsel for the Appellant(s), there were no details as to whom it was entrusted and what were the steps taken to ensure that the appeals filed were duly registered for pursuing further remedy as against the said judgment of the trial Court. As a matter of fact the appeal papers were filed without payment of any Court fee. This only affirms the stand of the Appellant(s) that there was no bona fide in the Respondents' claim and that they were seriously interested in challenging the judgment of the trial Court as against the non-grant of relief of specific performance. We also fail to see as to how the Respondent No. 1 which is a limited company involved in the business of exports, which would certainly have its own legal department, can plead that after entrusting the papers to some counsel whose name was not disclosed even before this Court did not even bother to take any follow-up action to ensure that its appeals were duly registered in the High Court. In this context the maxim *Vigilantibus Non Dormientibus Jura Subveniunt* (Law assists those who are vigilant and not those who sleep over their rights) aptly applies to the case on hand. The Respondents simply by throwing the blame on the previous counsel whose identity was not disclosed claimed that irrespective of the enormous delay of 1727 days in refiling the same should be condoned as a matter of course as there was only 9 days delay involved in filing



8. Now coming to the present facts and circumstances of the case, the petitioner has stated in a routine manner that he had been suffering from viral fever from 10.09.2005 and therefore, he was not able to meet his advocate and after he came to know about the exparte decree, immediately, he had filed the condone delay applications to condone the delay of 3020 and 3082 days in filing the applications to set aside the exparte decree in O.S.Nos. 593 and 594 of 2003 respectively. The petitioner has not produced any material to support his illness and he has also not explained the further delay from 2005 to 2014 with acceptable reasons. So, in my considered opinion, no sufficient cause has been exhibited by the revision petitioner for condoning the delay and therefore, the learned Judge considering all the same, has rightly dismissed the condone delay applications and the interference of this Court is not necessary.

9. In fine, these Civil Revision Petitions stand dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Principal Subordinate Judge, Karur.

COPY TO:

The Record Keeper, Vernacular Section, (2 copies)
Madurai Bench of Madras High Court, Madurai.

+2 CC to M/s.R.DEVARAJ, Advocate (SR-199,200[F] dated 06/01/2021)

C.R.P(MD)Nos.1071 and 1129 of 2020

05.01.2021

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