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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 07.01.2022

CORAM:

THE HON'BLE MR. JUSTICE M.DURAI SWAMY
AND
THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

C.M.P.NO.18844 OF 2021
IN W.A.(SR).NO.100651 OF 2021

1. The Additional Chief Secretary/
Commissioner of Revenue Administration,
Chepauk, Chennai - 5.

2. The District Collector,
Namakkal District.

... Petitioners/
Appellants

Vs.

1.S.Balakrishnan
2.T.Mohanraj
3.S.Sasikumar
4.K.Geetha
5.V.Sundar
6.C.Prakash
7.V.Kalaivani
8.S.Nesamalar
9.N.Vasanthi
10.M.Karthikeyan
11.V.Govindaraja

... Respondents

Petition filed under Section 5 of the Limitation Act to condone the delay of 655 days in filing the Writ Appeal against the order dated 18.12.2019 made in W.P.No.22235 of 2018.

Prayer in W.P.No.22235 of 2018:

Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records relating to the first respondent vide proceedings NO.Ser.3(3)/25427/2018 dated 13.08.2018 and also the proceedings of the second respondent vide proceedings No.Na.Ka 20719/2018/A2 dated 11.7.2019.



For Petitioners : Mr.R.U.Dinesh Rajkumar,
Additional Government Pleader

For Respondents : Mr.S.Vijayakumar

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O R D E R

(Order of the Court made by M.DURAI SWAMY, J.)

When the delay is nearly two years in filing the Writ Appeal as against the order passed in W.P.No.22235 of 2018 dated 18.12.2019, the petitioners have filed the above petitions to condone the delay of 66 days (wrongly stated as 66 days, when the actual delay is 655 days).

2.In the affidavit filed in support of the petition, it could be seen that pursuant to the order passed in the Writ Petition in W.P.No.22235 of 2018 dated 18.12.2019, they have filed a Contempt Petition in Contempt Petition No.872 of 2020. The petitioners/appellants have also filed a Review Application in Review Application No.49 of 2021, which was dismissed by the learned Single Judge on 15.09.2021. On dismissal of the Review Application, the learned Single Judge posted the Contempt Petition for compliance on 04.10.2021.

3.It is also brought to the notice of this Court by Mr.S.Vijayakumar, learned counsel appearing for the private respondents that statutory notice was issued in the Contempt Petition and the petitioners/appellants have also appeared before the learned Single Judge in the said Contempt Petition.

4.When the petitioners had sufficient knowledge about the order dated 18.12.2019 passed in the Writ Petition, they chose to file the Writ Appeal only on 02.11.2021.

5.It is settled law that a person seeking for condonation of the delay should give sufficient reason for condonation of the delay.

6.In the case on hand, inspite of the fact that the petitioners had knowledge about the order passed on 18.12.2019 in the Writ Petition, they have filed the Writ Appeal only on 02.11.2021. The reasoning given by the learned Additional Government Pleader that the petitioners have filed the Writ Appeal only after the dismissal of the Review Application and therefore, there is a delay of 66 days, cannot be accepted. The period of limitation shall start from the date of passing of the order and not from the date of dismissal of the Review Application.



7.Mr.S.Vijayakumar, learned counsel appearing for the respondents submitted that the petitioners have not only misrepresented before this Court as to the number of days in the affidavit, but also have not given sufficient reason for condonation of the delay. In support of his contention, the learned counsel relied upon a judgment of the Hon'ble Supreme Court made in Civil Appeal No.7696 of 2021 [Majji Sannemma @ Sanyasirao Vs. Reddy Sridevi & Ors.], wherein the Apex Court held as follows:

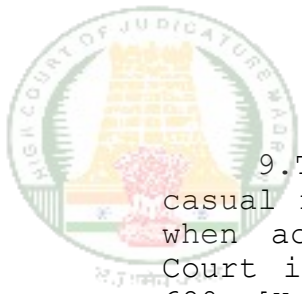
"...

6.2. We have gone through the averments in the application for the condonation of delay. There is no sufficient explanation for the period from 15.03.2017 till the Second Appeal was preferred in the year 2021. In the application seeking condonation of delay it was stated that she is aged 45 years and was looking after the entire litigation and that she was suffering from health issues and she had fallen sick from 01.01.2017 to 15.03.2017 and she was advised to take bed rest for the said period. However, there is no explanation for the period after 15.03.2017. Thus, the period of delay from 15.03.2017 till the Second Appeal was filed in the year 2021 has not at all been explained. Therefore, the High Court has not exercised the discretion judiciously.

...

8.Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the averments in the application for condonation of delay, we are of the opinion that as such no explanation much less a sufficient or a satisfactory explanation had been offered by respondent nos.1 and 2 herein - appellants before the High Court for condonation of huge delay of 1011 days in preferring the Second Appeal. The High Court is not at all justified in exercising its discretion to condone such a huge delay. The High Court has not exercised the discretion judiciously. The reasoning given by the High Court while condoning huge delay of 1011 days is not germane. Therefore, the High Court has erred in condoning the huge delay of 1011 days in preferring the appeal by respondent Nos.1 and 2 herein - original defendants. Impugned order passed by the High Court is unsustainable both, on law as well as on facts."

8.The ratio laid down by the Hon'ble Supreme Court squarely applies to the facts and circumstances of the case on hand.



9. The petitioners cannot be allowed to file petitions in a casual manner, misrepresenting that the delay was only 66 days, when actually, it was nearly two years. The Hon'ble Supreme Court in the judgment reported in (2015) 1 Supreme Court Cases 680 [H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and another], categorically held that a person seeking for condonation of the delay should give sufficient reason for the delay and in the absence of sufficient reason given by the party, the delay should not be condoned. In the case on hand, the reasoning given in the affidavit filed in support of the petition cannot be accepted in any manner whatsoever.

10. In such view of the matter, we are not inclined to condone the delay in filing the Writ Appeal. Accordingly, the petition in C.M.P.No.18844 of 2021 is dismissed. Consequently, the Writ Appeal in W.A.(SR).No.100651 of 2021 is rejected. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Chief Secretary/
Commissioner of Revenue Administration,
Chepauk, Chennai - 5.
2. The District Collector,
Namakkal District.

+1cc to Mr.S.Vijayakumar, Advocate, S.R.No.1469
+1cc to the Government Pleader, S.R.No.1976

C.M.P.No.18844 of 2021
in W.A.(SR).No.100651 of 2021

NR(CO)
PM/28/01/2022