



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.02.2021

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.P(MD)No.7636 of 2019

in

C.R.P(MD) SR.No.53676 of 2019

WEB COPY

N.Thiru Moorthy

... Petitioner/Petitioner/Petitioner

Vs.

1. The Deputy Registrar of Co-operative Societies,
Thenkasi, Tirunelveli District.

2. The Special Officer, E.E.255,
Ramasampuram Primary Agricultural-
Co-operative Credit Society,
Muthusamy Puram,
Tirunelveli District.

....Respondents/Respondents

Prayer in C.M.P(MD).No.7636 of 2019: This petition is filed under Section 5 of Limitation Act, to condone the delay of 1951 days in preferring the above Civil Revision Petition against the order dated 03.12.2013 made by the learned Principal District Judge, Tirunelveli District in I.A.No.75 of 2013 in unregistered C.M.A(CS) of 2013.

Prayer in C.R.P(MD) SR.No.53676 of 2019: This Civil Miscellaneous Appeal is filed under Section 115 of Code of Civil Procedure, to call for the entire records pertaining to the order passed by the learned Principal District, Tirunelveli District in I.A.No.75 of 2013 in Unregistered C.M.A(CS) of 2013 vide its order dated 03.12.2013 and set aside the same.

For Petitioner : Mr.M.Pitchai Muthu
For Respondents : Mr.J.Gunaseelan Muthiah,
Additional Government Pleader

ORDER

This Civil Miscellaneous Petition has been filed to condone the delay of 1951 days in preferring the above appeal.

2. It is the case of the petitioner that while he was holding the post of Secretary at the 2nd respondent Co-operative Credit Society, he colluded with others and misappropriated a sum of Rs.25,51,498/-. Thereafter, the 1st respondent conducted an enquiry and passed orders dated 25.11.2011 under Section 87 of the Tamil Nadu Co-Operative Societies Act, 1983, directing the petitioner to pay a sum of Rs.5,21,272/- jointly and severally and also to pay a



sum of Rs.20,08,628/- individually to the Society with interest at the rate of 18% from the date of loss to till the realization of the amount.

3. Learned counsel for the petitioner would submit that due to the petitioner's financial commitments, he has fallen sick physically and mentally and therefore, he was suffered with jaundice. It is also submitted that unfortunately, the advocate who was engaged by the petitioner was also murdered by his opponent. Hence, the delay is neither wilful nor wanton and would pray to condone the delay of 1951 days in preferring the above appeal.

4. Heard the learned counsel for the petitioner as well as the respondents and also 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 condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict

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mischievous 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. Now coming to the present facts and circumstances of the case, the petitioner has fallen sick due to jaundice and unfortunately, the advocate who was engaged by the petitioner was also murdered by his opponents and hence, he is unable to file the above appeal in time.

7. It is seen that no valid reason has been adduced for condoning the delay of 1951 days in filing the above Civil Revision Petition. The delay is not minimal and it is a very long delay. The reasons adduced by the petitioners for the delay is not convincing and acceptable. The petitioner has not proved his illness by keeping supporting documents. So, in my considered opinion, no sufficient cause has been exhibited by the petitioner for condoning the delay and therefore, this Court is not inclined to condone the delay of 1951 days in filing the revision petition.

8. Accordingly, this petition is dismissed. In view of the order passed in CMP(MD)No.7636 of 2019, the connected C.R.P.(MD) SR.No.53676 of 2019 is rejected at the SR stage itself. No costs.

Sd/-

Assistant Registrar (AS)

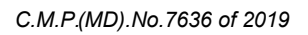
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Sub Assistant Registrar(CS)

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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.



The Principal District Court,
Tirunelveli District.

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in C.R.P (MD) SR.No.53676 of 2019
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