



C.R.P(MD)No.1334 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.03.2023

CORAM

THE HON'BLE MRS.JUSTICE L.VICTORIA GOWRI

C.R.P(MD)No.1334 of 2013

Anbalagan

... Petitioner / 2nd Petitioner
2nd Appellant

Vs.

1.The District Collector,
Theni District, Theni.

2.The Tahsildar,
Thasildar Office,
Andipatti,
Theni District.

3.Marivadan

... Respondents /
Respondents 1, 2, 4/Respondents 1, 2, 4

PRAYER : Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order dated 22.03.2013 passed in I.A.No.453 of 2011 in A.S.No.53 of 1998 on the file of the Additional District and Sessions Judge, Theni at Periyakulam.

For Petitioner : Mr.P.Vinoth



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For R-1 & R-2 : Mr.P.T.Thiraviyam
Government Advocate
For R-3 : Mr.R.Krishnan

ORDER

This petition has been preferred as against the order passed by the learned Additional District and Sessions Judge's Court, Theni, Periyakulam in I.A.No.453 of 2011 in A.S.No.53 of 1998. The petitioner in this Civil Revision Petition is the legal heir / son of the plaintiff in O.S.No.28 of 1997 on the file of the learned District Munsif Court cum Judicial Magistrate, Andipatti and the appellant in A.S.No.53 of 1998 on the file of the learned Additional District and Sessions Court, Theni. The original suit in O.S.No.28 of 1997 was one for declaration and permanent injunction, which was dismissed on merits after proper trial. As against the same, the plaintiff one Paapu Thevar preferred an appeal before the learned Additional District and Sessions Judge's Court, Theni. The same was dismissed for default on 16.08.2005.

2. For the sake of convenience, the parties herein are referred as arrayed in I.A.No.453 of 2011 in A.S.No.53 of 1998 on the file of

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Additional District and Sessions Judge's Court, Theni, Periyakulam.

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After the Appeal was dismissed for default, the Appellant, that is, the father of the petitioner herein died on 05.10.2006. After his death, after a period of 1684 days, the petitioner herein preferred I.A.No.453 of 2011 in A.S.No.53 of 1998 seeking to condone the delay of 1684 days in setting aside the abatement caused due to the death of his father on 05.10.2006. In his affidavit, he stated that the delay of 1684 days was neither wanton nor wilful but was caused due to the factum that he was residing away from his father in Thiruppur for so many years. It was his father / plaintiff who preferred A.S.No.53 of 1998 during his life time and the same was dismissed for default on 16.08.2005. After a period of almost one year and two months, on 05.10.2006, the said Paapu Thevar, that is, the petitioner's father passed away. After a period of 1684 days from the date of dismissal of the A.S, the son of Paapu Thevar, one Mr.Anbalagan filed I.A.No.453 of 2011 seeking to condone the delay of 1684 days in setting aside the abatement caused due to the death of his father and permit him to continue with the Appeal suit. But the same was dismissed by the learned Trial Court.



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3. Counter was filed on behalf of the fourth respondent in the I.A. and in that I.A, the first and second respondents were set *ex parte*.

4. Heard the learned Counsels for the petitioner and respondents and carefully perused the materials available on record.

5. The learned Counsel for the petitioner vehemently argued that the delay was neither wanton nor wilful and the delay was caused due to the factum of his prolonged absence in Andipatti, where his father was residing. The petitioner herein is residing in Thiruppur for the past several years and he has substantiated the same by marking five documents as Exhibits P.1 to P.5, which would prove the fact that he was residing in Thiruppur and he was not with his father. Only because of this, it was not brought to his knowledge that such an appeal suit was pending and he is in possession of the plaint schedule property comprising an area of 4 acres 31 cents comprised in S.No.1297 G.Usilampatti Mottanoothu Village. Only when his possession was



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disturbed by the third respondent, he came to know of the judgment and decree passed in the original suit and the untimely dismissal of A.S.No. 53 of 1998 and on coming to know of the same, immediately he has preferred this I.A.

6. The learned Government Advocate appearing for the first and second respondents would submit that the delay is not properly explained and this particular I.A was filed after the death of his father. His father was alive even after 12 months from the date of dismissal of the suit and had that been necessary to restore the appeal his father would have diligently done that. Hence, in view of the fact that the petitioner has not explained the reason for the delay on a day to day basis, this Civil Revision Petition is not maintainable.

7. The learned Counsel appearing for the third respondent vehemently submitted that he is in possession of the subject property and he also sail with the same arguments as substantiated by the learned Government Advocate. He relied on the Hon'ble Division Bench



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judgment of this Court reported in *MANU/TN/2141/2022 (M/s.Ess Gee International, Represented by its Manager, Mr.S.Prasad Vs. The State of Tamil Nadu)* dated 10.03.2022 and the relevant portion of which is extracted as follows:

10. In Esha Bhattacharjee v. Raghunathpur Nafar Academy [MANU/SC/0932/2013 : 2013 (12) SCC 649], the Hon'ble Supreme Court has culled out the principles applicable to an application for condonation of delay and the same are reproduced hereunder:

"i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

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 bona fides imputable to a party seeking



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condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

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.

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.

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.

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.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity



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representing a collective cause should be given some acceptable latitude."

13. Keeping in mind the principles of law as extracted supra and applying the same to the facts of this case, we are of the opinion that in granting the indulgence and condoning the delay, it must be proved beyond the shadow of doubt that the petitioner/appellant was diligent and was not guilty of negligence, whatsoever. Whereas, the petitioner/appellant herein has not shown any good and sufficient reason to condone the huge delay of 7 years in preferring the appeal. The delay cannot be condoned simply because the petitioner/appellant's case is hard and calls for sympathy or merely out of benevolence to the party seeking relief. Therefore, we are not inclined to condone the delay in filing the writ appeal."

8. However, the learned Counsel for the petitioner relied on a judgment reported in **2017 (3) CTC page 445 (S.Nirmaladevi Vs. T.R.Rangasamy)**, dated 06.03.2017, where a case of delay with 1202 days was condoned. Paragraph Nos.11 and 12 is extracted as follows:

"11. No doubt, the delay of 1,202 days is huge, but in



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the matter of condoning the delay, there is shift in the approach of the Court. It may be a shifting jurisprudence. The attitude of the Judges differ in tune with the change in time. It must have change. If it is not, it will bar the growth of law. That is how there is march of law.

12. Earlier, the attitude of the Courts in delay condonation petitions is to view it with tinged glasses. Now it has become obsolete. Now the attitude of the Court is that really there is a case for adjudication, the Court consider it a sufficient cause or reason to give an opportunity and condone the delay. Otherwise, they throw away such petitions. Thus, now the test is not the length of delay, but it is substance of the matter. However, using this benevolent attitude of the Court, a Court bird or a seasoned litigant shall not be allowed to enter the Court to practice some legal acrobatic at the cost of the public time and public money. In such view of the matter, even in these kind of petitions, the Court can gauge the bona fides of the petitioner. These are all distilled from the current trend of the case-laws on the point.”

9. He also relied on another judgment reported in ***AIR 1987 SC 1353 (Collector, Land Acquisition, Anantnag and Another Vs. Mst.Katiji and Others)*** and the relevant paragraph Nos.2, 3 and 4, which



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are extracted as follows:

“2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. “Every day's delay must be explained” does not mean that a pedantic approach should be made. Why not every hour's delay. Every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.”

10. Hence, without viewing the issue before me with tinged glasses in dealing with a matter of condoning delay, I feel that there is a real case for adjudication and hence this Court is of the considered view that the petitioner should be given an opportunity to condone the delay. The petitioner also submitted that he is inclined to pay cost whatever may be imposed by this Court. Another interesting fact to be considered

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in this case is that while the learned Counsel for the third respondent claims that he is in possession of the subject property on this date, the judgment passed by the learned trial Court in O.S.No.28 of 1997 in paragraph No.19, gives a different picture. Though the learned Trial Court dismissed the relief for declaration, the said Court has categorically stated that the plaintiff, that is, the petitioner herein was absolutely in possession of the plaint schedule property, as follows:

“வாதி தரப்பு சான்றாவணமான 3 வரிசை கிஸ்தி ரசீதுகள் இருந்தும், வாதி தான் வழக்கிடை சொத்தில் விவசாயம் செய்து வருகிறார் என்று 3ம் எதிர்வாதி சாட்சியம் அளித்திருப்பதில் இருந்தும் வழக்கிடை சொத்தை வாதிதான் அனுபவித்து வருகிறார் என்பதில் எந்த ஐயப்பாடும் இல்லை.”

11. In view of that, this Court is of the considered view that though the petitioner herein did not produce any document which would prove that his father was bed ridden and any document regarding his state of health, he relied on the age of his father in the plaint where it could be understood that he was 80 years even at the time of filing the original suit. At the time of dismissal of the appeal suit, he was 89 years old and his infirmness and old age would have resulted in his non-prosecution of the appeal suit and that has to be taken into consideration even if he did



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not produce any medical records before the Appellate Court. Understanding the plight of the petitioner, this Court is of the view that, it is not unusual for a son to be away from his father for employment purposes in far away place. In such instances, it may not be new in any Indian family, where the father might not have informed about the pending suits to his son and diligently the petitioner submits that he had come before the Court immediately on his knowledge when the third respondent disturbed his possession.

12. This Court relies on the order passed by the Hon'ble Supreme Court in ***Civil Appeal No.843 of 1984 dated 28.08.1984 in Sital Prasad Saxena (Dead) by Lrs. Vs. Union of India (UOI) and Others***, the relevant portion of which is extracted as follows:

“6.And in a traditional rural family the father may not have informed his son about the litigation in which he was involved and was a party. Let it be recalled what has been said umpteen times that rules of procedure are designed to advance justice and should be so interpreted and not to make them penal statutes for punishing erring parties.



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7. The deceased appellant has left behind him his sons. It is a moot point whether the father acquainted his son/sons about his litigation for seeking relief in respect of his service. If this is the nature of litigation, we are not inclined to draw the inference drawn by the trial court that son/sons knew about the pendency of appeal.

8. Having heard learned counsel on either side we are satisfied that both the trial court as well as the High Court were in error in not condoning the delay in seeking substitution of heirs and legal representatives of the deceased/appellant in time. Cause for delay as urged appears to us to be sufficient which prevented them from moving the petition for substitution. We are satisfied that sufficient cause was made for condoning the delay.....”

13. Hence, this Court is of the considered view that the order of the learned Additional District and Sessions Judge's Court at Theni refusing to condone the delay of 1684 days in setting aside the abatement, dated 22.03.2013 has to be set aside, on payment of a cost of Rs.20,000/- to the third respondent / fourth respondent by the petitioner /



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Appellant. Hence, the order passed by the learned Additional District and Sessions Judge's Court, Theni is set aside thereby allowing I.A.No.453 of 2011 in A.S.No.53 of 1998 and consequently this Civil Revision Petition stands allowed with a cost of Rs.20,000/- (Rupees Twenty Thousand only) to be paid to the third respondent / fourth respondent by the petitioner / Appellant on or before four (4) weeks from the date of receipt of a copy of this order. For reporting compliance post this case on 13.04.2023.

24.03.2023

NCC : Yes
Index : Yes
Internet : Yes
BTR

To

- 1.The Additional District and Sessions Judge,
Theni, Periyakulam.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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L.VICTORIA GOWRI, J.

BTR

Order made in
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