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Cr.A.No.1222/2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2024

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THE HONOURABLE MR.JUSTICE SHAMIM AHMED

CrI.A.No.1222 of 2022

M/s.Mamtha Steels Corporation,
represented by its Proprietor
T.Vasanaram

... Appellant

/vs/

1. M/s.Yosmite Engineering Private Limited,
represented by its Director P.Ramesh
2. P.Ramesh,
Director of M/s.Yosmite Engineering
Private Limited
3. Selvi Ramesh
Director of M/s.Yosmite Engineering
Private Limited

All having previous office at:
No.5, New Street,
Balaji Industrial Estate,
Ambattur, Chennai 600 053
Present Office at D.No.3,
Thamarai Nagar, 3rd Street,
Ambattur, Chennai 600 062.

... Respondents

Prayer : Criminal Appeal filed under section 378(4) of Cr.P.C., praying to call for the records in C.C.No.5897 of 2019 on the file of the Metropolitan Magistrate, Fast Track Court – II, Allikulam, Chennai and set aside the order passed on 15.07.2022.

For Appellant

... Mr.Ramesh Kumar Chopra

For Respondents

... Mr.Pradeep Jayaraman



JUDGMENT

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Heard Mr. Ramesh Kumar Chopra, learned counsel for the appellant and Mr. Pradeep Jayaraman, learned counsel appearing for the respondent.

2. This Criminal Appeal has been directed against the order passed by the learned Metropolitan Magistrate, Fast Track Court – II, Allikulam, Chennai in C.C.No.5897 of 2019, dismissing the complaint filed by the appellant under section 138 of Negotiable Instruments Act against the Revision Petitioner / complainant for his being absent on the date of hearing. The said complaint was dismissed by the trial court exercising power under section 256(1) of Cr.P.C. The impugned order reads as under:

*'Complainant absent. No representation.
Notice sent to the complainant. This case was
pending from 2017. Complainant was absent
continuously for several hearings. Hence, Notice was
sent to complainant on 30.06.2022 in D.No.426 of
2022. Sufficient opportunities given to the
complainant to make his appearance before this
court. Even today the complainant not appeared.*

*Considering all the above circumstances and
the summary nature of this case, this complaint is
hereby dismissed u/s.256(1) of Cr.P.C. Accused*



acquitted.'

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3. Learned counsel for the appellant submits that the 1st respondent is a private limited company registered under the Companies Act represented by the 2nd and 3rd respondents as their Directors. The 2nd and 3rd respondents are husband and wife and are in charge of the day to day affairs of the 1st respondent company and they used to negotiate and place orders for supply of stainless steel sheets, rods and pipes to the appellant. It was further argued by the learned counsel for the appellant that on 30.07.2018, the respondent owed and liable to pay Rs.54,70,735/- excluding interest for belated payment towards supply of the aforesaid materials. Thereafter, the respondent No.2, on behalf of the respondent No.1 issued cheque drawn on Standard Chartered Bank, Anna Nagar East, Chennai, bearing No.000013 dated 30.07.2018 for a sum of Rs.54,70,735/-. The appellant presented the above cheque for collection through its Bankers namely Corporation Bank, Anna Nagar, Chennai Branch on 30.07.2018, but the same has been dishonoured with an endorsement 'Funds Insufficient'. Thereafter, again the cheque was presented and again it was dishonoured as 'Funds Insufficient', When the Appellant informed about the legal action to be taken, an assurance was given by the 2nd respondent that he will pay the said amount after some time and the said



information was received by the appellant on 20.10.2018.

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4. It is further argued by the learned counsel for the appellant that the 2nd respondent was playing fraud with the appellant and there was no fund in his account and he was not intended to pay the same to him in lieu of the cheque issued by him. Thereafter, a legal notice was issued by the appellant to the respondents to pay the cheque amount. Since the respondents have not paid the cheque amount inspite of repeated requests and legal notice sent, left with no other alternative, the appellant filed complaint under section 138 of the Negotiable Instruments Act. As the appellant was busy person and involved in his business activities, he used to go to other places in respect of his business transactions, therefore he engaged an Advocate Mr.Ravindra Kumar to look after the matter and the Advocate was regularly appearing in the case, but unfortunately, on the date of the impugned order, i.e., on 15.07.2022, the counsel appeared and asked for an adjournment as the appellant was in Jaipur regarding the admission of his daughter and so he was not present at the time when the matter was called on 15.07.2023, but the learned trial court did not accept the request made by the learned counsel for the appellant for adjournment of the case and exercising power under section 256(1) of Cr.P.C., he dismissed the complaint without assigning any valid reason and without



affording any opportunity of hearing to the appellant. Thus, the learned counsel for the appellant submitted that the impugned order dated 15.07.2022 passed by the learned trial court is non speaking order without application of mind and the impugned order is an exparte order and the case has not been decided on merits.

5. The appellant is an aggrieved person. Thus proper hearing of the case may be given to the appellant before any final order is passed by the trial court. Thus he submits that the impugned order being the exparte order being passed without assigning any reason may be set aside by this court exercising revisional power and the matter may be remanded back to the trial court to decide the issue on merits afresh. He also undertake before this court that in future hearings, neither the appellant, nor his counsel would seek any further adjournment unless if there is any cogent reason.

6. Mr.Pradeep Jayaraman, learned counsel for the respondent whereas opposed the entire argument as advanced by the learned counsel for the appellant and submits that the appellant as well as counsel seeks a regular adjournment in the case and never intend to get the matter decided and the said fact has also been reflected in the impugned order dated



15.07.2022, but he also did not dispute the fact that the case was not decided on merits and only the trial court exercising power under section 256(1) of Cr.P.C. dismissed the said complaint. But any how, he submitted that the impugned order has been rightly passed and prayed for dismissal of the present appeal.

7. After considering the entire arguments of both sides and after perusal of the records as well as impugned order dated 15.07.2022, this Court is also of the view that the impugned order is passed exparte without assigning any reason and only the trial court exercising its power under section 256(1) Cr.P.C., dismissed the complaint of the appellant due to non appearance of the counsel as well as the appellant. Thus, the impugned order appears to be non speaking.

8. Even though in the grounds of appeal, it has been clearly stated that in paragraph 10 that the appellant counsel Ravindra kumar appeared before the trial court on 15.07.2022 to dispense with the presense of the appellant, as he was in Jaipur regarding the admission of his daughter, but the trial court refused to accept the request made by the learned counsel for the appellant and dismissed the complaint. He has also taken ground that due to lockdown and pandemic 19 Covid, it was difficult for the appellant



to appear for each and every date before the trial court as there was a danger to his life and also attendance in the court is also very less due to the danger of Covid Pandemic 19. This fact also has been stated in paragraph No.7 of the grounds of the appeal. Thus, the learned counsel submitted that the reason for non appearance has been justified before the trial court and as the appellant was not present before the court on the date fixed i.e., on 15.07.2022 as he was busy in admission of his daughter at Jaipur and requested his counsel Mr.Ravindrakumar to sought adjournment in the case, but the trial court without considering the request made by the learned counsel for the appellant, dismissed the complaint which caused injustice to the appellant as the case was not decided on merits. There appears force in the arguments advanced by the learned counsel for the appellant.

9. The expression "sufficient cause" and satisfactory explanation has been held to receive a liberal construction so as to advance substantial justice and generally a delay in preferring appeal/revision may be condoned in interest of justice where no gross negligence or deliberate inaction or lack of bona fide is imputable to parties, seeking condonation. In ***Collector, Land Acquisition Vs. Katiji, 1987(2) SCC 107***, the Court said, that, when substantial justice and technical considerations are taken against each



other, cause of substantial justice deserves to be preferred, for, the other side cannot claim to have vested right in injustice being done because of a non deliberate delay. The Court further said that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

10. In ***P.K. Ramachandran Vs. State of Kerala, AIR 1998 SC 2276***

the Court said:

"Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds."

11. The Rules of limitation are not meant to destroy rights of parties. They virtually take away the remedy. They are meant with the objective that parties should not resort to dilatory tactics and sleep over their rights. They must seek remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The statute relating to limitation determines a life span for such legal remedy for redress of the legal injury, one has suffered. Time is precious and the wasted time would never revisit. During efflux of time, newer causes would come up, necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for



launching the remedy may lead to unending uncertainty and consequential anarchy. The statute providing limitation is founded on public policy. It is enshrined in the maxim Interest reipublicae ut sit finis litium (it is for the general welfare that a period be put to litigation). It is for this reason that when an action becomes barred by time, the Court should be slow to ignore delay for the reason that once limitation expires, other party matures his rights on the subject with attainment of finality. Though it cannot be doubted that refusal to condone delay would result in foreclosing the suiter from putting forth his cause but simultaneously the party on the other hand is also entitled to sit and feel carefree after a particular length of time, getting relieved from persistent and continued litigation.

12. There is no presumption that delay in approaching the court is always deliberate. No person gains from deliberate delaying a matter by not resorting to take appropriate legal remedy within time but then the words "sufficient cause" show that delay, if any, occurred, should not be deliberate, negligent and due to casual approach of concerned litigant, but, it should be bona fide, and, for the reasons beyond his control, and, in any case should not lack bona fide. If the explanation does not smack of lack of bona fide, the Court should show due consideration to the suiter, but, when there is apparent casual approach on the part of suiter, the approach of



Court is also bound to change. Lapse on the part of litigant in approaching Court within time is understandable but a total inaction for long period of delay without any explanation whatsoever and that too in absence of showing any sincere attempt on the part of suiter, would add to his negligence, and would be relevant factor going against him.

13. I need not to burden this judgment with a catena of decisions explaining and laying down as to what should be the approach of Court on construing "sufficient cause" and it would be suffice to refer a very few of them besides those already referred.

14. In ***Pundlik Jalam Patil (dead) by LRS. Vs. Executive Engineer, Jalgaon Medium Project and Anr.(2008) 17 SCC 448***, in para 17 of the judgment, the Court said :

"...The evidence on record suggests neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and state claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and "do not slumber over their rights."

15. In ***Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai, 2012 (5) SCC 157***, in para 18 of the judgment, the Court said as under:



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"What needs to be emphasized is that even though a liberal and justice oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the Courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost. What colour the expression 'sufficient cause' would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bonafides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay. In cases involving the State and its agencies/instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and / or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest."

16. In ***Shakuntala Devi Jain Vs. Kuntal Kumari, AIR 1969 SC 575***

a three Judge Bench of the Court said, that, unless want of bona fide of such inaction or negligence as would deprive a party of the protection, the application must not be thrown out or any delay cannot be refused to be condoned.



17. The Privy Council in Brij Indar Singh Vs. Kanshi Ram ILR

(1918) 45 Cal 94 observed that true guide for a court to exercise the discretion is whether the appellant acted with reasonable diligence in prosecuting the appeal. This principle still holds good inasmuch as the aforesaid decision of Privy Council as repeatedly been referred to, and, recently in *State of Nagaland Vs. Lipok AO and others, AIR 2005 SC 2191*.

18. Even though from a bare perusal of the impugned order, which find place at page 18 of the paper book, the impugned order is totally non speaking and only a recital has been made that the complainant was absent on that day when the matter was fixed for hearing. Whereas, from the perusal of paragraph No.10 of the ground, it has been clearly stated by the appellant that the appellant counsel Mr.Ravindra Kumar appeared before the trial court on 15.07.2022 with the request to dispense with the presence of the appellant as he was in Jaipur. But the trial court refused to accept the request made by the learned counsel for the appellant and dismissed the complaint. This fact has also not been considered by the trial court when the appellant was in Jaipur regarding admission of her daughter. Even though a clear cut recital has been made in the grounds of appeal that due



to lockdown and Pandemic 19 Covid, it was not possible for the appellant to appear in the case on each and every date before the trial court as there was a danger to the life and during that period also, the attendance in the court is also very less due to covid 19 Pandemic. This fact has also been stated in paragraph 7 of the grounds of appeal. Thus, the court must have considered the reason with open heart and should not have been dismissed the case only for non appearance of the appellant or his counsel. Thus, the impugned order suffer from gross irregularity and was passed without application of mind.

19. In my view, the impugned order is totally non speaking without assigning any reason and is against the principles of natural justice. Thus, this court is of the view that the impugned order is liable to be set aside and the matter be remanded to trial court to decide the matter afresh after giving opportunity to the parties and after considering the entire evidence adduced by the parties concerned.

20. Accordingly, the impugned order dated 15.07.20221 passed by the learned Metropolitan Magistrate, Fast Track Court-II, Allikulam, Chennai in C.C.No.5897 of 2019 is hereby **set aside and reversed**. The appeal is **Allowed**. The matter is hereby **remanded back** to the trial court to decide afresh within a period of four months from the date of receipt of



certified copy of this order, after giving opportunity to both the parties to adduce the entire evidence.

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21. It is made clear that the parties shall not seek any adjournment and shall appear on the dates fixed by the trial court for hearing to argue the case, unless there is any cogent reason and they shall cooperate for the trial and disposal of the case.

22. With the above direction, the Criminal Appeal is **allowed**.

20.12.2024

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Index:yes
Internet: yes
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To

The Metropolitan Magistrate, Fast Track Court – II,
Allikulam, Chennai



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SHAMIM AHMED, J.

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