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C.M.P.No.21921 of 2024 in W.A.SR.No.1



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2024

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HON'BLE MR.JUSTICE P.B.BALAJI

C.M.P.No.21921 of 2024
in
W.A.SR.No.127825 of 2024

1. The Director General of Police /
Commissioner of Police,
Greater Chennai, Vepery,
Chennai-7.

2. The Deputy Commissioner of Police,
Armed Reserve-I,
Greater Chennai Police,
Vepery, Chennai-7.

... Appellants/Respondents

-VS-

G.Devaprakasam

... Respondent/Petitioner

Prayer: C.M.P.No.21921 of 2024 is filed to condone the delay of 362 days in filing the above appeal against the order dated 14.08.2023 made in W.P.No.7398 of 2023.

Prayer: W.A.SR.No.127825 of 2024 is filed under Clause 15 of Letters Patent, seeking to allow the Writ Appeal and set aside the order dated 14.08.2023 made in W.P.No.7398 of 2013 and allow the above Writ Appeal.

For Appellants : Mr.Abishek Murthy
Govt. Advocate



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C.M.P.No.21921 of 2024 in W.A.SR.No.1



ORDER

(By D.KRISHNAKUMAR,J.)

This Civil Miscellaneous Petition has been filed to condone the delay of 362 days in filing the above appeal against the order dated 14.08.2023 made in W.P.No.7398 of 2023.

2. Notice to the respondent is dispensed with, as no adverse order is going to be passed in this petition.

3. The petitioners/appellants have come forward with a prayer to condone the delay of 362 days, by giving reasons in Paragraph No.11 of the affidavit, which is extracted below:-

"5. It is respectfully submitted that the copy of the order dated 14.08.2023 passed in W.P.No.7398 of 2023 was received in the Office of the Commission of Police, Greater Chennai Police, Chennai on 05.10.2023. The Government Pleader, High Court of Madras, Chennai has been requested to offer his considered opinion on the judgment dated 14.08.2023 in his office letter dated 31.08.2023. The Government Pleader, High Court of Madras has offered his considered opinion that it is a fit case for appeal in his opinion. Hence, this present Writ Appeal is filed based on the opinion of the Government Pleader, High Court of Madras. Due to administrative reasons, we are unable to file the Writ Appeal immediately."



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4. The reasons adduced by the petitioners are not convincing and unsustainable, as the affidavit to condone the delay itself is bereft of particulars and the petitioners have not taken utmost care in drafting the affidavit. The Apex Court, while dealing with the issue of delay *in extenso* in the case of **N.Balakrishnan V. M.Krishnamurthy reported in (1998) 7 SCC** observed as under:

“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 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 court refuses to condone the delay. In such cases, the superior court 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.

10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered.



Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout 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. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain Vs. Kuntal Kumari* [AIR 1969 SC 575] and *State of West Bengal Vs. The Administrator, Howrah Municipality* [AIR 1972 SC 749].

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."

5. The Apex Court in *Esha Bhattacharjee v. Raghunathpur Nafar Academy*, (2013) 12 SCC 649, after considering a series of earlier decisions,



summarized the principles to be followed while considering an application for condonation of delay. The relevant portion of the said decision is extracted hereunder:

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“21.8. (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.

21.9. (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.

22.1.(a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2. (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.” [emphasis supplied]”

6. Reiterating the aforesaid principles, the Supreme Court in yet another case in **H.Dohil Constructions Company Private Limited vs Nahar Exports Limited** **and another** reported in **(2015) 1 Supreme Court Cases 680**, has categorically held as follows:

“23. When we apply those principles to the case on hand, it has to be stated that the failure of the Respondents in not showing due diligence in filing of the appeals and the enormous time taken in the refiling can only be construed, in the absence of any valid explanation, as gross negligence and



lacks in bonafides as displayed on the part of the Respondents. Further, when the Respondents have not come forward with proper details as regards the date when the papers were returned for refiling, the non-furnishing of satisfactory reasons for not refiling of papers in time and the failure to pay the Court fee at the time of the filing of appeal papers on 06.09.2007, the reasons which prevented the Respondents from not paying the Court fee along with the appeal papers and the failure to furnish the details as to who was their counsel who was previously entrusted with the filing of the appeals cumulatively considered, disclose that there was total lack of bonafides in its approach. It also requires to be stated that in the case on hand, not refiling the appeal papers within the time CIVIL APPEAL NOS. OF 2014 22 of 25 (@ SLP (C) Nos.10811-10812 of 2014 & Connected matters prescribed and by allowing the delay to the extent of nearly 1727 days, definitely calls for a stringent scrutiny and cannot be accepted as having been explained without proper reasons. As has been laid down by this Court, Courts are required to weigh the scale of balance of justice in respect of both parties and the same principle cannot be given a go-by under the guise of liberal approach even if it pertains to refiling. The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the Respondents not deserving any indulgence by the Court in the matter of condonation of delay. The Respondents had filed the suit for specific performance and when the trial Court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the Respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered”.

7. A Division Bench of this Court in the case of *M/s.Ruskim sea Foods Limited, Stafford Park 15, Teleford Shropshire TF33BB United Kingdom rep. By their Power of Attorney Agent Mr.Abdur Rahman No.42, Sindur Plaza Montieth Lane, Egmore, Chennai 600 008 vs. M/s Evergreen Sea Foods Pvt.,Ltd., rep. By its*



Managing Director, Mr.T.Loganathan, No.29, Kummalamankoil Street,

Tondiarpet, Chennai 600 081 and others [C.M.P.Nos.21784 and 21785 of 2017 in

OSA No.SR79476 of 2017] decided on 15.02.2018, elaborately dealt with the issue of

condonation of delay in terms of various judgments of the Supreme Court, was pleased

to hold as follows:

“36. The Petitioner has come with unclean hands and the Hon'ble Supreme Court in the decisions, which were cited by the Petitioner, had categorically held that the 'length of delay is not a matter, but the acceptance of explanation is only criteria and length of delay may be long, but if there is justification, long delay can also condoned'. If there is a short delay and the explanation is not satisfactory and if it is on account of smack or malafide or on account of dilatory strategy, this Court cannot help the persons, who come before this Court to condone the delay and protract the proceedings.”

8. If the present case on hand is analyzed on par with the judgments of the Supreme Court as well as this Court, it is obvious that even if the delay is long, the delay can be condoned, provided it is supported by sufficient reasons and justifications to exercise the discretion of the Court. It is well-settled proposition of law that condonation of delay is a matter of discretion of the court. What the court has to consider is not the length of delay, but the acceptability of the explanation.

9. In the case on hand, the asseveration as contained in the affidavit is only a self-serving statement and does not impel us to consider the same as a sufficient cause



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AND
P.B.BALAJI,J.,
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for condoning such inordinate delay. No reasons, much less valid and cogent reasons, are assigned to condone the delay. Hence, we see no valid ground to condone the delay of 362 days in filing the writ appeal.

10. For the foregoing reasons, C.M.P.No.21921 of 2024 is dismissed. Consequently, W.A.SR.No.127825 of 2024 is rejected. No costs.

[D.K.K., J.,] [P.B.B.,J.,]
18.10.2024

Index: Yes / No
Internet: Yes / No
Speaking Order/Non Speaking Order
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