



C.R.P.(MD)No.1509 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 12.07.2023

Delivered on : 01.08.2023

CORAM:

THE HONOURABLE **MR.JUSTICE C.KUMARAPPAN**

C.R.P.(MD)No.1509 of 2018

and

C.M.P.(MD)No.6556 of 2018

1.Ronickammal

2.C.Micheal George

3.T.Berlin

... Petitioners / Respondents 5 to 7/

Respondents 5 to 7

Vs.

1.S.Manokaran

... 1st Respondent/ Petitioner / Appellant

2.The District Collector,

Tirunelveli District,

Office at Collectorate,

Tirunelveli.

3.The Thasildhar

Radhapuram Taluk,

Office at Radhapuram.

4.The Branch Manager,

ICICI Bank, Vadakkankulam Post,

Radhapuram Taluk, Tirunelveli District.



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5.The Branch Manager,

State Bank of India,

Aralvoimozhi,

Thovalai Taluk,

Kanyakumari District.

... Respondents 2 to 5/ Respondents 1 to 4/

Respondents 1 to 4

Prayer: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order passed in I.A. No. 300 of 2016 in unregistered A.S., dated 27.02.2018, on the file of the Sub Court, Valliyoor.

For Petitioners : Mr.H.Arumugam

For Respondents : Mr.Palanivelayutham for R1

ORDER

The instant Civil Revision Petition has been filed against the order, made in I.A. No.300 of 2016 in unregistered A.S., dated 27.02.2018, on the file of the Sub Court, Valliyoor.

2. The revision petitioners herein are the respondents 5 to 7, the first respondent herein is the appellant and the respondents 2 to 5 herein are the respondents 1 to 4 before the first Appellate Court.



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3. The short facts which give rise to the instant Petition is that:-

3.1. The suit filed by the petitioner was dismissed on 13.12.2013.

Due to his illhealth, he was also bedridden. Hence, the appeal could not be filed in time and there was a delay of 1200 days.

3.2. The respondents filed a counter statement objecting to the grounds raised by the petitioner, and would submit that, though he pleaded that he was bedridden, in the interregnum period, he preferred a petition before the High Court, in CrI.O.P.(MD)No.9873 of 2016. Therefore, according to the respondents, the petitioner came up with a false affidavit and that the delay condonation application is vexatious one, hence, prayed to dismiss the application.

4. The learned trial Judge after considering either side, allowed the application. However, in his order, the learned trial Judge has disbelieved the reasons of the petitioner, but, on different reasons, allowed the application and has condoned the delay in filing the appeal.



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5. Aggrieved with the order of the learned trial Judge, the respondents 5 to 7 before the lower Court have come up with the revision petition.

6. The learned counsel for the revision petitioners would submit that, when the trial Judge has disbelieved the statement and also found that the reasons are not *bonafide*, the very order in allowing the application is perverse and prayed this Court to interfere with the order of the trial Judge.

7. However, the learned counsel for the first respondent would submit that, though the trial Judge has observed in his order, that the reason assigned in the affidavit is not *bonafide*, allowed the application based on some sufficient cause. Hence, prayed to dismiss this application.

8. I have given my anxious consideration to the either side submission.



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9. The learned counsel for the petitioners herein, to fortify his contention has invited the attention of this Court in respect of the finding of the trial Judge. It is obvious that the learned trial Judge explicitly, disbelieved the statement of the first respondent herein.

10. In this regard, the learned counsel for the petitioners would rely upon the judgment of the Hon'ble Supreme Court reported in **2010-4-MLJ-141(SC) (Oriental Aroma Chemical Industries Ltd V. Gujarat Industrial Development Corporation)** and would submit that, the Hon'ble Supreme Court has discouraged the condonation of delay for the period of 1067 days.

11. He also relied upon the another judgment of the Hon'ble Supreme Court reported in **2011-4-SCC-363 (Lanka Venkateswarlu (dead) V. State of Andhra Pradesh)**. Wherein, the Hon'ble Supreme Court held that, having found the averments of the affidavit are not *bonafide*, then allowing the application, is nothing but wrong exercise of jurisdiction by the High Court. The relevant paragraph reads as follows:-

“18. On the other hand, learned counsel for the respondents relied on the judgments of this Court in the case



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of N. Balakrishnan Vs. M.Krishnamurthy, Mithailal Dalsangar Singh & Ors. Vs. Annabai Devram Kini & Ors. and Sardar Amarjit Singh Kalra (dead) by LR's Vs. Pramod Gupta (dead) and submitted that the High Court in condoning the delay has merely advanced the cause of substantial justice.

19. We have considered the submissions made by the learned counsel. At the outset, it needs to be stated that generally speaking, the courts in this country, including this Court, adopt a liberal approach in considering the application for condonation of delay on the ground of sufficient cause under Section 5 of the Limitation Act. This principle is well settled and has been set out succinctly in the case of Collector, Land Acquisition, Anantnag & Ors. Vs. Katiji & Ors.

20. In the case of M. Balakrishnan (supra), this Court again reiterated the principle that

11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that the parties do not resort to dilatory tactics, but seek their remedy promptly.

21. In the case of Sardar Amarjit Singh Kalra (supra), this Court again emphasized that provisions contained in the Order 22 CPC were devised to ensure continuation and culmination in an effective adjudication and not to retard further progress of the proceedings. The



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provisions contained in the Order 22 are not to be construed as a rigid matter of principle, but must ever be viewed as a flexible tool of convenience in the administration of justice. It was further observed that

”26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing a substantial and real justice and not to foreclose even adjudication on merits of substantial rights of citizen under personal, property and other laws.”

22. In the case of Mithailal Dalsangar Singh and Ors. Vs. Annabai Devram Kini & Ors, (Supra), this Court again reiterated that

8. Inasmuch as abatement results in denial of hearing on the merits of the case, the provision of an abatement has to be construed strictly. On the other hand, the prayer of setting aside abatement and the dismissal consequent upon abatement had to be considered liberally.

It was further observed as follows:-

"The Courts have to adopt a justice oriented approach dictated by the uppermost consideration that ordinarily a litigant ought not to be denied an opportunity of having a lis determined on merits unless he has, by gross negligence, deliberate inaction or something akin to misconduct, disintitiled himself from seeking the indulgence



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of the court."

28. *We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as "liberal approach", "justice oriented approach", "substantial justice" can not be employed to jettison the substantial law of limitation. Especially, in cases where the Court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any lis between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms."*

12. The Hon'ble Supreme Court in the above judgment after referring various precedents has clearly laid down that the Court should be liberal in condoning the delay. However, it must be substantiated with reasons.

13. As rightly submitted by the learned counsel for the revision petitioners, the trial Judge though disbelieved the statement of the



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petitioner, in his order, he recorded the reason for allowing this application and he found that the high value of the suit property necessitated him to give an opportunity to the appellant so as to contest the matter on merits. Therefore, though the learned trial Judge, disbelieved the statement of the petitioners, he found sufficient cause from the available records. The reason he found was, high value of the suit property. Therefore, the arguments of the learned counsel for the petitioner that the trial Judge has simply allowed the application without any merits, cannot be countenanced.

14. At this juncture, this Court would like to rely upon the judgment of the Hon'ble Supreme Court reported in **1998-7-SCC-123 (N.Balakrishnan V. M.Krishnamurthy)**, the relevant paragraph reads as follows:-

“9. It is axiomatic that condonation of delay is a matter of discretion of the court Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the



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*explanation thereof is satisfactory. **Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first cut refuses to condone the delay. In such cases, the superior cut would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.***”

(Empasis supplied by this Court)

15. In the above judgment, the Hon'ble Supreme Court held that, when the trial Court has accepted the reasons and found the existence of sufficient cause, and after exercising discretion positively in condoning the delay, the Superior Court should not disturb such finding, that too in the revisional jurisdiction, unless the exercise of discretion was on untenable grounds or arbitrary or perverse.

16. The learned counsel for the first respondent has also relied upon the judgment rendered by the Hon'ble Single Judge of this Court held



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in C.R.P.(MD)No.2774 of 2010, (P.Arumugam V. S.P.Kuzhanthivel),

dated 08.03.2021, the relevant portion of the judgment reads as follows:-

“8. I have heard the rival submissions. The Honourable Supreme Court and this Court have been repeatedly pointing out that the Courts should adopt liberal approach in matters of delay, particularly the delay in filing the appeal. Unless the delay is shown to be mala fide and the person causing delay had obtained certain advantage because of the delay, the Courts in normal course should condone the delay. In University of Delhi Vs Union of India and others reported in 2019 SCC online 2634, had held that the Court should be liberal in condonation of delay. The lower Appellate Court had held that the petitioner has not satisfactorily explained the delay of 1093 days. The facts narrated above would show that a large part of the delay is due to the delay on the part of the Court in rectifying the errors that had crept in the decree. The appellate Court has not adverted to this vital aspect.

(Empasis supplied by this Court)

17. Even as per the above judgment, it is clear that the Court should adopt a liberal approach in matters of delay, particularly, while filing the appeal.



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18. In this case, the learned counsel for the revision petitioners would project the case that, while the trial Judge disbelieved the statement of the petitioner as not *bonafide*, and subsequently condoning the delay is nothing but arbitrary exercise of power. However, the arguments of the learned counsel for the petitioners are far from the factual position. It is true that the trial Court did not accept the reason of the petitioners, however, has recorded that the high value of the suit property would be the sufficient cause to condone the delay. The reasons recorded by the trial Court for allowing the delay condonation application appears to be rationale and within the contours of the sufficient cause. Such positive finding of the learned Court below, would definitely advance the substantial justice. It is also pertinent to mention here that as per the judgment of the Hon'ble Supreme Court in *N.Balakrishnan* case cited *supra*, when the trial Court has positively exercised its jurisdiction, this Court should be slow to reverse, unless it is perverse. But, this Court could not find any perversity in the order of the learned trial Judge.



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19. Thus, there is no scope for this Court to interfere with the well considered order. Hence, this Court is inclined to dismiss this petition.

20. In the result, the instant Civil Revision Petition stands **dismissed**. There shall be no order as to cost. Consequently, the connected Miscellaneous Petition is closed.

01.08.2023

NCC : Yes/No
Index : Yes/No
Ls

To

1.The Sub Court,
Valliyoor.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN.,J.

Ls

Pre-delivery Order made in
C.R.P(MD)No.1509 of 2018

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