



C.R.P.(NPD).Nos.1001 and 1002 of 2020
and C.R.P.(NPD).No.883 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD).Nos.1001 and 1002 of 2020
and C.R.P.(NPD).No.883 of 2017
and C.M.P.No.4305 of 2017

C.R.P.(NPD).No.1001 of 2020

Garage Owners Welfare Association
Besant Nagar
Rep by its Secretary

... Petitioner

VS

1.K.Shanmugam
2.C.Kameswari
3.S.Krishnamurthy
4.Rajeswari Arunachalam
5.I.Ramamurthy
6.V.K.Eswaran
7.H.V.Subramaniam
8.N.S.Narasimhan
9.The Chairman
Tamil Nadu Housing Board
Nandanam, Chennai – 600 035.



C.R.P.(NPD).Nos.1001 and 1002 of 2020
and C.R.P.(NPD).No.883 of 2017

10.The Executive Engineer/Administrative Officer
Tamil Nadu Housing Board Office
L.B. Road, Adyar
Chennai – 600 020.

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India, praying to set aside the dismissal order dated 12.03.2018 passed by the Principal Judge, City Civil Court, Chennai, in C.M.P.No.970 of 2017 in C.M.P.No.239 of 2014 in AS.Sr.No.9788 of 2014.

For Petitioner : Mr.S.Rajendrakumar

For R1 : Mr.T.A.Shagul Hameed

For R9 : Mr.C.Sathish
Government Advocate (CS)

For R10 : Mr.M.R.Sivakumar

For R2, R3, R5,
R7 and R8 : Vacated

C.R.P.(NPD).No.1002 of 2020

Garage Owners Welfare Association
Besant Nagar
Rep by its Secretary

... Petitioner

VS

1.K.Shanmugam

2.C.Kameswari



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3.S.Krishnamurthy

4.Rajeswari Arunachalam

5.I.Ramamurthy

6.V.K.Eswaran

7.H.V.Subramaniam

8.N.S.Narasimhan

9.The Chairman

Tamil Nadu Housing Board

Nandanam, Chennai – 600 035.

10.The Executive Engineer/Administrative Officer

Tamil Nadu Housing Board Office

L.B. Road, Adyar

Chennai – 600 020.

... Respondents

Prayer in C.R.P.(NPD).No.1002 of 2020: Civil Revision Petition is filed under Article 227 of Constitution of India, praying to set aside the dismissal order dated 20.07.2018 passed by the Principal Judge, City Civil Court, Chennai, in C.M.P.No.239 of 2014 in AS.Sr.No.9788 of 2014.

For Petitioner : Mr.S.Rajendrakumar

For R1 : Mr.T.A.Shagul Hameed

For R9 and R10 : Mr.C.Sathish
Government Advocate (CS)

For R4, R5 and R6: No Appearance

For R2, R3, R5,
R7 and R8 : Vacated



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1.K.SHANMUGAM

2.C.KAMESWARI

3.RAJESWARI ARUNACHALAM

... Petitioners

VS

1.GARAGE OWNER'S ASSOCIATION,
Besant Nagar,
Represented by its Secretary, A.Vidyasagar,
Son of Achutha Nayar,
No.M8/2, 28th Cross Street,
Besant Nagar,
Chennai 600 090.

2.S.KRISHNAMURTHY

T.K.RENGARAJAN (Deceased)

3.I.RAMAMURTHY

N.RAJAGOPALAN (Deceased)

4.V.K.ESWARAN

5.H.V.SUBRAMANIAM

6.S.S.NARASIMHAN

7.THE CHAIRMAN
Tamil Nadu Housing Board,
Nandanam,
Chennai.

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8. THE EXECUTIVE ENGINEER/EXECUTIVE OFFICER,

Tamil Nadu Housing Board Office,

L.B.Road, Adyar, Chennai – 20.

... Respondents

Prayer: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, praying to set aside the Fair Order and Decreetal Order dated 11.11.2016 passed in C.M.P.No.678 of 2016 in C.M.P.No.239 of 2014 in A.S.SR.No.9788 of 2014 on the file of the learned Principal Judge, City Civil Court at Chennai.

For Petitioners : Mr.T.A.Shagul Hameed

For R1 : Mr.N.Manokaran

For R2 to R8 : Dispense with

COMMON ORDER

The Civil Revision Petition in C.R.P.No.1002 of 2020 is filed against an order dismissing the petition filed by the petitioner seeking to condone the delay of 1615 days in filing appeal.

2. The petitioner herein filed a suit in O.S.No.6869 of 2001 on the file of VI Assistant Judge, City Civil Court, Chennai seeking injunction restraining the respondents 1 to 8 from interfering with their alleged peaceful



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possession and enjoyment of the suit property. The suit was dismissed by judgement and decree dated 14.08.2009. Challenging the same, the petitioner preferred an appeal in A.S.SR.No.9788 of 2014 on the file of Principal Judge, City Civil Court, Chennai with a delay of 1615 days. In the affidavit filed in support of the condone delay petition, it was stated by the petitioner that the Secretary of the petitioner's association died pending suit and a person, who had sworn the affidavit was elected as the next Secretary. Due to his old age, he could not contact his counsel and get the certified copy of the judgement and decree to enable him to file an appeal. It was further stated that the petitioner received the certified copy of the judgement and decree only during February-2014 and thereafter, the appeal has been preferred with the delay.

3. Consideration the averments found in the affidavit filed in support of the condone delay petition, the First Appellate Court observed that the petitioner has not given details of the date of the death of erstwhile Secretary and the election of the present Secretary etc. In the absence of details regarding the date of death of the earlier Secretary and election of the present Secretary, the reason given by the petitioner for condoning the huge delay of



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1615 days was not acceptable and hence, the petition was dismissed by the First Appellate Court. Aggrieved by the same, the petitioner is before this Court.

4. The learned counsel appearing for the petitioner submitted that while considering the petition to condone the delay, the Court should take a liberal approach. In the case on hand, the petitioner is a septuagenarian (aged 71) and he could not frequently contact his counsel and file the appeal in time due to his old age.

5. Per contra, the learned counsel appearing for the 1st respondent submitted that the reasons given by the petitioner in support of condone delay application are not sufficient to condone the huge delay of 1615 days. The learned counsel further submitted that the petitioner failed to prosecute the condone delay petition diligently and the same was dismissed for default on 25.04.2016. Thereafter, on application filed by him to restore the condone delay petition in C.M.P.No.678 of 2016, it was restored and challenging the same, he has filed a revision in C.R.P.No.883 of 2017. Therefore, it is the



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submission of the learned counsel for the 1st respondent that the petitioner is not at all interested in prosecuting the same and his only aim is to drag on the proceedings.

6. It is seen from the affidavit filed in support of the condone delay petition, the petitioner had stated his age as the reason for his failure to contact his counsel. The preamble portion of the affidavit would suggest that the petitioner was aged about 71 years on the date of filing of the petition. Merely because, the petitioner is aged about 71 years, he cannot wait for nearly 5 years and then contact his counsel to prefer an appeal. Further, as per the cause title in the judgement and decree passed in the original suit, the petitioner's association has been represented by V.Krishnasamy. Therefore, it is clear the erstwhile Secretary of the petitioner's association was very much alive on the date of disposal of the main suit. The petitioner has not given the details of the date of death of erstwhile Secretary and the date of his assumption of charge as Secretary. In these circumstances, the reason given by the petitioner for condoning the delay of 1615 days cannot be termed as a sufficient cause within the meaning of Section 5 of Limitation Act, 1963.



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Accordingly, the Court below rightly came to the conclusion that the petitioner failed to explain the huge delay of 1615 days in filing the appeal and consequently, dismissed the application. Hence, I do not find any illegality or irregularity in the order passed by the Court below. Accordingly, the Civil Revision Petition in C.R.P.No.1002 of 2020 is dismissed.

7. The Civil Revision Petition in C.R.P.No.883 of 2017 is arising out order passed by the Court below allowing an application filed by the respondent/petitioner in C.R.P.No.1002 of 2020 to restore the condone delay petition, which was dismissed for default. In view of the fact the main condone delay petition itself was dismissed by the Court below and the same was confirmed by this Court in C.R.P.No.1002 of 2020, C.R.P.No.883 of 2017 has become infructuous and consequently, the same is dismissed.

8. The Civil Revision Petition in C.R.P.No.1001 of 2020 is arising out of an order passed by the Court below dismissing the amendment application filed by the petitioner to amend the cause-title in condone delay petition. In view of the fact that condone delay petition has been already dismissed by the



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Court below and dismissal order was confirmed by this Court in C.R.P.No.1002 of 2020, the prayer in C.R.P.No.1001 of 2020 has also become infructuous. Accordingly, the same is also dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

02.01.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To

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- 1.The Principal Judge, City Civil Court,
Chennai.
- 2.The Chairman
Tamil Nadu Housing Board
Nandanam, Chennai – 600 035.
- 3.The Executive Engineer/Administrative Officer
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S.SOUNTHAR, J.

dm

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