



C.M.P.(MD)No.8956 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.09.2022

CORAM

THE HONOURABLE MR.JUSTICE **R.MAHADEVAN**
and
THE HONOURABLE MR.JUSTICE **J.SATHYA NARAYANA PRASAD**

C.M.P.(MD) No.8956 of 2022
and A.S.(MD) SR. No.17553 of 2009

1.The Union of India,
Represented by the Deputy Director (Food),
Southern Region,
Chennai, House No.7, Esplanade,
Madras.

2.The Food Corporation of India,
Represented by the District Manager,
Tuticorin,
Tuticorin District.

... Petitioners in CMP and
Appellants in Appeal Suit

Vs.

1.M/s.Viafiel Armadors,
S.A. of Panama is the
Owner of the Vessel,
"VASSILIS KATSIKIS"
Carrying on the Business of Carriers and
Owners of Steamers and is Represented
by its Agent at Tuticorin,
M/s.South India Corporation(Agencies) Private Ltd.,

2.South India Corporation(Agencies) Pvt. Ltd.,
the Agent of the 1st defendant,
having its Head Office at
Madras and Branch Office at No.22,
South Raja Street,
Tuticorin – 628 001.

... Respondents in CMA and
Appeal Suit



C.M.P.(MD)No.8956 of 2022

Prayer in C.M.P.(MD) No.8956 of 2022: Civil Miscellaneous Petition filed under Order 9 Rule 4(4) of Appellate Side Rules, praying to condone the delay of 4205 days in representing the First Appeal / Appeal Suit in A.S.(MD) SR. No.17553 of 2009.

Prayer in A.S.(MD) SR. No.17533 of 2009 : Appeal Suit filed under Section 96 and Order 41 Rule 1 of Civil Procedure Code, against the Judgment and Decree of the Additional District Court / Fast Track Court No.2, Tuticorin, dated 31.03.2008 made in O.S.No.33 of 2007, insofar as it relates to dismissal of the suit against the 2nd defendant.

For Petitioners in C.M.P. : Mr.M.Kumar
and Appellants in A.S. Panel Advocate of FCI
* * *

ORDER

(Order of the Court was made by **R.MAHADEVAN, J.**)

The petitioners have come forward with this Civil Miscellaneous Petition to condone the delay of 4205 days in representing the First Appeal / Appeal Suit in A.S.(MD) SR. No. 17553 of 2009.

2. Heard Mr.M.Kumar, learned Panel Counsel for Food Corporation of India, appearing for the petitioners.



C.M.P.(MD)No.8956 of 2022

3. The learned counsel for the petitioners submitted that earlier, the case was entrusted to Mr.P.Senthurpandian, learned Central Government Standing Counsel and the said counsel has not represented the Appeal Suit as it was misplaced and the same was not traceable. He would further submit that subsequently, the said learned Counsel has died and thereafter, the officials of the Food Corporation of India enquired with his Juniors and after getting the case bundle from them, this Civil Miscellaneous Petition is filed with a delay of 4205 days in representing the appeal suit.

4. This Court is unable to accept the said bald and vague statement as no supporting materials have been produced to condone the delay of 11½ years. The Hon'ble Apex Court in the case of ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur, Nafar Academy and Others*** reported in **2013 (5) CTC 547** has categorically held that there is a distinction between inordinate delay and the delay of short duration and the inordinate delay warrants strict approach. The relevant paragraphs of the said judgment read as follows:-

"15.....(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 former Doctrine of Prejudice is attracted, whereas to the latter it may not be attracted. That apart, the first one



C.M.P.(MD)No.8956 of 2022

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 he 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 guidelines taking note of the present day scenario. They are: -



C.M.P.(MD)No.8956 of 2022

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

5. It is well settled that delay defeats equality. Admittedly, in this case, there is an enormous delay of 11 ½ years in representing the Appeal Suit. Therefore, this Court has to see as to whether sufficient cause has been shown for condoning the delay. In the case on hand, except stating routine reason, no other



C.M.P.(MD)No.8956 of 2022

sufficient cause has been shown to condone the huge delay. The petitioners have to offer reason for each and every day delay, that is conspicuously absent. Hence, this petition is liable to be dismissed.

6. Accordingly, this Civil Miscellaneous Petition is dismissed. Consequently, A.S.(MD)SR.No.17533 of 2009 is rejected. No costs.

[R.M.D., J.] [J.S.N.P., J.]
28.09.2022

Internet : Yes / No
Index : Yes / No
sj



WEB COPY



C.M.P.(MD)No.8956 of 2022

R.MAHADEVAN, J.

and

J.SATHYA NARAYANA PRASAD, J.

sj

C.M.P.(MD) No.8956 of 2022
and A.S.(MD) SR. No.17553 of 2009

28.09.2022