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Application No.9830 of 2019
in C.S.No.36 of 2005



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.03.2023

PRONOUNCED ON : 28.04.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Application No.9830 of 2019
in C.S.No.36 of 2005

M.Srinivasan ... Applicant / 4th Defendant

versus

R.Ravinder Kumar ... Respondent / Plaintiff

PRAYER: Application filed under Order XIV Rule 8 of Original Side Rules r/w Section 5 of the Indian Limitation Act, praying to condone the delay of 4289 days caused in filing the application to set aside the *ex parte* decree passed in the above case on 05.07.2007.

For Applicant : Mr.R.Krishnaswamy

For Respondent : Mr.N.Nandhakumar

ORDER

This application has been filed to condone the delay of 4289 days in filing the application to set aside the *ex parte* decree passed in the above case on 05.07.2007.



2. Heard the learned counsel for the applicant / fourth defendant; learned counsel for the respondent / plaintiff and perused the materials available on record.

3. The applicant is the fourth defendant; the respondent / plaintiff had filed the suit for recovery of money that has been decreed *ex parte* on 05.07.2007; the applicant has filed this application to condone the delay of 4289 days in filing the application to set aside the *ex parte* decree dated 05.07.2007.

4. The learned counsel for the applicant submitted that the applicant came to know about the *ex parte* decree only on 02.03.2019; on 02.03.2014, the applicant received notice in E.P.No.174 of 2018 in C.S.No.36 of 2005; after receiving notice he made his appearance on 06.03.2019 and sought time for engaging an advocate. In the meanwhile, he came to know through his counsel that the *ex parte* decree has been passed on 05.07.2007. His further submission is that the defendants 1 to 3 had colluded and obtained an *ex parte* decree against the fourth defendant.



5. The learned counsel for the applicant further submitted that the delay in filing the application to set aside the *ex parte* decree is neither wilful nor wanton and hence the delay in filing the application to set aside the *ex parte* decree should be condoned. In support of his contentions, he cited the following decisions:-

- “(i) **2019 SCC Online Mad 24941 [R.Stella vs V.Antony Francis]**
(ii) **C.R.P.(NPD)No.3994 of 2016 dated 26.03.2021**
[Prabu vs. Ramaiya and others]
(iii) **C.R.P.(NPD)No.824 of 2022 dated 29.07.2022**
[Devagi and others vs. Asha]”

6. The learned counsel for the respondent / plaintiff submitted that the applicant had suppressed the material fact that he had received the suit summons on 14.03.2005 itself. He further submitted that the application has been filed just to delay the proceedings without assigning any valid reasons. In support of his above contentions, he relied on the decision of the Hon'ble Supreme Court held in *Esha Bhattacharjee vs. Management Committee of Raghunathpur Nafar Academy* reported in (2013) 12 SCC 649.



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7. The very contention of the learned counsel for the applicant is that he was not able to file the application to set aside the *ex parte* decree on time because of the non-receipt of suit summons. The learned counsel for the respondent was able to produce the copy of the suit summons to show that the applicant has received the same as early as on 14.03.2005. Having received the suit summons on 14.03.2005, the applicant / fourth defendant had failed to make his appearance and allowed an *ex parte* decree to be passed in the suit.

8. The learned counsel for the applicant by citing the decision of this Court held in *R.Stella vs V.Antony Francis* reported in *2019 SCC Online Mad 24941* submitted that the court cannot turn a blind eye when its attention is drawn to an *ex facie* illegal judgment. It is further submitted that the *ex parte* judgment is a cryptic one and hence in the interest of justice, the judgment needs to be set aside.

9. It is correct to state that no pedantic and hypertechnical view in the matter of condoning the delay should be taken and the paramount



consideration should be shown to the interest of justice. However, a party, who has come with an application to condone the delay after 12 years by suppressing the material facts cannot be dealt so leniently. Because the intention of such a party is not to save the interest of justice but to place hurdles against the plaintiff from enjoying the fruits of the decree.

10. The reason stated by the applicant should be reasonably sufficient and convincing even though the applicant might have omitted to explain each and every day of the delay. The applicant was not able to prove that he did not receive summons and so he cannot take advantage of any other circumstance in the first instance.

11. There are instances where the applicant after receiving the summons had chosen to file an application to set aside the *ex parte* decree with delay. In that case, he has to convince the court about the reasons for delay. But the applicant herein has come forward with an affidavit by stating that he has not received the suit summon at all. But the said fact has



not been proved in order to have a sympathetic view in favour of the petitioner.

12. The learned counsel for the applicant cited the decision of the Hon'ble Supreme Court in *Ram Nath Sao @ Ram Nath Sahu and others vs. Gobardhan Sao and others* reported in (2002) 3 SCC 195 in support of his contention and submitted that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition through a slipshod order in over jubilation of disposal drive. But in the very same order it is observed that if the lack of *bonafideness* is imputed to the defaulting party the courts are under no obligation to extend the liberty of condoning the delay. In this regard, it is worthwhile to extract paragraph nos.12 and 13 of the above judgment:-

“12. 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 fides is imputable to a



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party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependent upon facts 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 fides 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 hypertechnical 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.

13. In view of the foregoing discussions, we are clearly of the opinion that on the facts of present case, the Division Bench of the High Court was not justified in upholding the order passed by the learned Single Judge whereby prayers for condonation of delay and setting aside abatement were refused and accordingly the delay in filing the petition for setting aside abatement is condoned, abatement is set aside and prayer for substitution is granted.”

13. The learned counsel for the respondent has cited the decision of the Hon'ble Supreme Court in *Esha Bhattacharjee vs. Management Committee of Raghunathpur Nafar Academy* reported in (2013) 12 SCC 649 wherein it is held as under:-



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“21.4.(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.

21.5.(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.8.(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 warrants strict approach whereas the second calls for a liberal delineation.

21.9.(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.



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22.1.(a) An application for condonation of delay should be drafted with careful concern and not in a haphazard 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.

22.2.(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.

21.11.(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.

21.10.(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.”

14. Hence, one of the essential factors that cannot be omitted to be overlooked is proof of *bonafideness* on the part of the applicant. Due to the



suppression of the fact of receiving the summon, the applicant lacks *bonafideness*. Since there are reasons to believe that the applicant has the intention of delaying the proceedings and thereby prevent the respondent / plaintiff from enjoying the fruits of his decree, I am not inclined to condone the huge delay of 4289 days in filing the application to set aside the *ex parte* decree passed on 05.07.2007.

15. In view of the above stated reasons, this application stands dismissed.

28.04.2023

Speaking order

Index : Yes

Neutral Citation : Yes / No

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R.N.MANJULA, J.

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Pre-Delivery Order made in
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