



C.M.P(MD)No.6316 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
( Civil Appellate Jurisdiction )

Friday, the Twenty Second day of September Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

C.M.P(MD)No.6316 of 2022

in

C.M.A(MD)SR.No.28753 of 2022

THE MANAGER,  
NEW INDIA ASSURANCE COMPANY LIMITED,  
NO. 34, ALAGAR KOIL ROAD,  
TALLAKULAM,  
MADURAI - 625 002.

... PETITIONER/ APPELLANT

Vs

1 E. MURUGESAN

2 S.M. SYED MOHAMMED

... RESPONDENTS/RESPONDENTS

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to condone the delay of 1008 days in filing the above appeal and thus render justice.

PRAYER IN C.M.A(MD)SR.No.28753 of 2022:

To set aside the Judgment and Decree in M.C.O.P No.99 of 2016 dated 25.07.2017 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, Theni at Periyakulam and allow the appeal with costs.



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**WISER P** ORDER: This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.J.S.MURALI, Advocate for the petitioner and of MR.D.SELVANAYAGAM, Advocate on behalf of the Respondent No.1, the court made the following order:-

Reserved on : 25.08.2023

Pronounced on : 22.09.2023

This Civil Miscellaneous Petition is filed to condone the delay of 1008 days in filing the Civil Miscellaneous Appeal against the award dated 25.07.2017 made in M.C.O.P.No.99 of 2016 on the file of the Motor Accidents Claims Tribunal/ Additional District and Sessions Court, Theni at Periyakulam.

2. The petitioner has stated reasons in the accompanying affidavit filed along with the Civil Miscellaneous Petition are follows:

The second respondent, who is owner of the vehicle TATA Indica car bearing registration number TN-57-S-4888, obtained insurance policy from the petitioner for the period from 27.07.2015 to 26.07.2016. But, in the claim petition in M.C.O.P.No.99 of 2016 filed before the Tribunal stating that the vehicle met with accident took place on 03.05.2015. There is no privity of contract and valid insurance policy was subsisting at the time of accident. Due to shifting of office from Tallakulam branch to TP Hub, the Court notice issued by the Tribunal was misplaced and mingled with



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other files. Therefore, the petitioner company could not appear before the Tribunal and was set ex-parte by the Tribunal and ex-parte award was passed by the Tribunal on 25.07.2017. The petitioner filed a petition in I.A.No.231 of 2021 before the Tribunal to condone the delay of 1446 days in filing set aside petition and the same was dismissed on 07.04.2022. The petitioner company being custodian of public fund, the petitioner may be given an opportunity to be heard. Hence, the petitioner filed the Civil Miscellaneous Appeal with a delay of 1008 days. Therefore, the delay days may be condoned.

3. The first respondent filed counter affidavit and objected the petition and stated as follows:

The first respondent filed a claim petition in M.C.O.P.No.99 of 2016. The petitioner was served Court notice, but the petitioner did not appear. Hence, ex-parte award was passed on 25.07.2017. The first respondent filed the Execution Petition in E.P.No.29 of 2019 and thereafter, the petitioner filed petition in I.A.No.231 of 2021 to condone the delay of 1446 days in filing the petition to set aside ex-parte order dated 25.07.2017 and the Tribunal dismissed the same on 07.04.2022. Now, the petitioner has filed the Civil Miscellaneous Appeal against the ex-parte award with alleged delay of 1008 days. The reason stated by the petitioner that the Court notice was



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misplaced is not sufficient as per the Apex Court judgment reported in Basawaraj and other /vs/ Special Land Acquisition officer. Negligence, inaction and lack of bona fide cannot be imputed to the party. The first respondent obtained award and even after lapse of 4 years he could not get the compensation amount. The reason stated by the petitioner is not sufficient. If the delay is condoned, the first respondent will be put to irreparable loss. Therefore, the petition may be dismissed.

4. The learned counsel for the petitioner has submitted that the first respondent filed the claim petition in M.C.O.P.No.99 of 2016 on the file of the Motor Accidents Claim Tribunal/Additional District and Sessions Court, Theni at Periyakulam claiming compensation for the injuries sustained by him in a motor accident took place on 03.05.2015 stating that the accident was taken place due to rash and negligent driving of the driver of the 2<sup>nd</sup> respondent's vehicle. In fact the 2<sup>nd</sup> respondent's vehicle was not insured with the petitioner during the relevant period. The notice in M.C.O.P.No.99 of 2016 was misplaced in the petitioner's office as the petitioner company shifted to other place. The first respondent played behind back the petitioner Insurance Company and obtained an ex-parte award in his favour. On coming to know the fact, the petitioner immediately filed the petition in I.A.No.231 of 2021 to condone the delay in filing the petition to set aside ex-parte award. Though

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the said petition was dismissed by the Tribunal, there is no bar to prefer appeal against the ex-parte award as the petitioner has merits in its case. There is delay of 1008 days in preferring the appeal against the award. The petitioner is a public company and is the custodian of public money. The petitioner has fair chance in the appeal. Therefore, the petitioner may be given an opportunity to substantiate his case. In support his argument, the learned counsel for the petitioner has relied on the following citations.

1. 2019 (5) CTC 351 (Bhivchandra Shankar More /v/ Balu Gangaram More), wherein it is held in paragraph No.10 as follows:

“10.A conjoint reading of Order 9, Rule 13, Code of Civil Procedure and Section 96(2) of Code of Civil Procedure indicates that the defendant, who suffered an ex-parte decree has two remedies; (i) either to file an application under Order 9, Rule 13 Code of Civil Procedure to set aside the ex-parte decree to satisfy the Court that summons were not duly served or those served, he was prevented by “sufficient cause” from appearing in the Court when the suit was called for hearing; (ii) to file a regular appeal from the original decree to the First Appellate Court and challenge the ex-parte decree on merits.”



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2. Judgment dated 07.02.2023 passed by this Court in C.R.P.No.550 of 2021,  
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wherein it is held in paragraph No.7 as follows:

“7...The Court below ought to have seen that the very document is fraudulent and the documentary evidence shows that the agreement has been put up as back dated on 15.06.2002, whereas the stamp paper has been purchased only on 04.10.2022 after a lapse of 4 months of the alleged agreement.....The Court below ought to have allowed the petition for condonation of delay under Order 9 Rule13 of CPC, to set aside the ex-parte decree on the only ground that the plaintiff has not come forward with clean hands. Based on the document Ex.A.1, the sale agreement dated 15.06.2022 was erroneously executed by the parties.”

3. Judgment dated 28.04.2023 passed by this Court in C.R.P(MD)No.1471 of 2022, wherein it is held in paragraph No.15 as follows:

“15. In my view, the petitioner cannot be blamed for not approaching the Court earlier for setting aside the ex-parte decree granting divorce, as the address for communication given in HMOP No.70 of 2005 was not the correct address of the petitioner. The paper publication that was effected by the respondent(since deceased) was clearly intended



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to ensure the petitioner gets no notice in the above said proceedings.”

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5. Per contra, the learned counsel for the first respondent has contended that the first respondent filed the claim petition in M.C.O.P.No.99 of 2016 on the file of the Motor Accidents Claim Tribunal/Additional District and Sessions Court, Theni at Periyakulam claiming compensation for the injuries sustained by him in a motor accident. Notice was duly served on the petitioner. The Tribunal after considering the evidences passed an award on 25.07.2017. Then the first respondent filed the execution proceedings for realizing the compensation amount. At this stage the petitioner has filed petition to condone the delay in filing petition to set aside ex-parte award and the same was dismissed by the Tribunal. Now, the petitioner has approached this Court by filing appeal with delay condone petition to drag the proceedings to prevent the first respondent from obtaining fruits of the award. The petitioner has not stated valid reason to condone the delay. The reason stated by the petitioner that the Court notice was misplaced with some other records as they shifted their office. There is no material to substantiate their version. So, the petition may be dismissed. In support of his case, the learned counsel for the first respondent has relied on the decision of the Hon'ble Supreme Court reported in (2021) 6 Supreme Court Cases 512 (Brahampal Alias Sammy and Anr /v/ National



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Insurance Company), wherein it is held in paragraph No.22 as follows:

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“22. Undoubtedly, the statute has granted the courts with discretionary powers to condone the delay, however, at the same time, it also places an obligation upon the party to justify that he was prevented from abiding by the same due to existence of sufficient cause. Although there exists no straitjacket formula for the courts to condone delay, but the courts must not only take into consideration the entire facts and circumstances of the case but also the conduct of the parties. The concept of reasonableness dictates that the courts even while taking a liberal approach must weigh in the rights and obligations of both the parties. When a right has accrued in favour of one party due to gross negligence and lackadaisical attitude of the other, this court shall refrain from exercising the aforesaid discretionary relief.”

6.Heard both sides and perused the records in this Civil Miscellaneous Petition.

7.It is clear that the first respondent as claimant filed M.C.O.P.No.99 of 2016 on

the file of the Motor Accidents Claim Tribunal/Additional District and Sessions

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Court, Theni at Periyakulam claiming compensation for the injuries sustained by him in a motor accident taken place on 03.05.2015. The petitioner has admitted that the served notice was misplaced, but stated that it was misplaced as the petitioner's office shifted from the existing place where the notice was served to some other place. The petitioner has now stated that the vehicle of the second respondent, which involved in the accident, was not insured with the petitioner insurance company at the time of accident. Admittedly, in the claim petition the Tribunal passed an ex-parte award on 25.07.2017. On perusal of claim petition and award of Tribunal, there is stated two dates of accident as 03.05.2016 and 03.05.2015. So, there is prima facie made out in favour of the petitioner. Though the petitioner earlier filed the petition to condone the delay in filing the petition to set aside the ex-parte award, that petition was dismissed. Now, the petitioner has filed the Civil Miscellaneous Appeal with delay petition. Considering the citations relied on the petitioner, this Court is of the opinion that there is no bar in filing appeal against the ex-parte award as there are two remedies available to the parties under Order 9 Rule 13 and section 96(2) of the Code of Civil Procedure.

8. The petitioner wants to question about the validity of the insurance policy of the vehicle involved at the time of accident. The respondent has not raised any



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strong objection in respect of validity of policy. It is settled by the Hon'ble Supreme Court in various decisions that in view of the importance of questions of law involved, the delay be condoned subject to the payment of cost. The petitioner says the petitioner Insurance Company is a public limited company and is custodian of public money and the same has to be dealt in proper perspective. Considering the above fact and circumstances, this Court is of the opinion that the petitioner has prima facie in raising question of law and thereby the petitioner has to be given an opportunity to be heard in the appeal and at the same the inconvenience caused to the first respondent has to be suitably compensated. Thus, the delay is to be condoned by imposing certain condition to meet out the inconvenience caused to the first respondent.

9. In the result, this Civil Miscellaneous Petition is allowed on condition that the petitioner shall pay a cost of Rs.10,000/- (Rupees Ten Thousand only) to the first respondent within a period of four weeks from the date of receipt of a copy of this order failing which this Civil Miscellaneous Petition stands dismissed automatically without any further reference to this Court.



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10. On such payment being made within the stipulated time, the Registry is directed to number the Civil Miscellaneous Appeal, if it is otherwise in order and list it for admission in the usual course.

sd/-  
22/09/2023

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/09/2023  
Sub-Assistant Registrar (C.S. )  
Madurai Bench of Madras High Court,  
Madurai - 625 023.

vsd

TO

THE MOTOR ACCIDENTS CLAIMS TRIBUNAL,  
ADDITIONAL DISTRICT AND SESSIONS COURT, THENI AT PERIYAKULAM

COPY TO

1. THE SUB ASSISTANT REGISTRAR(AE)  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

2 THE SECTION OFFICER,  
JUDICIAL SECTION  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.J.S.MURALI, Advocate ( SR-14112[I] dated 25/09/2023 )

ORDER IN  
C.M.P(MD)No.6316 of 2022  
in  
C.M.A(MD)SR.No.28753 of 2022  
Date :22/09/2023

RK/GB (26/09/2023) 11P / 5C

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