



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.02.2021

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.P. (MD) No.9578 of 2017

in

C.R.PMD) .No.SR49188 of 2015

WEB COPY

Mohd.Majitha

: Petitioner/Petitioner

Vs.

Mohd.Mashood

:Respondent/Respondent

PRAYER in C.M.P(MD) .No.9578 of 2017: The Civil Miscellaneous Petition has been filed under Section 5 of Limitation Act, to condone the delay of 329 days in filing this Civil Revision Petition.

PRAYER in C.R.P. (MD) .SR.No.49188 of 2015: The Civil Revision Petition has been filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order dated 04.08.2014 in I.A.No.1329 of 2014 in O.S.No.118 of 2009 on the file of the Sub Court, Tuticorin.

For Petitioner : Mr.Senthilsankaranathakumar

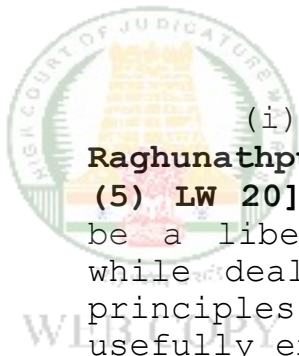
For Respondent : Mr.G.Prabhu Rajadurai

O R D E R

This petition has been filed by the petitioner seeking to condone the delay of 329 days in filing the above Civil Revision Petition.

2.The learned counsel for the petitioner would state that the respondent filed a suit for recovery of possession of suit properties from the petitioner. After receiving notice, the petitioner filed written statement in time. On 23.04.2012, the petitioner herein was called absent and exparte decree was passed. Subsequent to that, the respondent filed an execution petition in E.P.No.59 of 2012. After serving notice only, the petitioner came to know about the exparte decree. Thereafter, she filed exparte set aside petition with delay of 126 days where the Court below dismissed the petition on 04.08.2014 and the same was not informed by the petitioner's counsel. After enquiry only, the petitioner came to know about the dismissal order. Thereafter, the petitioner engaged another counsel and applied copy of the said order. After receiving that order only, the present Civil Revision Petition has been filed. In the above circumstances, there has been a delay of 329 in filing the above Civil Revision Petition.

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.

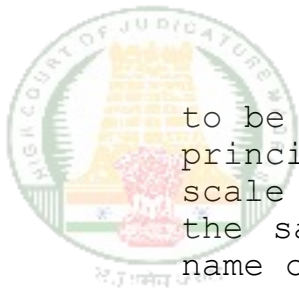
(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(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.

WEB COPY

(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.

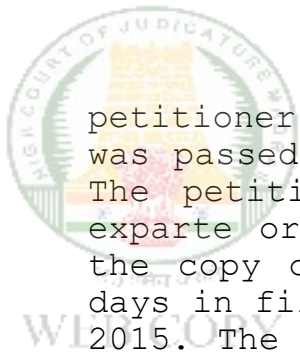
16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

(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."



petitioner was called absent and set exparte and an exparte order was passed. Thereafter, the respondent has filed E.P.No.59 of 2012. The petitioner alleging that only on receipt of E.P.notice, the exparte order came to his knowledge and thereafter, he applied for the copy of the order and filed the petition with a delay of 329 days in filing the above revision and the same came to be filed in 2015. The Office returned the paper and this Court considering the situation, condoned the delay in representing with cost. Even thereafter, the petitioner has not pursued the matter and the condone delay petition heard on 09.02.2021. The petitioner intention is only to drag on the proceedings. By applying the principles in Para Nos. IX and X in the judgement cited supra, I am not inclined to condone the delay of 329 days in filing the above revision.

6. Accordingly, this Civil Miscellaneous Petition is dismissed. In view of the order passed in CMP(MD)No.9578 of 2017, connected C.R.P. (MD)SR.No.49188 of 2015 is rejected at the SR stage itself. No costs.

Sd/-

Assistant Registrar (T&P)

// 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 Subordinate Judge,
Tuticorin.

Copy to

The SAR(A.E),
Madurai Bench of Madras High Court,
Madurai

C.M.P. (MD) No.9578 of 2017
in
C.R.PMD) .No.SR49188 of 2015
09.02.2021

KUN (CO)
KB (26.02.2021) 4P 3C