



C.M.P.No.21880 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	13.04.2023
Delivered on	21.09.2023

CORAM:
THE HONOURABLE Dr. JUSTICE D. NAGARJUN

C.M.P.No.21880 of 2017
in
C.R.P.NPD.No.SR96310 of 2017

J.Vijayalakshmi

... Petitioner/Plaintiff

v.

1.The Purasawalkam Permanent Fund Ltd.,
Rep. by its Managing Director,
Old No.173, Vellala Street,
Purasawalkam, Chennai - 600 084.

2.Balaji and Company Auctioneers and Estate Agents,
No.160, Thambu Chetty Street,
2nd Floor, Chennai - 600 001. ... Respondents/Defendants

PRAYER: Civil Miscellaneous Petition under Section 5 of Limitation Act,
to condone the delay of 562 days to file C.R.P.NPD.SR96310 of 2017.

For Petitioner : Mr.Dalit Tiger C.Ponnusamy

For Respondents : Mr.M.A.Lakshmipathi for R1



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ORDER

This Civil Miscellaneous Petition is filed under Section 5 of the Limitation Act, 1963, seeking to condone the delay of 562 days in filing the civil revision petition aggrieved by the orders passed in C.M.P.No.4 of 2015 in A.S.No.405 of 2007 in O.S.No.6435 of 2004 dated 06.08.2015 on the file of XII Additional District Judge, Chennai.

2. The facts which made the petitioner to file this application are as in brief:-

The petitioner/plaintiff has filed O.S.No.6435 of 2004 on the file of XVI Assistant City Civil Court, Chennai seeking permanent injunction against the respondent No.2 and a direction against respondent No.1/defendant No.1 not to bring her house property to auction. After full-fledged trial, the said suit was decreed on 17.04.2007. Aggrieved by the same, the respondents/defendants have preferred an appeal in A.S.No.405 of 2007. The petitioner has engaged one Mr.G.Appavu, Advocate to defend A.S.No.405 of 2007, however on receipt of notice dated 05.11.2014, the petitioner has realized that A.S.No.405 of 2007



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was allowed ex parte on account of negligence of her Advocate.

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3. The petitioner filed C.M.P.No.4 of 2015 in A.S.No.405 of 2007 on the file of the learned XVII Additional District Judge, Chennai, for condoning the delay of 1769 days and same was dismissed on 06.08.2015.

4. Subsequent to the dismissal of C.M.P.No.4 of 2015 on 06.08.2015 the petitioner was making preparations to file civil revision petition on the file of this Court however, the respondents/defendants approached her proposing for out of Court settlement. During the course of negotiations for settlement, the Central Government has declared demonetization, on account of which the money circulation became very slow and thereby settlement process was also became slow. In the meanwhile, on 19.11.2017 the second respondent/auctioneer has issued sale notice to the petitioner in pursuance of judgment in A.S.No.405 of 2007.

5. The petitioner has therefore filed the civil revision petition before this Court along with this petition to condone the delay of 562 days in



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preferring the civil revision petition questioning the orders passed in
C.M.P.No.4 of 2018 on 06.08.2015.

6. Heard both sides and perused the record.

7. Section 5 of the Limitation Act, 1963, runs as under:-

“5. Extension of prescribed period in certain cases.—
Any appeal or any application, other than an application
under any of the provisions of Order XXI of the Code of
Civil Procedure, 1908 (5 of 1908), may be admitted after the
prescribed period if the appellant or the applicant satisfies the
court that he had sufficient cause for not preferring the
appeal or making the application within such period.”

8. The petitioner is seeking to condone the delay of 562 days in
preferring the civil revision. According to the petitioner she is old and
illiterate widow and after dismissal of C.M.P.No.4 of 2015 on 06.08.2015
when she was making preparations to file revision petition, the
respondent has proposed for out of court settlement however on account
of demonetization settlement talks could not be concluded thereby since
settlement talks were going on civil revision could not be filed on time.
According to the petitioner, the appellant court while setting aside the



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trial court judgment has erroneously directed the petitioner to pay Rs.25,98,247.02/-. However, merits in respect of the issues involved in the appeal cannot be considered in this petition filed for condoning the delay.

9. Normally when the rights of the parties are involved in respect of immovable properties it is not advisable to put an end to the litigation on technical grounds of delay in preferring the application. However, it does not mean that any amount of delay in filing by reason cannot be condoned without valid reason.

10. On a perusal of the affidavit and other records pertaining to this petition very closely, the only ground on which the petitioner sought for condoning the delay of 562 days is that subsequent to disposal of C.M.P.No.4 of 2015 on 06.08.2015, the petitioner was preparing to file civil revision however, she could not file the same as the respondents/defendants have approached for out of court settlement and during the process of negotiations demonetization was declared by the Central Government. Thereby, the negotiations could not be concluded and in the meanwhile, proceedings were initiated to auction her house



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property thereby she filed civil revision along with condone delay petition.

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11. The petitioner has not filed any material in order to substantiate her contention. The petitioner should have filed an affidavit of any one of the persons who has involved in the negotiations of out of court settlement. The petitioner is aware of the fact that she has to prefer civil revision within time prescribed and if really the respondents/defendants have approached her with a proposal of out of court settlement, she can participate in the negotiations however, simultaneously she could have filed the civil revision on time. The contention of the petitioner that since negotiations were on, she could not filed civil revision is not convincing. She has not produced any evidence either oral or documentary before the trial Court to show that negotiations were held. If really negotiations were held, why steps were taken to auction the property. The petitioner has not explained as to on what date and which place, before whom the discussions in respect of out of court settlement were initiated and closed.

12. The other ground mentioned by the petitioner is that on account



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of demonetization the process of settlement became slow. There is no justification in the submissions of the petitioner linking demonetization to the delay in filing of civil revision. Even during demonetization, Courts were regularly functioning. Even after filing of civil revision also in case, if the settlement is arrived at then the parties are at liberty to report the same to the Court. If at all on account of demonetization if any of the parties was not able to pay the money, they should at least have some documents to show that some kind of compromise terms were underwent by way of draft agreement or settlement between them, instead, simply mentioning in the averment that on account of negotiations and on account of demonetization delay has occurred is not convincing.

13. In order to consider the application under Section 5 of the Limitation Act, apart from the explanation being offered by a person who approaches the Court for condonation of delay, the Court is also expected to see the conduct of the person who approaches the Court. The petitioner herein has alleged that her counsel could not defend A.S.No.405 of 2007 thereby appeal was allowed without hearing the arguments of the petitioner. Though the petitioner has made allegations of negligence against her counsel, there is no record to show that she has proceeded



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against her counsel for his alleged "Negligence".

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14. The petitioner should have filed an affidavit from his previous counsel stating that on the date of hearing of an appeal he was busy otherwise thereby he could not attend the Court. If at all the counsel was busy on the day when it was posted in the appellate Court, subsequent to the date of hearing also, either the petitioner or his counsel should have pursued the case in the appellate Court.

15. The petitioner has filed the petitioner to condone the delay of 1769 days before the appellate Court and said petition was dismissed. That means, the petitioner is aware of the consequences of not filing the appeal or revision on time. Once the petitioner is suffered on account of the dismissal of condonation of delay petition before the appellate Court, the petitioner should have vigilant in preferring the revision on time without giving lame excuses.

16. Therefore, the conduct of the petitioner would go to show that



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the petitioner is in the habit of not filing the applications before the Courts on time and filing the petitioner to condone the delay so that the litigation continuous and that the respondents/defendants will not be enjoying the benefits of orders passed.

17. Considering the above, petition does not deserve any sympathetic consideration. Accordingly, this Civil Miscellaneous Petition is dismissed. Consequently, the Civil Revision is closed in SR stage itself.

21.09.2023

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To

The XII Additional District Judge, Chennai.



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DR.D.NAGARJUN,J

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