



CMP No.17050 of 2021 in
S.A.(SR).No.91046 of 2021

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G.CHANDRASEKHARAN,J.

This petition is filed to condone the delay of 830 days in filing S.A.(SR).No.91046 of 2021.

2. Learned counsel for the petitioners submitted that A.S.No.226 of 2015 was disposed on 07.07.2018 by the learned XVII Additional City Civil Court, Chennai, confirming the judgment of learned IV Additional City Civil Court, Chennai in O.S.No.1176 of 2003. The suit was erroneously dismissed. Respondents have not given any evidence before the trial Court still the suit was dismissed. First Petitioner is a heart patient and taking treatment in Vijaya Hospital. First Petitioner was cross-examined on 03.04.2009 in part before the trial Court and cross-examination was adjourned at the request of learned counsel for the respondents. Thereafter, the case was posted for further cross-examination. Respondents have not cross-examined the first petitioner. Therefore, the



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Court closed the evidence of the petitioner. Respondents did not enter into witness box and has not given any oral evidence and documentary evidence. In 2017, petitioner became bedridden and was frequently taking treatment in Vijaya Hospital. His daughters have been looking after him. Due to his illness, there was a communication gap with his Advocate. Only in August 2021, petitioner became alright and then came to know about the dismissal of the appeal on 07.07.2018, thus there is a delay of 830 days in filing the Second Appeal.

3. In response, learned counsel for the respondents strongly opposed to condone the delay, stating that the reasons stated for the delay cannot be accepted. First appeal was filed after the performance of surgery on the first petitioner. When the first appeal was filed he was taking treatment. Therefore, his claim that because of surgery and treatment, Second Appeal could not be filed in time cannot be accepted. The limitation period expired even before the onset of COVID-19 lockdown. There is no merits in the case to file Second Appeal. Petitioners are not in



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possession of the suit property and they abandoned their case. Therefore, the petition is liable to be dismissed.

4. Though it is only a petition to condone the delay of 830 days in filing the Second Appeal, in the light of the submissions made on behalf of the petitioners that PW.1 was not cross-examined fully and no evidence was produced on the side of the respondent, background of the case has to be looked into. The suit was filed by the petitioners seeking the relief of declaration of title, permanent injunction, mandatory injunction and for other reliefs. It is claimed by the petitioners that they purchased the suit property from the defendants. It is seen from the written statement of the defendants that they admitted that the petitioners purchased the property for a sale consideration of Rs.8,40,000/-. However, there appears a dispute with regard to an area of 458 sq.ft. It is claimed by the respondents that taking advantage of their illiteracy, first petitioner had taken a power from the respondents and executed a sale in his name and in the name of his family members selling excess extent of 458 sq.ft. Effectively, the dispute



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is with regard to only a portion of the land said to have been purchased by the petitioners. It is seen from the judgment of the trial Court that PW.1's cross examination was adjourned for want of presence of defendants' side. Therefore, the evidence of PW.1 was closed. Thus, it is clear that PW.1 was not examined in full. No other witness was examined on the side of petitioners/plaintiffs. There is no evidence also produced on the side of respondents/defendants. Still the learned Judge proceeded to dispose the suit on the basis of incomplete evidence of PW.1 and the documents on the side of petitioners. First appellate Court has also confirmed this Judgment. Considering the manner in which both the Courts have disposed the suit, this Court is of the considered view that the petitioners should be given an opportunity to contest the judgment by way of Second Appeal, if they could make out a substantial question of law.

5. Learned counsel for the petitioner relied on the following judgments supporting the condonation of delay.

(i) ***AIR 2002 Supreme Court 1201 (Ram Nath Sao alias Ram***



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Nath Sahu and others ..vs.. Gobardhan Sao and others)

"7. The expression 'sufficient cause' within the meaning of [Section 5](#) of the Limitation Act, 1963 (hereinafter referred to as 'the Act'), Order 22 Rule 9 of the Code of Civil Procedure (hereinafter referred to as 'the Code') as well as similar other provisions and the ambit of exercise of powers thereunder have been subject matter of consideration before this Court on numerous occasions. In the case of [The State of West Bengal v. The Administrator, Howrah Municipality and others](#) (1972) 1 Supreme Court Cases 366, while considering scope of the expression 'sufficient cause' within the meaning of [Section 5](#) of the Act, this Court laid down that the said expression 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.

8.

9.

10. In the case of [N.Balakrishnan v. M.Krishnamurthy](#) (1998) 7 Supreme Court Cases 123, there was a delay of 883 days in filing application for setting aside *exparte* decree for which application for condonation of delay was filed. The trial court having found that sufficient cause was made out for condonation of delay, condoned the delay but when the matter was taken to the High Court of Judicature at Madras in a revision application under Section 115 of the Code, it was observed that the delay of 883 days in filing the application was not properly explained and it was held that the trial court was not justified in condoning the delay resulting into reversal of its



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order whereupon this Court was successfully moved which was of the view that the High Court was not justified in interfering with order passed by trial court whereby delay in filing the application for setting aside exparte decree was condoned and accordingly order of the High Court was set aside. K.T.Thomas, J., speaking for the Court succinctly laid down the law observing thus in paras 8, 9 and 10 :

"8. The 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.

9. 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 a want of acceptable explanation whereas in certain other cases, delay of a 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, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or



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arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court 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.

10.

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time- limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause." [Emphasis added]

The Court further observed in paragraphs 11, 12 and 13 which run thus:-

"11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every



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legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under [Section 5](#) of the Limitation Act should receive a liberal construction so as to advance substantial justice vide [Shakuntala Devi Jain v. Kuntal Kumari](#) (1969) 1 SCR 1006 and [State of W.B. v. Administrator, Howrah Municipality](#) (1972) 1 SCC 366.

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. " [Emphasis added]

11. 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



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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. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine like manner. However, by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way.

12. In view of the foregoing discussions, we are clearly of the opinion that on the facts of present case, Division Bench of the High Court was not justified in upholding order passed by the learned Single Judge whereby prayers for condonation of delay and setting aside abatement were refused and



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accordingly the delay in filing the petition for setting aside abatement is condoned, abatement is set aside and prayer for substitution is granted.

13. In the result, the appeal is allowed, impugned orders passed by the High Court are set aside and the matter is remitted back to the learned Single Judge for deciding the First Appeal on merits in accordance with law. In the circumstances of the case, we direct that the parties shall bear their own costs."

(ii) ***(2018) 4 MLJ 363 (SC) (Ummer ..vs.. Pottengal Subida and***

others), wherein it is observed as follows:-

"18. One cannot now dispute the legal proposition that the earlier view of this Court that the appellant was required to explain the delay of each day till the date of filing the appeal has since been diluted by the later decisions of this Court and is, therefore, held as no longer good law."

6. Learned counsel for the respondents relied on the following judgments opposing the condonation of delay.

(a) ***(1981) 1 SCC 495 (Ajit Singh Thakur Singh and another ..vs.. State of Gujarat)***



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"6. Now, it is true that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. There may be events or circumstances subsequent to the expiry of limitation which may further delay the filing of the appeal. But that the limitation has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of limitation. In the present case, there was no such cause, and the High Court erred in condoning the delay."

(b) ***AIR 2009 Supreme Court 2907 (Katari Suryanarayana and others ..vs.. Koppiseti Subba Rao and others)***

"The aforementioned decision has been noticed by this Court in *Bhag Singh & Ors. v. Major Daljit Singh & Ors.* 1987 (Supp) SCC 685], to opine:

"The law is now well settled by several decisions which have been cited before us, *Prem Nath v. M/s. Kandoomal Rikhiram* and *Hanuman Dass v. Pirthivi Nath* as well as of this Court reported in *Union of India v. Ram Charan* that the court while considering an application under *Section 5* of the Limitation Act will consider the facts and circumstances not for taking too strict and pedantic stand which will cause injustice but to consider it from the point of taking a view which will advance the cause of justice."

(c) ***(2013) 12 Supreme Court Cases 649 (Esha Bhattacharjee ..vs.. Managing Committee of Raghunathpur Nafar Academy and others)***



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"21. 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 encapsule 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



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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.

22. 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



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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-challant manner requires to be curbed, of course, within legal parameters.

23. Presently to the assertions made in the application for condonation of delay and the asseverations in oppugnation of the same. It may be stated here that the Division Bench while dealing with the application for condonation of delay has also adverted to the legal tenability of the interim order in a matter of appointment and approval of a teacher, and condoned the delay. It does not require Solomon's wisdom to perceive that the delay was colossal."

7. Though the learned counsel appearing for the parties relied on the judgments as to the condonation of delay, this Court for the reasons



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stated above, is of the considered view that the petitioners should not be denied an opportunity to contest the judgments of the Courts below, merely on the ground of delay. Admittedly, first petitioner is a heart patient and he suffered a surgery and he was in continuous treatment. His daughters are also helping him and because of his illness, he could not contact his Advocate. This Court finds that the reasons stated by the petitioners for the delay of 830 days in filing the Second Appeal appears to be genuine and reasonable and therefore, condones the delay of 830 days in filing the Second Appeal and allows this petition.

8. Registry is directed to number the Second Appeal, if it is otherwise in order.

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Pre-delivery order in
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