



Crl.R.C.Nos.649, 652 to 655 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

Crl.R.C.Nos.649, 652 to 655 of 2024

M/s.IHA Jewellers,
Represented by its Proprietor Karta,
Abhishek Kumar Ramani,
Old No.348, New No.336,
Shop No.5, 3rd Floor,
Mint Street, Sowcarpet,
Chennai – 600 079.

... Petitioner in all
Crl.R.Cs

Vs.

1.Bonito Dilip Chhabria HUF,
Rep. By its Karta Bonito Dilip Chhabria,
No.21, 2nd Floor, Sanjay Plaza,
A.B.Nair Road, Juhu, Andheri,
Mumbai – 400 049.

2.Bonito Dilip Chhabria
3.Anushree Bonito Dilip Chhabria

... Respondents in all
Crl.R.Cs

Prayer in Crl.R.C.No.649 of 2024 : Criminal Revision Case filed under
Section 397 r/w 401 of Code of Criminal Procedure, praying to set aside
the order dated 31.01.2024 in Crl.M.P.No.14 of 2024 in S.R.No.575 of
2020 passed by the learned Metropolitan Magistrate, Fast Track-II Court,



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Egmore, Allikulam, Chennai – 03.

Prayer in Crl.R.C.No.652 of 2024 : Criminal Revision Case filed under Section 397 r/w 401 of Code of Criminal Procedure praying to set aside the order dated 31.01.2024 in Crl.M.P.No.15 of 2024 in S.R.No.513 of 2020 passed by the learned Metropolitan Magistrate, Fast Track-II Court, Egmore, Allikulam, Chennai – 03.

Prayer in Crl.R.C.No.653 of 2024 : Criminal Revision Case filed under Section 397 r/w 401 of Code of Criminal Procedure praying to set aside the order dated 31.01.2024 in Crl.M.P.No.13 of 2024 in S.R.No.574 of 2020 passed by the learned Metropolitan Magistrate, Fast Track-II Court, Egmore, Allikulam, Chennai – 03.

Prayer in Crl.R.C.No.654 of 2024 : Criminal Revision Case filed under Section 397 r/w 401 of Code of Criminal Procedure praying to set aside the order dated 31.01.2024 in Crl.M.P.No.11 of 2024 in S.R.No.512 of 2020 passed by the learned Metropolitan Magistrate, Fast Track-II Court, Egmore, Allikulam, Chennai – 03.

Prayer in Crl.R.C.No.655 of 2024 : Criminal Revision Case filed under Section 397 r/w 401 of Code of Criminal Procedure praying to set aside the order dated 31.01.2024 in Crl.M.P.No.10 of 2024 in S.R.No.514 of 2020 passed by the learned Metropolitan Magistrate, Fast Track-II Court, Egmore, Allikulam, Chennai – 03.

For Petitioner : Mrs.Ramya Murali Kumaran
(in all Crl.R.Cs) for M/s.McGAN Law Firm
For Respondent : Not Ready in Notice
(in all Crl.R.Cs)



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COMMON ORDER

These Criminal Revision Cases have been preferred assailing the orders passed in Crl.M.P.Nos.14, 15, 13, 11 and 10 of 2024 in S.R.Nos.575, 513, 574, 512 and 514 of 2020 dated 31.01.2024 passed by the Metropolitan Magistrate, Fast Track Court No.II, Egmore, Allikulam, Chennai - 03, in and by which the petitions to condone the delay of 25 days in representation were dismissed.

2. It is the case of the petitioner that the respondents formed a HUF of which the 2nd respondent was the Karta and pursuant to his demise, the 3rd respondent stepped into the role of Karta. It is the further case of the petitioner that cheques had been issued by the respondents, which were all dishonoured with endorsements “Stopped by Drawer” and “Insufficient Funds” respectively. Against the said dishonour, after issuing legal notice, since no reply was received and the cheque amounts were also not paid, complaints were preferred by the petitioner before the jurisdiction court.



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2.1. It is the further case of the petitioner that in parallel, complaint was also preferred before the Economic Offences Wing on 25.11.2020, which led to the registration of FIR in Crime No.09 of 2021 for the offences u/s 406, 409, 420 and 34 IPC, in which subsequently offences 465, 467, 471, 474 and 477-A of IPC were added. For the purpose of filing the final report, the original dishonoured cheques, which were documents of the petitioner were taken along with the return memos by the Economic Offences Wing and a charge sheet was laid before the Mumbai Court by the Economic Offences Wing. However, the petitioner was assured that for the purpose of Section 138 case, the cheques, whenever sought would be returned. When the hearing was fixed on 12.7.2022, the petitioner sought for the original documents and not being able to receive the same, filed certified copies of the said documents, which was rejected by the learned Magistrate.

2.2. It is the further case of the petitioner that thereafter on 9.11.2022, the petitioner filed Application No.3657/M/22 in Case



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No.296/PW/2021 in Crime No.09 of 2021 before the Mumbai Court for return of documents. Thereafter, the petitioner received the original documents on 17.11.2022 and as there occurred a delay in the interregnum, the complaint was presented with delay condonation petition, which after being posted on various dates by raising queries, which was complied with, within time on 12.12.2023 and represented on 12.12.2023, but the complaint was again returned after refusing to receive the original documents. However, as the petitioner was on pilgrimage, he could not attend the hearing and the complaint was represented on 31.01.2024 with a condone delay application, but the same was dismissed, aggrieved by which the present petition is filed.

3. Learned counsel appearing for the petitioner submits that the court below has taken a literal view that each and every day's delay has to be explained, which ought not have been enforced in this case, as the bona fides of the petitioner would be evident from the steps he has taken all along in the prosecution of the case. Therefore leniency ought to have been shown to the petitioner.



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3.1. It is the further submission of the learned counsel that the orders of the court below is perverse as the ratio laid down by the Apex Court with regard to taking a pedantic approach by the courts in condonation of delay matters, has not been properly appreciated and followed. It is the submission of the learned counsel that the expression “sufficient cause” in condonation of delay application would have to be given a liberal construction and that the foundation of law should be rendering substantial justice and not hide behind technical considerations. Therefore, learned counsel prays that this Court may interfere with the said orders passed by the court below.

4. This Court gave its careful consideration to the submissions advanced by the learned counsel for the petitioner and also perused the materials available on record as also the decisions to which attention was drawn.

5. Before advertng to the factual matrix on which the case revolves, guiding principles relating to condonation of delay, has been



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adumbrated by the Hon'ble Apex Court in *Basawaraj & Anr. - Vs -*

Special Land Acquisition Officer (2013 (14) SCC 81) and for better

clarity the relevant portions in the said decision are extracted hereunder:-

“8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide Chandigarh Admn. v. Jagjit Singh [(1995) 1 SCC 745 : AIR 1995 SC 705] , Anand Buttons Ltd. v. State of Haryana [(2005) 9 SCC 164 : AIR 2005 SC 565] , K.K. Bhalla v. State of M.P. [(2006) 3 SCC 581 : AIR 2006 SC 898] and Fuljit Kaur v. State of Punjab [(2010) 11 SCC 455 : AIR 2010 SC 1937] .)

9. Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word “sufficient” is “adequate” or “enough”, inasmuch as may be necessary to answer the purpose intended. Therefore, the word “sufficient” embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing



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in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, “sufficient cause” means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has “not acted diligently” or “remained inactive”. However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court that he was prevented by any “sufficient cause” from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See Manindra Land and Building Corpn. Ltd. v. Bhutnath Banerjee [AIR 1964 SC 1336] , Mata Din v. A. Narayanan [(1969) 2 SCC 770 : AIR 1970 SC 1953] , Parimal v. Veena [(2011) 3 SCC 545 : (2011) 2 SCC (Civ) 1 : AIR 2011 SC 1150] and Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai [(2012) 5 SCC 157 : (2012) 3 SCC (Civ) 24 : AIR 2012 SC 1629] .)

* * * * *

11. The expression “sufficient cause” should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide Madanlal v. Shyamlal [(2002) 1 SCC 535 : AIR 2002 SC 100] and Ram Nath Sao v. Gobardhan Sao [(2002) 3 SCC 195 : AIR 2002 SC 1201] .)

* * * * *

15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or



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for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

6. This Court, in *Sundar Gananaolivu – Vs – Rajendran Gnanavolivu* (2003 (1) LW 585), after considering various decisions on the issue of condoning of delay, held as under :-

11. In a recent Judgment of the Honourable Supreme Court reported in 2002 (3) SCC 195 = 2002 3 L.W. 417 (Ram Nath Sao @ Ram Sahu & Others v. Gobardhan Sap & Others), the position has been succinctly set out in para 12 which reads as under:

“12. Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine-like manner.”

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15. *On a conspectus reading of the above principles set out in the various judgments, it is well settled that a liberal approach should be extended while considering the application for condonation of delay. Sufficient caution has been exhibited to note that wherever there is lack of bona fides or attempt to hood-wink the Court by the party concerned who has come forward with an application for condonation of delay, in such cases, no indulgence should be shown by condoning the delay applied for. It is also clear to the effect that it is not the number of days of delay that matters, but the attitude of the party which caused the delay. In other words when the Court finds that the party who failed to approach the Court within the time stipulated comes forward with an explanation for condoning the delay, the Court if satisfied that the delay occasioned not due to the deliberate conduct of the party, but due to any other reason, then by sufficiently compensating the prejudice caused to the other side monetarily, the condonation of delay can be favourably ordered.*

16. *As held by His Lordship Mr. Justice M. Srinivasan, as he then was, in the Division Bench Judgment reported in 1990 (1) LLN 457 (Tamil Nadu Mercantile Bank Ltd. Tuticorin v. Appellate Authority Under The Tamil Nadu Shops And Establishments Act, Madurai And Another), the rules prescribing the period of limitation have to be obeyed by the concerned party and in order to get over such period prescribed, sufficient explanation should be tendered. His Lordship was pleased to hold that question of limitation is not merely a technical consideration but based on principles of sound public policy as well as equity and that a litigant cannot be expected to have a Damocles' sword hanging over his head indefinitely for a period to be determined at the whims and fancies of the opponent."*

(Emphasis supplied)



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7. From a conspectus reading of the decisions quoted above, it is clear that it is the attitude of the party that matters and not the number of days delay. It has been cautioned that where the Court finds that the party, who failed to approach the Court within the stipulated time, comes forward with proper and sufficient explanation for condoning the delay, on the court being satisfied that the delay caused is not part of any deliberate conduct of the party or any dilatory tactics to prolong the litigation, the court can condone the delay. As has been held by the Supreme Court in ***Ram Nath Sao @ Ram Sahu & Ors. - Vs – Gobardhan Sap & Ors. (2002 (3) SCC 195)***, “*acceptance of explanation furnished should be the rule and refusal an exception*”. So long as the party comes before the court with clean hands, the scales should naturally tilt in favour of the party.

8. A perusal of the order passed by the court below reveals that the queries raised by the Registry of the Court below have not been properly complied with on various dates and that everytime the petition was represented without documents, thereby envisioning a delay of 25 days.



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Further, the Court below has observed that this is not the first petition seeking condonation of delay, as there was yet another petition with a delay of 183 days in which delay was condoned. Therefore, the court below went into the attitude of the petitioner, thereby calling upon the petitioner to explain each and every day's delay. The procedure adopted by the court below, in the light of the well-defined ratio laid down above cannot be faulted with.

9. Though the delay is not enormous, as is reflected in the present case, it should not be lost sight of that already a delay condonation petition was ordered in favour of the petitioner and such being the case, the petitioner ought to have been more vigilant in prosecuting the case and leaving the case to once again fall into delay would only show the lethargic attitude of the petitioner in prosecuting the case, thereby, receiving the wrath of the court below in the form of its harsh remarks. The ratio laid down by the Apex Court in *Ram Nath Sao case* stands squarely attracted to the case on hand and though refusal should not be the norm, however, the attitude of the petitioner in not prosecuting his case diligently cannot be merely condoned so as to put the other party in



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peril.

10. In the light of the aforestated position, the delay having not been properly explained, as pointed out by the court below, this Court is not inclined to interfere with the orders passed by the court below. Therefore, these revisions are dismissed. However, liberty is granted to the petitioner to work out his remedy in the manner known to law before the appropriate forum.

22.04.2024

Index : Yes / No
Speaking order / Non-speaking order
NCC : Yes / No
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To
The Metropolitan Magistrate,
Fast Track-II Court,
Egmore, Allikulam, Chennai – 03.



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M.DHANDAPANI, J.

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