



CMP No.19074 of 2022
and AS.SR.No.109203 of 2022
and CMP.No.7447 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.P.No.19074 of 2022
and A.S.SR.No.109203 of 2022
and C.M.P.No.7447 of 2023

Duraiparimalam

... Petitioner/Appellant

-vs-

1. Meenatchi
2. Ranjith
3. Ranjana
4. Desingu

.. Respondents/Respondents

Prayer in CMP.No.19074 of 2022: This petition has been filed under Order 41 Rule 3-A of C.P.C. to condone the delay of 2313 days in filing the appeal suit before this Court as against the judgment and decree as made in OS.No.143 of 2011, dated 27.01.2016.

Prayer in AS.SR.No.109203 of 2022: This Appeal Suit filed under Section 96 read with Order XLI Rule 1 of CPC to set aside the judgment and decree made in OS.No.143 of 2011 dated 27.01.2016 on the file of the Principal District Judge, Cuddalore.

For appellant : Mr.V.Balamurugan

For R1 to R3 : No Appearance

For R4 : Mr.D.Ravichander



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J U D G M E N T

The present application has been filed to condone the delay of 2313 days in filing the Appeal Suit.

2. Mr.V.Balamurugan, learned counsel for the Petitioner / Appellant has submitted that the original notice sent to the respondents 1 to 3 has been returned as "No such person" and hence, he filed C.M.P.No.7447 of 2023 for substitution of service by effecting paper publication.

3. Mr.D.Ravichander, learned counsel appearing for the fourth respondent has contended that the fourth respondent, without knowing about the mortgage, had advanced money. Subsequently, when a demand was made by the fourth respondent to refund the money, the same was not paid by the petitioner herein. Hence, suits in O.S.Nos.91 of 2007 and 143 of 2011 were filed before the Principal District Court, Cuddalore and the same were decreed in favour of the 4th respondent for refund of amount together with interest. He has also drawn the attention of this Court to the undertaking given by the petitioner on 15.03.2023 to the effect that she is willing to deposit a sum of Rs.10,00,000/- to show her *bona*



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fides. He has further contended that though the Execution Petition in E.P.No.22 of 2018 is now ripe for orders, the petitioner is not inclined to part with any money nor has she questioned the judgment and decree in O.S.No.91 of 2007.

4. Mr.Balamurugan, learned counsel for the petitioner, in response, has submitted that the petitioner is now willing to deposit an amount of Rs.13,00,000/-.

5. Be that as it may, even going by the affidavit, the judgment and decree in the suit was delivered on 27.01.2016 and the copy application was made only in the year 2022, i.e., after a lapse nearly six years. The petitioner has stated that in view of her heart ailment and his consequential hospitalization coupled with the subsequent lock down on account of Covid-19 pandemic, the delay had occurred in filing the copy application and appeal.

6. This stance of the petitioner cannot be countenanced for the reason that excluding the period of 2 years during which the pandemic was at its peak, still there is a delay of more than 4 years in preferring the appeal, for which there is no explanation forthcoming on the side of the petitioner.



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7. 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** filed to condone the delay of 765 days in preferring the Appeal, dismissed the case.

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."

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 time laws of limitation are a means



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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 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



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

9. It is seen that the total sum payable by the petitioner comes to Rs.35,43,406/-. Though the petitioner had earlier undertaken to deposit a sum of Rs.10,00,000/- on 15.03.2023, till now, no amount has been deposited. Now, she has expressed her inclination to deposit only a sum of Rs.13,00,000/- as against



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Rs.35,43,406/-. We are not inclined to accept the above submission of the petitioner, so as to condone the delay in view of the decision of the Apex Court referred to supra and reject her plea in *toto*. The Court below can proceed with the auction in E.P.No.22 of 2018.

Accordingly, C.M.P.No.19074 of 2022 filed to condone the delay is dismissed and as a sequel, the Appeal Suit in SR Stage is rejected. Consequently, C.M.P.No.7447 of 2023 filed for substitution of service is also dismissed. No costs.

(S.V.N.J.,) (R.K.M.J.,)
30.03.2023

Speaking Order: Yes / No
pvs

S.VAIDYANATHAN, J
and



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