



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.02.2021

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.P(MD)No.9736 of 2018

in

C.R.P(MD) SR.No.41276 of 2018

P.Veerasankara Moorthy Rajan ... Petitioner/Revision Petitioner

Vs.

Mrs.Latha ...Respondent/Respondent

Prayer in C.M.P(MD).No.9736 of 2018: This petition is filed under Section 5 of Limitation Act, to condone the delay of 384 days in preferring the above Civil Revision Petition against the order passed in I.A.No.6 of 2017 in H.M.O.P.No.346 of 2009 on the file of the I-Additional Subordinate Court, Madurai (Melur Camp) dated 09.06.2017.

Prayer in C.R.P(MD) SR.No.41276 of 2018: This Civil Miscellaneous Appeal is filed under Section 115 of Code of Civil Procedure, to allow this Civil Revision Petition and set aside the order passed in I.A.No.6 of 2017 in H.M.O.P.No.346 of 2009 on the file of the I-Additional Subordinate Court, Madurai (Melur Camp) dated 09.06.2017.

For Petitioner : Mr.C.K.M.Appaji
For Respondent : Mr.V.Natarajan

ORDER

This Civil Miscellaneous Petition has been filed to condone the delay of 384 days in preferring the above revision petition.

2. It is the case of the petitioner that his marriage with respondent was solemnized on 08.02.2006 at Sivan Koil, Melur Town, Madurai District as per Hindu rites and customs. According to the petitioner the respondent suffers with severe stomach pain and diagnosed with cancer. Doctor recommended the removal of the uterus. The petitioner further states that due to the illness of the respondent and on account of uterus cancer, the respondent became unfit to lead the marital life. Thereafter, the petitioner has filed Divorce petition in H.M.O.P.No.346 of 2009 on the file of the III-Additional Subordinate Court, Madurai to dissolve the marriage dated 08.02.2006.



3. Learned counsel for the petitioner further submitted that on account his military duty at far away places, his father used to follow up the case till March 2010. On 09.04.2010, the divorce petition was transferred to the I-Additional Subordinate Court, Melur Camp, Madurai and the father of the petitioner was not informed about the transfer of the case and were under the impression that the counsel would take care of the matter. On 04.03.2015, the Commanding Officer had reported that the divorce petition was dismissed on 18.11.2011 itself. Thus, the petitioner has filed a restoration application along with the application in I.A.No.6 of 2017 in H.M.O.P.No.346 of 2009 to condone the delay of 1468 of delay in filing the restoration petition and the same was dismissed on 09.06.2017. It is further stated by the petitioner that the dismissal of the application was not informed to the petitioner by the counsel. Thereafter, the counsel at Melur applied for a certified copy of the dismissal order and the same was ready only on 03.08.2018. Hence, the delay is neither wilful nor wanton and would pray to condone the delay of 384 days in preferring the above appeal.

4. Heard the learned counsel for the petitioner 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.

<https://hcservices.ecourts.gov.in/hcservices/> 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.

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(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

<https://hcservices.gov.in> 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 filed Divorce petition in H.M.O.P.No.346 of 2009 on the file of the III-Additional Subordinate Court and the same was transferred to the I-Additional Subordinate Court, Melur Camp, Madurai. It appears that the petitioner never appeared before the Court and hence, the divorce petition was dismissed for default on 18.11.2011. The respondent had filed several representations to the authorities of the petitioner for maintenance and immediately, the petitioner filed the restoration petition to condone the delay of 1468 days of delay in filing the restoration petition in I.A.No.6 of 2017 and the same was dismissed by the learned Judge finding that the petitioner has not approach before the Court with the clean hands. Against which, the revision petitioner has been filed the present petition with the delay of 384 days.

7. It is seen that no valid reason has been adduced for condoning the delay of 384 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. 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 384 days in filing the revision petition.

8. Accordingly, this petition is dismissed. In view of the
<https://hccservices.courts.gov.in/cservices/> CMP (MD) No.9736 of 2018, the connected C.R.P.(MD)



SR.No.41276 of 2018 is rejected at the SR stage itself. No costs.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

To

I-Additional Subordinate Court,
Madurai (Melur Camp).

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