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WP.Nos.17698 & 18660 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

WP.Nos.17698 & 18660 of 2014 &

M.P.Nos.2, 3 of 2014, 17615 of 2016 in W.P.No.17698 &

M.P.No.2 of 2014 in W.P.No.18660 of 2014

W.P.No.17698 of 2014

1. P.S.M.Syed Abuthahira Beevi [Died]
2. Mohammed Shamsuddin
3. Hasanuddin
4. Zainuddin
5. Sarfraz Nawaz
6. Aysath Rushthana

[P2 to P6 substituted as LR's of deceased first petitioner
as per Order dated 02.03.2016 by TSSJ made in WMP.No.
34740 of 2016 in W.P.No.17698 of 2014]

... Petitioners

Vs

1. The Competent Authority,
Smugglers Foreign Exchange Manipulated,
[Forfeiture] of Property Act, Utsav,
64/1, G.N.Getty Road, T.Nagar, Chennai -17.
2. The Registrar,
Appellate Tribunal for Forfeited Property,
IV Floor, Lok Nayak Bavan, Khan Market,
New Delhi – 110 003.



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3. The District Collector,
Ramanathapuram District,
Ramanathapuram.

W.P.No.18660 of 2014

Aysath Rushthana

... Petitioner

.. Vs ..

1. The Joint Commissioner,
Office of the Competent Authority & Administrator [SAFEMA],
Foreiture of Property, Utsav,
64/1. G.N.Chetty Road, T.Nagar, Chennai – 17.

2. The District Collector,
Ramanathapuram District, Ramanathapuram. ... Respondents

Prayer in W.P.No.17698 of 2014 : Writ Petition filed under the Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the respondents in connection with the impugned Order passed by the first respondent in F.No.OCA.MDS/2655/87 dated 29.01.2001 confirmed by the second respondent in FPA No.29/MDS/2001 dated 27.06.2002 and again re-confirmed by the second respondent in MP 62/MDS/2013 & MP70/MDS/2013 in FPA No.29/MDS/2001 dated 20.06.2014 and quash the same and further direct the second respondent appellate authority to hear the appeal on merit.

Prayer in W.P.No.18660 of 2014 : Writ Petition filed under the Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus



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calling for the records of the respondents in connection with the impugned Order passed by the respondents in connection with the impugned Order passed by the first respondent in F.No.OCA/MDS/2665/87 dated 0.10.2013 and F.No.OCA/MDS/2665/87 dated 01.07.2014 and quash the same and direct the respondents to remove the paper seal affixed on 14.11.2013 on the residential building situate at 15/28, new No.4/209, East Street, Customs Road Ramnad District.

For Petitioners : Mr.ARL Sundaresan, Senior Counsel
in both WPs for Mr.A.S.Vijaraghaan

For Respondents : Mr.N.Ramesh, SPC – R1 & R2 in
W.P.No.17698 of 2014 &
for R1 in W.P.No.18660 of 2014

Mr.D.Gopal, Government Advocate
for 3 in w.PNo.17698 of 2014 &
for R2 in W.P.No.18660 of 2014

COMMON ORDER

The Writ Petition in 17698 of 2014 has been filed to quash the impugned Order passed by the first respondent in F.No.OCA.MDS/2655/87 dated 29.01.2001 confirmed by the second respondent in FPA No.29/MDS/2001 dated 27.06.2002 and again re-confirmed by the second respondent in MP 62/MDS/2013 & MP70/MDS/2013 in FPA



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No.29/MDS/2001 dated 20.06.2014 and further direct the second respondent appellate authority to hear the appeal on merit.

2. The Writ Petition in 18660 of 2014 has been filed to quash the the impugned Order passed by the respondents in connection with the impugned Order passed by the first respondent in F.No.OCA/MDS/2665/87 dated 0.10.2013 and F.No.OCA/MDS/2665/87 dated 01.07.2014 and direct the respondents to remove the paper seal affixed on 14.11.2013 on the residential building situate at 15/28, new No.4/209, East Street, Customs Road Ramnad District.

3. The petitioner has a house property and agricultural property in Keelakarai which has been forfeited by a competent authority by an Order dated 29.01.2001. Challenging the same, an appeal has been filed before the Appellate Tribunal through one Advocate Jabbar. When the appeal was originally posted on 23.04.2002, an adjournment was sought. Therefore, the appeal was adjourned to 27.06.2002. On that date, as none appeared for the appellant, the appeal has been dismissed for default. However, one Junior Advocate Ismail filed a petition for adjournment, which was received



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later by the Tribunal. As the appeal has already been disposed of, the above petition has not been decided. In the meanwhile, when the notice was issued for taking possession of the property, the petitioner had tried to contact his counsel Mr.Jabbar to ascertain the details of the case. By that time only she came to know that the said Advocate Jabbar died in the year 2006. Therefore, she engaged yet another lawyer who informed her after checking the records that the appeal was dismissed for default on 27.06.2002. Thereafter, she had filed a petition to restore the appeal on 18.11.2013 stating that on enquiry she came to know that the advocate passed away in the year 2006 due to injuries sustained in a motor accident. According to the petitioner, the advocate has met with an accident on 29.04.2002. Thereafter, as he suffered multiple injuries in the accident and due to complications arose out of the said accident, he was taking treatment and died in the year 2006. Therefore, dismissal of the appeal for non prosecution has not been intimated to the petitioner and the petitioner came to know about the dismissal of the appeal only in the year 2013 when the notice was served for taking possession. Therefore, she filed a petition immediately for restoring the appeal.



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4. The respondent filed objections in the above appeal before the competent authority stating that the petitioners are not regular in attending the case and hence, an exparte order has been passed on 27.06.2002. Thereafter, the appeal was remanded onceagain and subsequently, final Order has been passed. According to the respondent, sufficient opportunities have been given to the petitioners before the competent authority. It is their further contention that after the dismissal of the appeal for default a copy of the same has been served on the petitioner. Therefore, it is the contention of the respondent that the petitioners knowledge only in the year 2013 is also false. Considering the entire aspects, the Appellate Tribunal dismissed the appeal holding that sufficient reasons have not been given in the petition. While dismissing the appeal, the Tribunal also took note of the subsequent sale of one of the property by one of the petitioner and came to the conclusion that the sufficient reasons have not been properly explained and therefore, dismissed the petition. Challenging the same, the Writ Petitions have been filed.

5. The learned Senior Counsel Mr.ARL Sundaresan, appearing for the petitioners has submitted that the reasons assigned for restoration of the



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appeal has not been properly considered by the Tribunal. It is his contention that admittedly the advocate engaged by the petitioner met with an accident prior to the date of hearing of the appeal which has been clearly established before the Appellate Tribunal. Despite the above, the Tribunal failed to accept the above fact. Due to the said accident, the advocate was under treatment for some time and subsequently, he died. Therefore, it is his contention that when the petitioners who are residing in a remote area and the counsel who has been engaged to argue the appeal could not appear before the Tribunal due to the accident, the litigants statutory right of hearing the appeal on merits cannot be defeated. It is his further contention that the factum of the accident and the injuries sustained by the advocate has been clearly established by the petitioner and to substantiate the same, he has also placed the First Information filed in this regard and Motor Accident Tribunal Award, to substantiate his contention.

6. Whereas, the learned counsel appearing for the respondents would contend that even before the competent authority, the petitioner was not prompt in appearing for the hearings and the delay has occasioned only because of nonchalant attitude of the petitioner. The Tribunal has

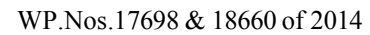


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considered entire aspects and even gone into the merits and held that the petition deserves to be dismissed. Therefore, opposed the Writ Petitions.

7. It is not in dispute that as against the Order of the competent authority, an appeal has been filed by the petitioner before the Tribunal and an advocate one Jabbar was engaged to pursue the appeal and the appeal was listed on 27.06.2002. On that date, the counsel has not appeared, therefore, the appeal got dismissed. It is relevant to note that prior to the hearing, one junior counsel also sent a petition for adjournment and the same reached later. In view of the dismissal of the appeal on the earlier hearing on 27.06.2002, the petition for adjournment has not been considered. The specific case of the petitioner is that their advocate met with an accident at the relevant point of time and sustained multiple injuries and could not appear as he is in the hospital for many days due to complications arose out of the accident and he subsequently died in the year 2006. Therefore, the fate of the proceedings before the appellate Tribunal has not been intimated to the petitioner to take immediate action. Though the discharge summary of the Advocate has also been placed before the Tribunal, the Tribunal took a view a that since the discharge



8. It is relevant to note that the Limitation Act is not meant to destroy the rights of the parties. Length of the delay is not a matter. Even the delay may be long and the same can be condoned, if proper cause is shown. In some cases, even the delay may be very small, it cannot be condoned, if the cause shown for such a delay is either false or not sufficient. Exercising the power to condone the delay is purely discretionary taking note of facts and circumstances of each case. The main contention of the petitioner is that the advocate who was engaged by the petitioner could not appear before the Tribunal as he met with an accident followed by continuous treatment in the hospital. Thereafter, he died in the year 2006. In the additional typed



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set filed before this Court, a copy of the First Information Report dated 30.04.2002 has been filed and the same reveals that one Jabbar met with an accident and the Accident Register and death certificate of the Advocate has also been filed by the petitioner. It is relevant to note that originally the Advocate has filed a claim petition before the Motor Accidents Claim Tribunal during his life time and after his death, it is continued by his legal heirs. The judgment of the Motor Accident Claims Tribunal has also been placed before this Court. Though the same is not a conclusive proof, the fact remains that the facts recorded on the basis of the evidence adduced to prove the nature of injuries sustained and the death of the Advocate cannot be ignored altogether.

9. A perusal of the judgment of the Motor Accident Claims Tribunal makes it clear that one Dr.T.Muruganantham has been examined as P.W.5. He was working in the Apollo First Med Hospitals and he has also seen the deceased during his life time and he was treated in the Apollo Speciality Hospital. The said Doctor has deposed in his evidence that after accident various complications developed illness from the accident and he died on 19.02.2006. Immediately after the accident several surgeries have been



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conducted by the said Doctor. This has also been captured in the judgment on the basis of the medical records produced in MCOP cases and finally, the Court has also placed reliance on the evidence of P.W.4 that Advocate was in continuous treatment for the injuries sustained by him and suffered complications and as a result of which he died. More than three doctors have been examined before the Tribunal. They have in one voice stated that ever since the date of accident, the advocate has suffered severe complications till his death. Therefore, when the counsel who was engaged met with an accident, due to which there were severe complications and he could not pursue the case properly, the litigant cannot be suffered in such peculiar circumstances.

10. It is also to be noted that the petitioner is residing in a remote corner of South India. When an advocate has been engaged to deal with their case in Delhi, it cannot be expected that the people residing in a remote corner always be vigil and contact their lawyers to get the details. It is normal conduct of the persons to wait for their results or information from their lawyers. Therefore, merely because the petitioner has not taken any action to enquire their case immediately then and there, the same



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cannot be pitted against them. In the judgment of the Apex Court in

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N.Balakrishnan Vs. M.Krishnamurthy reported in **1998 [III] CTC 533**,

in para 9 and 10, the Honourable Apex Court has held as follows :

“Appellant's conduct does not on the whole warrant to castigate him as an irresponsible litigant. What he did in defending the suit was not very much far from what a litigant would broadly do. Of course, it may be said that he should have been more vigilant by visiting his advocate at short intervals to check up the progress of the litigation. But during these days when everybody is fully occupied with his own avocation of life an omission to adopt such extra vigilance need not be used as a ground to depict him as a litigant not aware of his responsibilities, and to visit him with drastic consequences.

It is axiomatic that condonation of delay is a matter of discretion of the court [Section 5](#) of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding,



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much less in reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first cut refuses to condone the delay. In such cases, the superior cut would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.”

11. Considering the above judgment and also the undisputed documents placed before this Court, this Court is of the view that the reasons for non appearance of the advocate and failure to follow the case is only due to the accident met by the Advocate and further complications which resulted in the death of the advocate, in such situations the party's statutory right cannot be defeated.

12. Accordingly the Order rejecting the petitions filed to restore the appeals are hereby set aside and the appeals are restored to file and these Writ Petitions are allowed. The Tribunal may dispose the appeal expeditiously considering the nature of the delay due to pendency of these Writ Petitions and dispose the Appeals on its own merits. Consequently,



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connected miscellaneous petitions are closed. No costs.

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N.SATHISH KUMAR, J.

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