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OSA (CAD) No.165 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P. DHANABAL

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Tribal Co-operative Marketing Development
Federation of India Limited,
Represented by its Manager Director,
3, Siri Institutional Area,
NCUI Building Second Floor,
KhelGaon Marg,
New Delhi-110016,
Now at NSIC Business Park,
NSIC Estate, Okhla Phase -111,
Okhla Industrial Area,
New Delhi-110020.

... Appellant

versus

M/s.South India Shipping & Exports Co.,
Represented by its Managing Partner,
Mr.Saleem Basha,
Taj Towers, No.22A, Second Line Beach,
Chennai-600 001.

... Respondent



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PRAYER: Original Side Appeal filed to set aside the fair and decreetal order dated 06.11.2023 passed in Application No.4963 of 2023 in Application Sr No.38925 of 2023 against A No.3877 of 2021 in EP No.2965 of 2010.

For the Appellant :Mr.K.Lavan
For the Respondents :Mr.Edwin Prabakar

JUDGMENT

(Judgment of the Court was delivered by *D.KRISHNAKUMAR, J.*)

With the consent of both parties, this appeal is taken up for final disposal at the admission stage itself.

2. The appeal has been filed challenging the order of the learned Single Judge in A.No.4963 of 2023 dated 06.11.2023, condoning the delay of 262 days in filing the application to set aside the order dated 22.06.2022 in Appl No.3877/2021 in E.P.No.2965/2010.

3. Learned counsel for the appellant submits that the reason stated by the respondent in the affidavit for condoning such inordinate delay was that



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the respondent was bedridden and therefore he could not meet his counsel to give instructions to file the above appeal. However, the appellant has not submitted any documents to substantiate the said reasons. Therefore, as there is no satisfactory explanation given by the respondent for condoning the inordinate delay in filing the appeal, the same cannot be accepted. The Court below has failed to consider the fact that no convincing reasons were assigned, which caused the inordinate delay of 262 days in preferring the appeal and in such circumstances, the impugned order of the learned Single Judge is liable to be set aside.

4. Learned counsel for the respondent submits that the respondent has given elaborate reasons in the affidavit which led to the delay in filing the appeal. The learned Master has passed the order on 22.06.2022, dismissing the application filed by the appellant herein and thereafter the respondent had applied for certified copy by filing application on 23.06.2022. Since there was some delay in remitting the stamp fee, an application was filed to condone the delay which was later allowed. After the application was allowed, the stamp fee was called for on 15.02.2023 and the respondent has



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also paid the stamp fee on 16.02.2023. It is thereafter, the certified copy was made ready on 20.02.2023. Learned counsel further submits that though the respondent ought to have filed the appeal within 8 days from 20.02.2023, in terms of Order 14 Rule 12 of Original Side Rules, the respondent has filed the appeal on 20.03.2023, with a delay of 22 days from the date when the certified copy was made ready and for the said delay of 22 days, the respondent has stated that he was ill and could not be able to file the appeal. Learned counsel further submits that as per sub paragraph 2 to Rule 12 to Order 14 of Madras High Court Original Side Rules, the respondent is not required to file a copy of the order or decision appealed against. However, since the respondent was under the bona fide belief that appeal was to be filed along with the certified copy of the order of the Learned Master dated 22.06.2022, he filed the appeal on 20.03.2023, with a delay of 22 days, after excluding the period of 8 days granted under Order 14 Rule 12. Therefore, in view of the aforesaid bona fide reasons, the learned Single Judge has condoned the delay. Therefore, he seeks for dismissal of the appeal.



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5. In view of the above, we accept the contention of the respondent that certified copy has been applied by the respondent on 23.06.2022. Subsequently, as there was delay in submission of stamp fee, the same was condoned and thereafter the certified copy was made ready on 20.02.2023 and the respondent has filed the appeal on 20.03.2023, with a delay of 22 days from the date of certificate copy was made ready and for the said delay of 22 days, excluding the period of 8 days granted under O.S Rules, the respondent has stated that he was ill and could not be able to file appeal. Therefore, the order of the learned Single Judge does not warrant any interference. Consequently, the appeal is liable to be dismissed in the light of the decision of the Hon'ble Supreme Court in the case of ***Dohil Constructions Company Priv vs Ma Exports Limited and another (2015) 1 SCC 680***. The relevant portion of the order is extracted hereunder:

22. We may also usefully refer to the recent decision of this Court in Esha Bhattacharjee vs Mg.Commit. of Raghunathpur Nafar Academy and Others where several principles were culled out to be kept in mind while dealing with such applications for condonation of delay. Principles



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Nos.(iv), (v), (viii), (ix) and (x) of paragraph 21 can be usefully referred to which reads as under:

(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.

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

(viii) There is a distinction between inordinate delay and a delay of short duration of 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.

(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 CIVIL APPEAL Nos. of 2014 21 of 25 (@SLP(C) Nos.10811-10812 of 2014 & connected matters weigh the scale of



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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.

(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.."

23. When we apply those principles to the case on hand, it has to be stated that the failure of the respondents in not showing due diligence in filing of the appeals and the enormous time taken in the refiling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bonafides as displayed on the part of the respondents. Further, when the respondents have not come forward with proper details as regards the date when the papers were returned for refiling, the non-furnishing of satisfactory reasons for not refiling of papers in time and the failure to pay the Court fee at the time of the filing of papers on 06.09.2007, the reasons which prevented the respondents from



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not paying the Court fee along with the appeal papers and the failure to furnish the details as to who was their counsel who was previously entrusted with the filing of the appeals cumulatively considered, disclose that there was total lack of bonafides in its approach. It also requires to be stated that in the case on hand, not refiling the appeal papers within the time CIVIL APPEAL Nos. of 2014 22 & 25 (@ SLPP (C) Nos.10811-10812 of 2014 & connected matters prescribed and by allowing the delay to the extent of nearly 1727 days, definitely calls for a stringent scrutiny and cannot be accepted as having been explained without proper reasons. As has been laid down by this Court, Courts are required to weigh the scale of balance of justice in respect of both parties and the same principle cannot be given a go-by under the guise of liberal approach even if it pertains to refiling. The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the respondents not



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deserving any indulgence by the court in the matter of condonation of delay. The respondents had filed the suit for specific performance and when the trial court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered."

6. At this juncture, learned counsel for the appellant submits that considering the said huge inordinate delay in filing the appeal and considering the fact that the execution petition is also pending before the executing court, and further the appellant has also placed in hardship due to such inordinate delay in filing the appeal, he seeks heavy costs to be imposed in case of dismissing the appeal.



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7. Considering the said contention made by the learned counsel for the appellant, which is very reasonable one, we also feel that the cost of Rs.10,000/- imposed on the respondent to condone the delay by the learned Single Judge is a meager one and therefore the cost imposed is enhanced to Rs.25,000/- payable to the appellant. The respondent shall pay the said cost of Rs.25,000/- to the appellant, through his counsel, within a period of two weeks from the date of receipt of a copy of this order.

8. With the above direction, the appeal is dismissed. There will no order as to costs. Consequently, CMP No.28352 of 2023 is closed.

[D.K.K., J.] [P.D.B., J.]
14.12.2023

Index : Yes/No
Neutral Citation : Yes/No
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