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C.R.P.No.4746 of 2017

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 04.07.2023

CORAM :

**THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN**

C.R.P.No.4746 of 2017  
and C.M.P.No.22332 of 2017

K.G.Chandrasekaran

.. Petitioner

**Versus**

1. J.Dhanapal (Died)
2. J.Ravichandran
3. Latha
4. Shankar
5. Kamalaveni
6. Dhanapal
7. Ramesh
8. Rajesh
9. Aananthi
10. Saroja
11. A.Janaki
12. D.Kayethri
13. Minor D.Sakthi Mahendran

(Minor rep. by mother, next friend and  
natural guardian A.Janaki)

.. Respondents

RR-11 to 13 brought on record as LRs of the deceased R1  
viz Dhanapal *vide* Court order, dated 08.03.2021 made in  
C.M.P.No.4644 of 2021 in C.R.P.No.4746 of 2017

**Prayer :** Civil Revision Petition filed under Section 115 of the Civil  
Procedure Code to set aside the fair order dated 03.10.2017 in I.A.No.299 of



C.R.P.No.4746 of 2017

2014 in A.S.No.126 of 2008 on the file of Principal District Court, Erode and allow the Civil Revision Petition.

For Petitioners : Mr.S.Kaithamalai Kumaran

For Respondents : Mr.N.Manokaran, for RR-2 and 12

: R1 - Died

: RR-3 to 10 - Given up

: No Appearance for R11

: R13 (Minor represented by R11)

### **ORDER**

Three applications were taken out to condone the delay in representation. The three applications were I.A.No.299 of 2014, I.A.No.300 of 2014 and I.A.No.301 of 2014. All the applications wanted the Court to condone the delay of 1512, 217 and 240 days respectively in representation.

2. The appeals in A.S.Nos.126 and 127 of 2008 were dismissed for default on 16.03.2009. The appeals arise out of suits namely, O.S.No.602 and 497 of 1993. The suits were dismissed on 23.07.2007. O.S.No.602 of 1993 was a suit for bare injunction not to alienate the property and O.S.No.497 of 1993 was filed for the relief of specific performance on agreement of sale, dated 30.11.1990.



C.R.P.No.4746 of 2017

WEB COPY

3. On the dismissal of the suit, the party engaged a Lawyer and filed appeals before the learned Principal District Judge at Erode. The said appeals, as already narrated, were dismissed for default and within a period of 30 days, granted under the Limitation Act, 1963, the applications were taken out to restore the appeals under Order XLI R 19 of the Code of Civil Procedure. The three applications in I.A.Nos.229 to 301 of 2019 arise out of these applications filed to restore the appeals.

4. The usual reason that is given by every Counsel was also given in this case namely, the bundle got misplaced and therefore, the applications could not be represented in time. However, what is surprising in this case is that the affidavit that was filed, seems to be a printed format, in which, blanks alone have been filled up. Fortunately, for the respondents, it is the Advocate himself who has sworn to the affidavit. If a Clerk had sworn to the affidavit, perhaps, the Court would have taken a different view. The learned District Judge, Erode after analysing the entire case in particular, following the view in the judgment of this Court in ***Bhuvaneswari Vs. R.Elumalai***<sup>1</sup>, had condoned the delay on imposing heavy costs. She had

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<sup>1</sup> (2002) 3 CTC 22



C.R.P.No.4746 of 2017

WEB COPY

directed the payment of Rs.15,000/- for condonation of delay in I.A.Nos.299, 300 and 301 of 2014.

5. Mr.S.Kaithamalai Kumaran, learned Counsel appearing for the Civil Revision Petitioner, would point out the lackadaisical attitude of the party in filing of affidavit which is bereft of any detail. He would state that unless and until cause, which are equal to "sufficient cause", had been shown by the party, the delay ought not to have been condoned. To that effect, he would rely upon the judgment of the Supreme Court in ***H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and Anr.***<sup>2</sup>. In the said case, the Supreme Court was pleased to consider an application, which had been filed under Order XLIX R 3-A of the Code of Civil Procedure, along with an application filed for condonation of delay in refiling (representation). The Supreme Court had held that where there is gross negligence and lack of bona fides on part of the appellant, then the delay should not be condoned. Citing this as a precedent, Mr.S.Kaithamalai Kumaran, learned Counsel would vehemently contend that in this case, there is absolutely no reason that has been given and therefore, the delay ought not to be condoned.

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<sup>2</sup> (2015) 1 SCC 680



C.R.P.No.4746 of 2017

WEB COPY

6. Per *contra*, Mr.N.Manokaran, learned Counsel for the respondents, would submit that the details have been given in the affidavit. The party had engaged a Lawyer and it was the mistake of the Lawyer that the papers have gone missing. He would state that at best, the party can rely upon the Lawyer to prosecute his case in a proper manner and for the mistake of the Lawyer, the client should not be penalised. He would also submit that taking into consideration the surrounding circumstances, the learned Judge has condoned the delay on payment of the costs of Rs.15,000/- which itself is a heavy punishment on the party.

7. He would also rely upon the judgment of the Supreme Court in ***Rafiq and Anr. Vs. Munshilal and Anr.***<sup>3</sup> to state that a mistake of the Lawyer must not be fastened on the client. He also drew my attention to the judgment of this Court in ***Bhuvaneswari Vs. R.Elumalai***'s case (cited *supra*), whereunder, this Court had held that the condonation of delay in representation (refiling) is, at best, an administrative order and is not a judicial order. He would also contend that since the Trial Court had exercised discretion in condoning the delay, the High Court must not

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<sup>3</sup> AIR 1981 SC 1400 : (1981) 2 SCC 788



C.R.P.No.4746 of 2017

WEB COPY

interfere with the same under Article 227 of the Constitution of India. He has also submitted that if this Court comes to a conclusion that the condonation of delay need not be interfered with, he will co-operate for disposal of the appeals within the time limit fixed by this Court.

8. I have carefully considered the arguments made on either side. I am afraid that I am not able to agree with Mr.S.Kaithamalai Kumaran, learned Counsel for the petitioner, for the simple reason that this Court cannot interfere with an exercise of discretion unless and until the same is capricious or arbitrary. This has been laid down by the Supreme Court in *N.Balakrishnan Vs. M.Krishnamurthy*<sup>4</sup>. This proposition has been laid for, even a situation which is higher than a case of condonation of delay in representation i.e., in the case of condonation of delay in filing under Section 5 of the Limitation Act, 1963. When such high bar has been placed with respect to exercise of jurisdiction under Article 227 of the Constitution of India, I am constrained to not to interfere with the order of the Court.

9. Apart from that, for more than five decades, the consistent view of this Court has been that condonation of delay in representation is a matter

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<sup>4</sup> (1998) 7 SCC 123



C.R.P.No.4746 of 2017

WEB COPY

between the Court and the party and the defendant does not have a say in the same. This principle is laid down by this Court in its judgment in *Y.Cusbar Vs. K.Subbarayan*<sup>5</sup>. In fact, a learned Single Judge of this Court in *Bhuvaneswari Vs. R.Elumalai*'s case (cited *supra*) has held that condonation of delay in representation is an administrative delay and cannot be treated on the same plane as Section 5 of the Limitation Act, 1963 which gives a right to the opposing party to oppose and get the application dismissed. Being an administrative delay, the delay in representation can be condoned by the Court even without notice to the other side. However, due to caution and prudence, normally, Courts issue notice to the other side where the delay in representation is very large as in the present case.

10. Be that as it may, since the learned Trial Judge has exercised her discretion and condoned the delay, I am not inclined to interfere with the same. However, the costs of Rs.15,000/- seems to be very less compared to the number of days in delay that has been incurred. Therefore, I increase the costs by a further sum of Rs.15,000/-. The said costs must be paid by the respondents to the petitioner within a period of four weeks from today. The matter, being of the year 1993, the learned Principal District Judge, Erode,

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<sup>5</sup> 1993 TLNJ 375 (DB)



C.R.P.No.4746 of 2017

WEB COPY

shall give priority to the case and take it up for hearing and dispose it off on or before 31.10.2023 and submit a report to this Court.

11. Mr.N.Manokaran, learned Counsel for the respondents, states that the amount, directed to be deposited by the lower Appellate Court, has already been deposited on 23.10.2017 and the application, under Order XLI R 19 of the Code of Civil Procedure, has been numbered as I.A.No.268 of 2017. Since the application under Order XLI R 19 of the Code of Civil Procedure has been filed without any delay, the learned District Judge, Erode is directed to allow the application and restore the appeal on to its file and dispose off the appeal as expeditiously as possible within the time limit as fixed by this Court.

12. With the above modification, the Civil Revision Petition stands partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

04.07.2023

Index : yes/no  
Speaking order/Non-speaking order



*C.R.P.No.4746 of 2017*

Neutral Citation : yes/no  
grs

To

The Principal District Court,  
Erode.



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*C.R.P.No.4746 of 2017*

**V.LAKSHMINARAYANAN, J.**

grs

C.R.P.No.4746 of 2017  
and C.M.P.No.22332 of 2017

04.07.2023