



C.M.P. Nos. 7103 & 7899 of 2023
&
W.A.Sr. Nos. 12531/2021 & 95031/2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

C.M.P. Nos. 7103 & 7899 of 2023

&

W.A.SR. Nos. 12531 of 2021 & 95031 of 2020

C.M.P. No. 7103 of 2023 in W.A. Sr. No. 12531 of 2021

1. The Director General,
Employees State Insurance
Corporation,
Panchdeep Bhavan, CIG Road,
New Delhi – 100 002.
2. The Regional Director,
Regional Office,
Employees State Insurance
Corporation,
143, Sterling Road,
Chennai – 600 034.
3. The Joint Director,
Sub Regional Office,
Employees State Insurance



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Corporation,
IV Main Road, K.K. Nagar,
Madurai – 625 020.

..Petitioners

Vs.

1. The Management,
Rathinasamy Spinners Pvt. Ltd.,
Kasipalayam, Vendasandur Taluk,
Dindigul District.
2. Rathinsamy Spinners Thozhilalar
Nala Sangam,
rep. by its Secretary L. Sellamuthu

..Respondents

Prayer: Civil Miscellaneous Petition to condone the delay of 2843 days
in filing the writ appeal as against the order dated 26.03.2018 in W.P.
No.24846 of 2007.

For Petitioner :: Ms.G.Narmada

For Respondent :: Mr.M. Elanchezian for R1

C.M.P. No. 7899 of 2023 in W.A. Sr. No. 95031 of 2020

1. The Director General,
Employees State Insurance
Corporation,
Panchdeep Bhavan, CIG Road,
New Delhi – 100 002.



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2. The Regional Director,
Regional Office,
Employees State Insurance
Corporation,
143, Sterling Road,
Chennai – 600 034.

3. The Joint Director,
Sub Regional Office,
Employees State Insurance
Corporation,
IV Main Road, K.K. Nagar,
Madurai – 625 020.

..Petitioners

Vs.

1. The Management of
M/s. Prasanna Spinning Mills,
Lakshmanpatty, Vendasandur,
Dindigul District.

2. Prasanna Spinning Mills
Thozhilalar Nala Sangam
(Regd.No. 262/DGL)
Lakshmanapatty, Vendasandur,
Dindigul District, rep. by its
Secretary Mr.K. Murugan

..Respondents

Prayer: Civil Miscellaneous Petition to condone the delay of 595 days
in filing the writ appeal as against the order dated 08.07.2008 passed in
W.P. No. 22373 of 2023.



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ORDER

(Order of the Court was made by ***S. Vaidyanathan,J.***)

The above civil miscellaneous petitions have been filed to condone the delay of 2843 days and 595 days respectively in preferring the respective writ appeals.

2. Ms.G. Narmada, learned counsel for the petitioner Corporation would submit that the delay had occurred due to the conduct of the counsel, who failed to furnish any particulars for filing the writ appeals and the petitioner Corporation should not be penalised for the fault of the counsel. Further, she would submit that a clarification petition under the guise of review cannot be filed and entertained and the learned Single Judge erred in entertaining the miscellaneous petitions filed seeking clarification of the final orders passed in W.P. Nos. 24846 of 2007 & 22373 of 2007. In support of her contention, she also drew the attention of this Court to the judgment dated 28.07.2021 in W.A. No. 4270 of 2019 wherein a Co-ordinate Bench of this Court had held that a clarification petition under the guise of review



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cannot be entertained and set aside the order passed in the miscellaneous petition in that case. Learned counsel for the petitioner also submitted that they have got a good case on merits and if the delay is not condoned, they would be put to great loss and hardship.

3. On the other hand, learned counsel for the 1st respondent would submit that the petitioner Corporation has not given proper explanation for each and everyday's delay and in the absence of valid reasons for the inordinate delay in preferring the writ appeals, the delay condonation petitions are liable to be dismissed. According to the learned counsel for the 1st respondent, actually, there had been a delay of 4245 days and not 595 days as alleged by the petitioner in preferring the writ appeal in W.A.SR. No. 95031 of 2020. He would further submit that the petitioner Corporation should have been vigilant enough to file the writ appeals in time and they cannot shift the blame on their counsel for their lethargic attitude in following up the cases. According to the learned counsel, the learned Single Judge rightly followed the law laid down by the Hon'ble



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Apex Court and allowed the clarification petitions, which is perfectly valid in the eye of law. He also brought to the notice of this Court that in similar circumstances, in C.M.P. No. 2273 of 2021 in W.A.Sr. No. 95104 of 2020, where there was a delay of 2550 days in preferring the writ appeal, this Court, by order dated 18.03.2021, dismissed the miscellaneous petition.

4. Heard both sides.

5. Though we are in entire agreement with the contention of the learned counsel for the petitioner that an order passed on merits cannot be reviewed by means of a clarification petition and a review application alone can be filed, the said contention can be entertained provided we are inclined to condone the delay and take up the writ appeals on merits. The delay in preferring each of the writ appeals, being huge and inordinate and no reasons, whatsoever, having been given so as to convince this Court to condone the delay, we are of the view that the petitions are liable to be dismissed.



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6. At this juncture, it would be relevant to point out that in similar circumstances, a Division Bench of this Court (SVNJ & MVJ), by an order dated 15.02.2018, in the case of M/s.Ruskim Sea Foods Limited vs. M/s.Evergreen Sea Foods Pvt. Ltd., reported in MANU/TN/0876/2018, which were filed to condone the delay of 765 days in preferring the Appeal, dismissed the said Petitions. Relevant Paragraph of the said decision is extracted hereunder:

“32. Ordinarily, the 'Condonation of Delay' is a matter of discretion to be exercised by the Concerned Court. Also, it is true that the length and breadth of delay is not relevant, but the acceptance of explanation can only be a relevant criterion for the concerned Court to deal with / condone the aspect of 'Condonation of Delay'. However, in this regard, the Petitioner / concerned litigant is to offer / ascribe sufficient reasons or project sufficient cause or good cause to condone the delay with a view to enable the Concerned Court to take a liberal view with a view to secure the ends of justice.

7. While dealing with yet another similar issue of condoning a huge delay, a Division Bench of this Court, has observed as follows:

“4. The Court, in exercising discretion, particularly in these types of Petitions, has to see the conduct, behaviour and attitude of a party relating to its inaction or negligence. The above factors are relevant to be taken into consideration as the fundamental principle is that Courts are required to weigh the



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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. There is an increasing tendency to perceive delay even in a non-serious matter. Hence, the delay due to nonchalant attitude should be curbed at the initial stage itself.

5 . Considering the above aspects and further the Affidavit filed for condoning the delay, did not contain any details as to how the delay of 1860 days had occurred and that no plausible and proper explanation was assigned for each and every day's delay, we are of the view that it is a fit case where the discretion cannot be exercised for condonation of the delay. Accordingly, the Miscellaneous Petition seeking condonation of 1860 days delay in preferring the Appeal is dismissed. Consequently, the Writ Appeal also stands dismissed.”

8. The Hon'ble Supreme Court in the case of **Majji Sannemma @ Sanyasirao vs Reddy Sridevi and others**, reported in **MANU/SC/1269/2021**, has held as follows:

“7.3 In the case of Pundlik Jalam Patil (supra), it is observed as under:-

“The laws of limitation are founded on public policy. Statutes of limitation are sometimes described as “statutes of peace”. An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. The principle is based on the maxim “interest reipublicae ut sit finis litium”, that is, the interest of the State requires that there should be end to litigation but at the same



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time laws of limitation are a means to ensure private justice suppressing fraud and perjury, quickening diligence and preventing oppression. The object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.”

7.4 In the case of Basawaraj (supra), it is observed and held by this Court that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case. It is further observed that the expression “sufficient cause” cannot be liberally interpreted if negligence, inaction or lack of bona fides is attributed to the party. It is further observed that even though limitation may harshly affect rights of a party but it has to be applied with all its rigour when prescribed by statute. It is further observed that in case a party has acted with negligence, lack of bona fides or there is inaction then there cannot be any justified ground for condoning the delay even by imposing conditions. It is observed that each application for condonation of delay has to be decided within the framework laid down by this Court. It is further observed that if courts start condoning delay where no sufficient cause is made out by imposing conditions then that would amount to violation of statutory principles and showing utter disregard to legislature.

7.5 In the case of Pundlik Jalam Patil (supra), it is observed by this Court that the court cannot enquire



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into belated and stale claims on the ground of equity. Delay defeats equity. The Courts help those who are vigilant and “do not slumber over their rights”.

*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.***

9. In view of the above and for the reasons stated above, the present Appeal is Allowed. The impugned order dated 16.09.2021 passed by the High Court condoning the delay of 1011 days in preferring the Second Appeal by respondent Nos.1 and 2 herein is hereby quashed and set aside. Consequently, Second Appeal No.331 of 2021 preferred by respondent Nos.1 and 2 herein



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stands dismissed on the ground of delay. The present Appeal is accordingly Allowed. However, there shall be no order as to costs."

9. We therefore find no justification to entertain the delay condonation petitions and they are accordingly dismissed. Consequently, the writ appeals stand rejected at SR stage itself. No costs.

(S.V.N.J.) (K.R.S.J.)
26.07.2023

nv

To

1. The Director General,
Employees State Insurance
Corporation,
Panchdeep Bhavan, CIG Road,
New Delhi – 100 002.
2. The Regional Director,
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S. VAIDYANATHAN,J.

AND

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K. RAJASEKAR,J.

nv

3. The Joint Director,
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