



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Thursday, the First day of April Two Thousand and Twenty One

PRESENT

The Hon`ble Mr.Justice R.SUBRAMANIAN

C.M.P. (MD) Nos.10622 to 10624 of 2018
in
C.R.P.No.1245 of 1996

C.M.P. (MD) Nos.10622 to 10624 of 2018 in C.R.P.No.1245 of 1996:

S.SETHUKARAI NADAR

... PETITIONER/ PETITIONER
IN ALL THE PETITIONS

Vs

1 P.VADAMALAI (DIED)

2 V.JAYAPAL

3 V.CHANDRASEKARAN

4 V.RAJASEKARAN

... RESPONDENTS/ RESPONDENT-
L.RS. OF THE DECEASED SOLE
RESPONDENT
IN ALL THE PETITIONS

Prayer in CMP(MD) . 10622/ 2018 :

To condone the delay of 5007 days to bring the respondents 2 to 4 herein on record as the legal representatives of the deceased sole respondent P.Vadamalai by ranking them as respondents 2 to 4 in the above Civil Revision Petition in CRP No.1245 of 1996 on the file of this Honourable Court and thus render justice.

Prayer in CMP(MD) . 10623/ 2018 :

To Set aside the abatement CRP No.1245 of 1996 by reason of not bringing the legal representatives of record of the deceased sole respondent P.Vadamalai, by setting aside the order dated 22.02.2007 and to restore the above CRP No.1245 of 1996, to the file of this Honourable Court and thus render justice.

Prayer in CMP(MD) . 10624/ 2018 :

To bring the respondents 2 to 4 herein on record as the legal representatives of the deceased sole respondent P.Vadamalai by ranking them as respondents 2 to 4 in the above Civil Revision Petition in CRP No.1245 of 1996 on the file of this Honourable Court.

PRAYER in C.R.P.No.1245 of 1996:

To set aside the judgment and decree dated 17.03.1994 made in R.C.A.No.126 of 1991 on the file of the Court of Appellate Authority (Court of Principal Subordinate Judge), Madurai confirming the order and decree dated 29.04.1991 made in R.C.O.P.No.782 of 1982 on the file of the Court of Rent Controller (Principal District Munsiff), Madurai and allow this Revision Petition with cost.

ORDER : These petitions coming up for orders on this day, upon perusing the petitions and the affidavit filed in support thereof and upon hearing the arguments of M/S.P.JESSI JEEVA PRIYA, Advocate for Mr.G.ARAVINTHAN, Advocate for the petitioner in all the petitions and of Mr.V.MEENAKSHI SUNDARAM, Advocate for Mr.D.NALLATHAMBI, Advocate for the respondents in all the petitions, the court made the following order:-

RESERVED ON : 09.03.2021

DELIVERED ON: 01.04.2021

These applications have been filed by the petitioner in the Civil Revision Petition seeking condonation of delay of 5007 days in bringing on record the respondents 2 to 4 herein as the legal heirs of the deceased sole respondent; to set aside the abatement caused due to the death of the sole respondent; and to bring on record the respondents 2 to 4 herein as the legal representatives of the deceased sole respondent and rank them as respondents 2 to 4 in the Civil Revision Petition.

2.The original proceeding arises under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The claim of the landlord for eviction on the ground of demolition and reconstruction under Section 14(1)(b) of the Act was negatived by the Rent Controller as well as the Appellate Authority. Pending the revision, the tenant/sole respondent in the revision petition died on 12.08.2004. Though the sons of the tenant had written to the petitioner/landlord on 20.08.2004 informing him about the death of their father and their continuing as tenants, no steps were taken by the petitioner to bring on record the legal representatives within the time allowed by law. However, it is seen that the Civil Revision Petition was heard on merits and it came to be allowed by this Court on 22.02.2007, oblivious of the death of the respondent/tenant.

3.It is also seen from the order, dated 22.02.2007, that the respondent/tenant was not represented by a Counsel before this Court. Thereafter, when execution proceedings were levied and an order of delivery was passed in the said execution proceedings, it was brought to the notice of the Court that the respondent/tenant had died even before the Civil Revision Petition was allowed by this Court. The legal effect was that the order of this Court, dated 22.02.2007 became a nullity. It is at this juncture, the petitioner has come up with these applications seeking condonation of delay and



to bring on record the legal representatives of the deceased sole respondent.

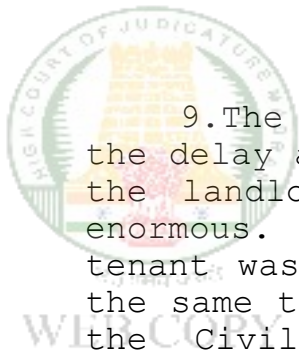
4.The reason set out for the delay is that the petitioner/landlord had, in fact, sought for eviction of five tenants, who were occupying a row of shops. The Rent Control Original proceedings commenced in the year 1982 and the appeals filed by the landlord came to be disposed of in the year 1994. The Civil Revision Petitions, that were filed before the Principal Seat of this Court in the year 1996, were transferred to this Bench during the year 2004.

5.Conceding the claim of the respondents that they informed the death of the tenant even during the year 2004, the landlord would seek to explain his failure to take steps within the time allowed under the law, stating that the sons of tenant alone used to send the rents and the information regarding the death of the tenant given in one of the letters addressed to him by the sons of the tenant was, in fact, overlooked by him. He would also further state that he had taken possession of all the other shops situated in the same building and they have been demolished. Only the shop, that is in occupation of the respondents herein, remains as on date.

6.This Court had appointed a Commissioner pending the revision and the said Commissioner had also filed a report. Mr.Subbiah, learned Senior Counsel appearing for the petitioner would seek to rely upon the Commissioner's report to demonstrate that the building is in very dilapidated condition and therefore, it requires immediate demolition.

7.This claim of the landlord is stoutly opposed by the legal heirs of the tenant. Pointing out that, immediately after the death of the tenant, the legal heirs had, by their letter, dated 20.08.2004, informed the landlord about the death of their father and their continuing to occupy the premises as tenants, the respondents 2 to 4 would submit that there is no proper explanation for the delay. The petitioner/landlord, according to the legal representatives, namely, respondents 2 to 4, had been phenomenally negligent in pursuing the proceedings before this Court and therefore, he is not entitled to seek condonation of delay, which is a discretionary relief.

8.It is their further contention that the petitioner/landlord was aware of the death of the tenant even during the year 2013, when the notices sent in the Execution Proceedings were returned with an endorsement "respondent died". But, he has chosen to take steps to bring on record the legal heirs, only after five years in the year 2018. Therefore, according to the respondents 2 to 4, there is no explanation for the delay of more than five years between 2013 and 2018.



9.The moot question is as to whether this Court should condone the delay and re-hear the Civil Revision Petition on merits or drive the landlord to seek eviction afresh. No doubt, the delay is enormous. It is also seen from the records that the death of the tenant was intimated to the landlord almost immediately. But, at the same time, since the tenant was not represented by a Counsel in the Civil Revision Petition, the factum of the death was, unfortunately, not brought to the notice of this Court and this Court proceeded to dispose of the Civil Revision Petition on merits on 22.02.2007.

10.This being a revision under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control), Act 1960, Order 22 CPC may not in its terms apply. But, at the same time, the principles would apply. Rule 25 of the Tamil Nadu Buildings (Lease and Rent Control), Rules, 1974, prescribes the time limit of one month from the date of death of the person or the date of knowledge of death of the person concerned to bring on record the legal representatives. The applicability of Section 5 of the Limitation Act, 1963, is not very seriously disputed by the Counsel for the parties. The explanation or the sufficient cause, that is offered by the landlord, is that he had omitted to notice the information regarding the death of the tenant, which was incorporated in the letter, dated 20.08.2004. It is also seen that one of the sons of the tenant had signed on behalf of the tenant even in the earlier letter dated 22.06.2004. The factum of death has been specifically mentioned in the letter, dated 20.08.2004.

11.The learned Counsel for the respondents 2 to 4 would submit that despite knowledge of the death of the tenant, the landlord has not chosen to take steps to bring on record the legal representatives and therefore, he is not entitled to indulgence of condonation of delay of 5007 days. It is not the length of the delay that matters, but, it is the sufficiency of the explanation that is offered and consequence of the refusal to condone the delay that should be looked into. The landlord is already languishing in Courts from the year 1982. It is almost 39 years now. If the application for condonation of delay is dismissed, the landlord will have to start afresh all over again. If the application is allowed, the consequence would be that the legal heirs of the tenant, namely, respondents 2 to 4, will have to contest the Civil Revision Petition on merits.

12.The Honourable Supreme Court had considered the meaning of the term "**sufficient cause**", particularly, its relation to the cases seeking to set aside the abatement under Order 22 CPC, in **Ram Nath Sao @ Ram Nath Sahu and others vs Gobaradhan Sao and others**, reported in **(2002) 3 SCC 195**. The Honourable Supreme Court after considering various decisions on the question, has held as follows:



"12.Thus it becomes plain that the expression "sufficient cause" within the meaning of [Section 5](#) of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependant upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal an exception more so when no negligence or inaction or want of bona fide can be imputed to the defaulting party."

13.In "**Collector, Land Acquisition, Anantnag and another vs Katiji and others**", reported in (1987) 2 SCC 107, the Honourable Supreme Court had held that the Courts should be liberal in condonation of delay and the expression "**sufficient cause**" should be considered in a meaningful manner, which subserves the ends of justice. The Honourable Supreme Court had observed as follows:

"3..... And such a liberal approach is adopted on principle as it is realized that:-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.



5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

14. These principles were reiterated in the recent judgment of the Honourable Supreme Court in **University of Delhi vs Union of India and other**, reported in **(2020) 13 SCC 745**, wherein, the Honourable Supreme Court had observed as follows:

"20. From a consideration of the view taken by this Court through the decisions cited supra the position is clear that, by and large, a liberal approach is to be taken in the matter of condonation of delay. The consideration for condonation of delay would not depend on the status of the party namely the Government or the public bodies so as to apply a different yardstick but the ultimate consideration should be to render even handed justice to the parties. Even in such case the condonation of long delay should not be automatic since the accrued right or the adverse consequence to the opposite party is also to be kept in perspective. In that background while considering condonation of delay, the routine explanation would not be enough but it should be in the nature of indicating "sufficient cause" to justify the delay which will depend on the backdrop of each case and will have to be weighed carefully by the Courts based on the fact situation. In the case of Katiji (Supra) the entire conspectus relating to condonation of delay has been kept in focus....."

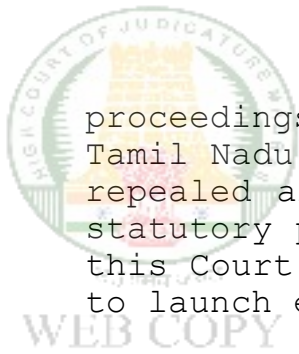
15. A Five Judge Bench of the Honourable Supreme Court in the case of **Sardar Amarjit Singh Kalra and others vs Pramod Gupta and others**, reported in **(2003) 3 SCC 272**, held as follows:

"25. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. A careful reading of the provisions contained in Order 22 of CPC as well as the subsequent amendments thereto would lend credit and support to the view that they were devised to ensure their continuation and culmination into an effective



adjudication and not to retard the further progress of the proceedings and thereby non-suit the others similarly placed as long as their distinct and independent rights to property or any claim remain in tact and not lost forever due to the death of one or the other in the proceedings. The provisions contained in Order 22 are not to be construed as a rigid matter of principle but must ever be viewed as a flexible tool of convenience in the administration of justice. The fact that the Khata was said to be joint is of no relevance, as long as each one of them had their own independent, distinct and separate shares in the property as found separately indicated in Jamabandhi itself of the shares of each of them distinctly. We are also of the view that the High Court should have, on the very perception it had on the question of abatement, allowed the applications for impleadment even dehors the cause for the delay in filing the applications keeping in view the serious manner it would otherwise jeopardize an effective adjudication on merits, the rights of other remaining appellants for no fault of them. Interests of justice would have been better served had the High Court adopted a positive and constructive approach than merely scuttle the whole process to foreclose an adjudication of the claims of others on merits. The rejection by the High Court of the applications to set aside abatement, condonation and bringing on record the legal representatives does not appear, on the peculiar nature of the case, to be a just or reasonable exercise of the Court's power or in conformity with the avowed object of Court to do real, effective and substantial justice. Viewed in the light of the fact that each one of the appellants had an independent and distinct right of his own not inter-dependant upon the one or the other of the appellants, the dismissal of the appeals by the High Court in their entirety does not constitute a sound, reasonable or just and proper exercise of its powers. Even if it has to be viewed that they had a common interest, then the interests of justice would require the remaining other appellants being allowed to pursue the appeals for the benefit of those others, who are not before the Court also and not stultify the proceedings as a whole and non-suit the others, as well."

16.If we are to test the reasons assigned by the petitioner in the light of the above pronouncements of the Honourable Supreme Court, the delay though enormous, has to be condoned. After all, the landlord does not gain any advantage, because of the delay. No doubt, it could be said that a valuable right has accrued to the tenant. If we are to pose a question, as to what is the valuable right that had accrued to the tenant, because of the delay, it could be said that the right to drive the landlord to a fresh eviction



proceedings and delay eviction. The parent enactment, namely, the Tamil Nadu Buildings (Lease and Rent Control) Act, 160, has now been repealed and replaced by a new enactment, which does not offer any statutory protection to the tenant. Therefore, I do not think that this Court should refuse to condone the delay and drive the landlord to launch eviction proceedings afresh under the new Act.

17.The only consequence of such action would be a further delay of the eviction proceedings, which had already lasted 39 years. Therefore, looking at from any angle, prudent act would be to condone the delay and re-hear the Civil Revision Petition on merits by bringing the legal heirs on record. At the same time, it cannot be said that the landlord has been very vigilant in persecution of the proceedings. It is clear that the landlord had been negligent or extremely careless in prosecution of the proceedings. But, when we consider the scope of the proceedings and the consequences, I do not think that the landlord should be nonsuited only because of his being negligent. It is not demonstrated that the delay has been caused with *mala fide* intention. On the other hand, it is the landlord, who had suffered because of the delay. Though he had technically succeeded before this Court in 2007, despite the lapse of 14 years, he is unable to enjoy the fruits of the decree.

18.Considering the overall circumstances, I am of the considered opinion that the delay should be condoned and the landlord should be given an opportunity to contest the proceedings. But at the same, the respondents should also be compensated for the delay, that had been caused and the fact that they have been forced to defend the proceedings for over these years. I am, therefore, of the considered opinion that the delay could be condoned on payment of cost, which I fix at Rs.50,000/-.

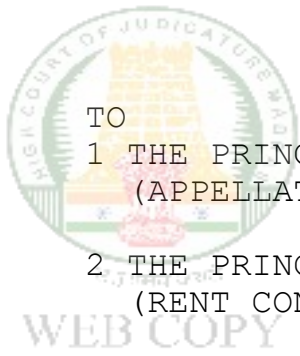
19.In the result, these petitions are allowed and the delay is condoned on condition that the petitioner pays a sum of Rs.50,000/- to the learned Counsel appearing for the respondents 2 to 4 in this Court on or before 30.04.2021. On such payment, all these applications will stand allowed. On production of proof of payment, the Registry shall carry out necessary amendments and post the C.R.P.(MD)No.1245 of 1996 for final hearing. If the payment is not made by 30.04.2021, these petitions will stand dismissed without any further reference to this Court.

20.Post C.R.P.No.1245 of 1996 along with C.R.P.(MD)No.2076 of 2018.

sd/-
01/04/2021

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/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



TO
1 THE PRINCIPAL SUBORDINATE JUDGE
(APPELLATE AUTHORITY), MADURAI
2 THE PRINCIPAL DISTRICT MUNSIF,
(RENT CONTROLLER), MADURAI.
3 THE ADDITIONAL DISTRICT MUNSIF,
MADURAI TOWN,

ORDER IN
C.M.P. (MD) Nos. 10622 to 10624 of 2018
in C.R.P.No.1245 of 1996
Date : 01/04/2021

CMR
MS/PN/SAR-4/28.04.2021/9P.4C