



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:29.03.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

C.M.P(MD)No.1617 of 2022

in

S.A. (MD)No.SR8946 of 2022

Pannerselvam :Petitioner/Appellant

Vs.

Karupayee : Respondent/Respondent

PRAYER in C.M.P(MD)No.1617 of 2022: Civil Miscellaneous Petition filed under Order 41 Rule 3A r/w Section 151 of C.P.C., to condone the delay of 973 days in preferring the second appeal against the judgment and decree passed by the Court of the Subordinate Judge, Srivilliputhur in A.S.No.47 of 2010 on 17.04.2017 in confirming the judgment and decree passed by the Court of the Principal District Munsif, Srivilliputtur in O.S.No.566 of 2005 on 20.10.2008.

PRAYER in S.A. (MD)No.SR8946 of 2022: Second Appeal filed Section 100 of C.P.C., against the judgment and decree passed by the Court of the Subordinate Judge, Srivilliputtur in A.S.No.47 of 2010 on 17.04.2017, confirming the judgment and decree passed by the Court of the Principal District Munsif, Srivilliputtur, in O.S.No.566 of 2005 on 20.10.2008.

For Petitioner : Mr.M.Jothi Basu
For Respondent : No appearance

ORDER

This Civil Miscellaneous Petition is filed to condone the delay of 973 days in filing the second appeal against the judgment and decree dated 17.04.2017 made in A.S.No.47 of 2010 on the file of the Subordinate Judge, Srivilliputtur, confirming the judgment and decree dated 20.10.2008 made in O.S.No.566 of 2005 on the file of the Principal District Munsif, Srivilliputtur.

2.The reason stated in the accompanying affidavit filed in support of the miscellaneous petition reveals that the petitioner is suffering from hypertension, diabetic etc., and therefore, he could not able to file an appeal.

3.The learned counsel for the petitioner states that the petitioner is a senior citizen.

4.These reasons are flimsy. The petitioner has not filed any supporting document to establish such serious ailments. Mere statement that the petitioner is suffering from hypertension and diabetic, is insufficient to form an opinion that the delay is

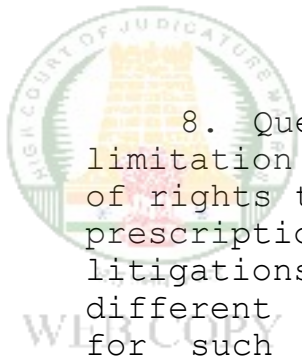


otherwise genuine.

5. Law of limitation is to be followed in all circumstances. Condonation of delay is an exception. Exception sought to be exercised exceptionally, only when reasons are adequate enough to condone such enormous delay. The Courts cannot condone the huge delay in a routine manner. In the event of condoning such huge delay, the rights of the decree holder is prejudiced. The rights of the parties are to be equally protected by the Courts. The aggrieved persons are expected to file an appeal within a reasonable period of time. Meagre amount of delay may be condoned by the Courts by adopting a liberal approach. However, enormous delay cannot be condoned in a routine manner, unless the reasons furnished are candid and convincing. By condoning enormous delay, the Court cannot dilute the law of limitation in the event of such routine condonation of delay, the purpose and object of law of limitation is not only diluted, it will result in causing of prejudice to the other parties to the litigations. Therefore, all mitigating factors are to be considered, while condoning the delay in filing the appeals.

6. Unconardonable delay cannot be condoned in a routine manner. Law of limitation is substantive. Litigations / appeals are expected to be filed within the period of limitation as contemplated under the Statutes. Rule is to follow limitation. Condonation of delay is an exception. Exceptions are to be exercised discreetly, if the reasons furnished are genuine and acceptable. The Courts are vested with the power of discretion to condone the delay, that does not mean that enormous delay in instituting the suit or appeal is to be condoned mechanically. Undoubtedly, if the reasons are candid and convincing, then the Courts are empowered to exercise its power of discretion for the purpose of condoning the delay. Power of discretion is a double-edged weapon. Thus, discretionary powers are to be exercised cautiously and uniformly so as to avoid any prejudice to either of the parties. Exercise of power of discretion if made excessively, would defeat the purpose and object of the law of limitation. The Courts are expected not to travel beyond the permissible extent, so as to condone the enormous delay in a routine or mechanical manner. Power of discretion is to be exercised to mitigate the injustice, if any occurred to the litigants.

7. A fine distinction is to be drawn in respect of 'acceptability' and 'unacceptability', as far as the condonation of delay is concerned. The reasons and its genuinity are important for condoning the delay. It became unnecessary that the Courts have to consider the precedents and condone the delay thereafter or reject the same. There are judgments far and against, but predominantly the facts, circumstances and the genuinity of the reasons of each case plays a pivotal role in considering the relief of condonation of delay.



8. Question may arise the purpose and object of the law of limitation as refusal of condonation of delay sometime causes denial of rights to the litigants. However, there is a definite purpose for prescription of period of limitation for institution of litigations/appeals. Different time limits are prescribed for different kinds of litigations. However, there is a strong reason for such prescription of limitation in various statutes. The litigants are always expected to be vigilant over their rights and liabilities, duties and responsibilities. If any citizen of our great nation is allowed to exercise his right at his whims and fancies without reference to the law of limitation, circumstances may arise that the rights of other fellow citizens are prejudiced or infringed. Rights cannot be exercised in an unguided manner. All rights including fundamental rights under the Constitution of India is qualified and subject to various restrictions under other laws in-force. Thus, the rights of citizen and corresponding duty towards the other fellow citizen are to be balanced in such a manner without causing any prejudice, which resulted in prescription of law of limitation. Exercise of right by a citizen cannot infringe the right of other fellow citizen. Rights and duties are corresponding and therefore, the law requires a limitation for institution of litigations/appeals.

9. Any citizen, who slept over his right, cannot wake up one fine morning and knock the doors of the Court for re-dressal of his grievances. The person, who slept over his right, has to necessary loose his right on account of efflux of time which caused expiry of the cause. In the event of institution of appeal or litigation after a prolonged period, the right of defence will also be affected and further it will lead to unnecessary harassment for prolonged period. All these mitigating factors are to be considered while condoning the huge delay in instituting the litigations/appeals. Thus, the law of limitation has got a definite reasoning and logic. Various time limitations prescribed under many statutes are adopting the principles of "Doctrine of Reasonableness".

10. The principles of reasonableness would be adopted with reference to the nature of litigations to be instituted. Various time limits are prescribed for Civil litigations, Appeals and other varieties of litigations, considering various factors and by applying the Doctrine of reasonableness. Thus, the law of limitation became substantive and to be followed scrupulously in all circumstances and on exceptional cases, the delay is to be condoned, if the reasons are genuine and acceptable.

11. Exceptions can never be adopted as a rule. Exceptions are to be exercised exceptionally and the power of discretion is to be exercised judiciously, so as to mitigate the injustice if any caused.



Condoning long delay in a routine or mechanical manner by the Courts cannot be considered as a good practice. It would result to an injustice in respect of the other parties to the litigation.

12. Another point to be considered is that whenever the condone delay petitions are taken into consideration, there is a frequent representation from the parties that the delay is to be condoned by imposing heavy costs or otherwise. This Court is of the humble opinion that by imposing heavy costs, long delay cannot be condoned. In the event of condoning enormous delay by imposing costs, undoubtedly, the legal principles are not only compromised, but 'justice' is not done to the parties. The Courts are not supposed to compromise the legal principles under the guise of imposing heavy costs. Costs are imposed on certain exceptional circumstances, when the Courts form an opinion that lapses are minor and on account of such minor lapses, the parties should not suffer or their rights cannot be denied. However, costs cannot be in terms with reference to the number of days of delay. It is not an arithmetic principle, where long delay is to be condoned with heavy costs and meagre delay is to be condoned with meagre costs. Such a principle is opposed to public policy and therefore, this Court is not prepared to accept such concept of imposing heavy costs for condoning enormous delay by violating the Law of Limitation, which is substantive and also the legal principles to be followed.

13. Once the delay petition is filed, it is to be dealt with independently by considering the reasons furnished by the petitioner. If the reasons are candid and convincing, then the petitions are to be considered. However, condonation of delay cannot be allowed merely based on the merits in the main appeal. Of course, it is not a trite law to follow. However, in certain circumstances, the Courts can take a lenient view if the reasons are genuine. If the delay is about three months or upto five or six months, the Courts may take a lenient view, but not in respect of longer delay.

14. This being the factum, the petitioner has not sufficiently explained the huge delay of 973 days. The reasons stated are not sufficient enough to condone such huge delay. Thus, this Civil Miscellaneous Petition stands dismissed. No costs. Consequently, the second appeal is also rejected at SR stage itself.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)



1.The Subordinate Judge,
Srivilliputtur.

2.The Principal District Munsif,
Srivilliputtur.

1 cc TO Mr.G.M.LAW OFFICE, Advocate in SR No.2670 dated 30/03/2022

C.M.P (MD) No.1617 of 2022
in
S.A. (MD) No.SR8946 of 2022
29.03.2022

NSN (CO)
KB (08.04.2022) 5P 4C