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C.R.P(MD)No.456 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 26.04.2023

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.R.P.(MD)No.456 of 2014

and

M.P.(MD)No.1 of 2014

Adaikalam

... Petitioner

Vs

Chola Pandiyan

... Respondent

PRAYER :-

This Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decreetal order passed in I.A.No.386 of 2012 in O.S.No. 34 of 2008 on the file of the District Munsif, Pattukkottai, dated 17.01.2014, by allowing this Civil Revision Petition.

For Appellant : Mr.S.M.A.Jinnah

For Respondent : No Appearance



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ORDER

Heard the learned counsel for the petitioner. Despite several chances given, the learned counsel for the respondent did not appear today(26.04.2023) and was also absent on the last hearing dates.

2. When the case came up for hearing on 31.03.2023, the matter was taken up for arguments and the learned counsel for the petitioner submitted his arguments.

3. This Civil Revision Petition is preferred as against the order passed in I.A.No.386 of 2012 in O.S.No.34 of 2008 on the file of the District Munsif, Pattukottai dated 17.01.2014. The said Interlocutory Application has been filed under Section 5 of the Limitation Act to condone the delay of 902 days in filing the application to set aside the exparte decree passed against the defendant in the suit dated 26.08.2008. The said interlocutory application was dismissed. Against which, the present Civil Revision Petition is filed.



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4. The learned counsel for the petitioner vehemently contended that the Trial Court dismissed the said I.A., on hypothetical ground despite having genuine reasons for the delay caused.

5. The Hon'ble Division Bench 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, 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.



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

6. In another case of this Court reported in **2017 (3) CTC page 445 (S.Nirmaladevi Vs. T.R.Rangasamy)**, dated **06.03.2017**, where a delay of 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 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



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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.”

7. Satisfied by the reasons submitted by the learned counsel for the petitioner, this Court is inclined to set aside the order passed by the learned Trial Court in I.A.No.386 of 2012 in O.S.No.34 of 2008 on the file of the District Munsif, Pattukottai dated 17.01.2014. The delay of 902 days is hereby condoned.

8. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition stands closed.

26.04.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
pnn / BTR

To

- 1.The District Munsif, Pattukkottai.
- 2.The Section Officer, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

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L.VICTORIA GOWRI, J.

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