



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.02.2021

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.P. (MD) No.4198 of 2019

in

CMA(MD) .No.SR13937 of 2019

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Kandasamy

: Petitioner

Vs.

1.Ponnuthai

2.Thillai Thevar

: Respondents

PRAYER in C.M.P(MD) .No.4198 of 2019: The Civil Miscellaneous Petition has been filed under Section 5 of Limitation Act, to condone the delay of 2350 days in filing the above Civil Miscellaneous Appeal.

PRAYER in C.M.A. (MD) .SR.No.13937 of 2019: The Civil Miscellaneous Appeal has been filed under Section 55 of I.D.O.P.Act, to set aside the Judgment and Decree passed by the learned Principal District Judge, Thoothukudi in I.D.O.P.No.13 of 2005 dated 30.07.2012 and allow the Civil Miscellaneous Appeal by granting Decree of divorce to the petitioner as prayed for in I.D.O.P.No.13 of 2005.

For Petitioner : Mr.Lakshmi Gopinathan

For R1 : Mr.T.A.Ebenezer

O R D E R

This petition has been filed by the petitioner seeking to condone the delay of 2350 days in filing the above Civil Miscellaneous Appeal.

2.The learned counsel for the petitioner would state that the petitioner filed I.D.O.P.No.13 of 2005 seeking decree of divorce against the first respondent herein who is the wife of the petitioner alleging adultery with the second respondent herein. After hearing the case, the learned District Judge dismissed the petition and the order was made on 30.07.2012 and the appeal ought to have been filed on or before 30.08.2012. The petitioner is aged about 72 years and he was suffering from Asthma and many other physical ailments and hence, the petitioner has given the certified copies of all the papers to the Advocate at Madurai and he told that he will file the appeal in time. Later, the petitioner came to know that no appeal was filed. Thereafter, the petitioner checking the



registry records through another counsel in the month of January 2019 and he came to know that no appeal has been filed. Thereafter, the petitioner asked the trial Court Advocate to file another copy application for getting of all the papers to file the present appeal. In the above circumstances, there has been a delay of 2350 days in filing the above appeal.

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

(i) 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 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.

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(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."

4. Now coming to the present facts and circumstances of the case, the petitioner has stated in a routine manner that the order copy of I.D.O.P.No.13 of 2005 on the file of the Principal District Judge, Thoothukudi was made on 30.07.2012 and the appeal ought to have been filed on or before 30.08.2012. The petitioner is aged about 72 years and he was suffering from Asthma and many other physical ailments. Hence, the petitioner has given the certified copies of all the papers to the Advocate at Madurai and he said that he will file the appeal in time. Later, the petitioner came to know that appeal was not filed. He would also state that he forgot the name of the Advocate where he handed over the papers. Thereafter, the petitioner asked the trial Court Advocate to file another copy application of all the papers for filing the present appeal. In the above circumstances, there has been a delay of 2350 days in filing the above Civil Miscellaneous Appeal. The reasons stated for the delay are not acceptable reasons for condoning the delay of 2350 days in filing the above Civil Miscellaneous Appeal. The delay is not minimal and it is a very long delay. Therefore, this Court is not inclined to condone the delay of 2350 days in filing the appeal.

5. Accordingly, this Civil Miscellaneous Petition is dismissed. In view of the order passed in CMP(MD)No.4198 of 2019, connected C.M.A. (MD) SR.No.13937 of 2019 is rejected at the SR stage itself. No costs.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

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To

The Principal District Judge,
Thoothukudi.

C.M.P. (MD) No.4198 of 2019
in
CMA (MD) .No.SR13937 of 2019
11.02.2021

VB (25.02.2021) 5P 2C