



C.R.P.(PD)(MD) No.599 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 13.03.2024

ORDERS PRONOUNCED ON : 26.03.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

C.R.P.(PD)(MD) No.599 of 2020

and

C.M.P.(MD) No.3811 of 2020

1.R.Udaya Kumar

2.R.Natarajan

... Petitioners/Respondents 3 & 4/
LRs of Plaintiff

Vs.

1.C.Ganapathi

G.Rajakumaran (Died)

2.G.Rengaraj

3.G.Mathi

4.R.Deivarani

5.R.Sindhuja

6.Minor R.Brindha

7.Minor R.Narmadha

... Respondents 1 to 7/
Petitioners/Appellants



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[Minor Respondents No.6 and 7 are represented by their mother and guardian Deivarani, who is the 4th respondent herein]

C.Raman (Died)

8.R.Panchavarnam

9.R.Amutha

10.R.Geetha

11.Subramanian

12.Vasantharaj

13.Minor Sugintharaj ... Respondents 8 to 13/
Respondents/LRs of Plaintiff

[Minor Respondent No.13 is represented by his father and natural guardian 11th respondent herein]

[No notice is required for the above 8 to 13 respondents herein]

Prayer: Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 29.01.2020 passed in I.A.No.1 of 2015 in unfiled A.S.No.--- of 2015 on the file of the Court Principal Subordinate Judge, Thanjavur.

For Petitioners : Mr.Ananth C. Rajesh

For RR1 to 5 : Mr.M.P.Senthil



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RR6 & 7 : Minors (Rep. by their mothers)
For RR8 to 13 : No notice required (*Vide* EB)

ORDER

This civil revision petition is directed against an order dated 29.01.2020 passed in I.A.No.1 of 2015 in unnumbered A.S.No.-- of 2015 on the file of the Court of the Principal Subordinate Judge, Thanjavur.

2. The said application was filed under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 5676 days in filing an appeal against the ex-parte decree and judgment passed in O.S.No.500 of 1997 on the file of the Court of the District Munsif, Thanjavur, dated 20th August, 1998.

3. Heard Sri Ananth C. Rajesh, learned counsel for the petitioners and Sri M.P.Senthil, learned counsel appearing for Respondents No.1 to 5.



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4. Though the matter was argued at length by the learned counsels on either side and the matter is hotly contested and though the delay that was condoned by the learned lower appellate Court was huge amounting to 5676 days, this Court does not deem it necessary to discuss the matter elaborately.

5. Learned counsel for the petitioners seriously contested the matter on the ground that the respondents herein failed to assign sufficient cause for the abnormal delay in filing the appeal and also on the ground that the respondents/petitioners are under obligation to explain the day-to-day delay in filing the appeal belatedly and unless they satisfactorily explain the delay and show sufficient cause for the abnormal delay of 5676 days, the said delay ought not to have been condoned by the learned lower appellate Court.

6. Learned counsel for the petitioners also further contended that the respondents have made false averments in the affidavit filed in support of the application seeking condonation of delay and as knowing fully well



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that such averments are false and thereby playing fraud on the Court and therefore, the order passed by the learned lower appellate Court condoning the abnormal delay cannot be sustained. He also placed reliance on various decisions of the Hon'ble Apex Court in ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Others*** reported in (2013) 12 SCC 649; ***Satluj Jal Vidyut Nigam vs. Raj Kumar Rajinder Singh (Dead) Through LRs and others*** reported in (2019) 14 SCC 449; and ***Ramchandra Dagdu Sonavane (Dead) by LRs and others vs. Vithu Hira Mahar (Dead) by LRs and others*** reported in 2009 7 Supreme 30.

7. On the other hand, learned counsel appearing for the respondents/petitioners placed reliance on the decision in ***Esha Battacharjee vs. Managing Committee of Raghunathpur Nafar Academy*** reported in (2013) 12 SCC 649 and contended that the technicalities shall not come in the way of administration of justice. Further, he also placed reliance on various other decisions where the very issue of condonation of delay was considered *vis-a-vis* the ex-parte decree passed in violation of Order XX Rule 4(2) of the Civil Procedure Code as under:



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- i. *The Commissioner, Rameshwaram Municipality vs. Tmt. Subbuthayammal and others* reported in *2015-4-L.W.142*;
- ii. *Meenakshisundaram Textiles vs. Valliammal Textiles Ltd.*, reported in *2011 (3) CTC 168*;
- iii. *Sindha Beevi vs. S.M.K. Peer Mohammed, represented through his Power Agent Peerpathu* reported in *2023 SCC OnLine Mad 5850*;
- iv. *Aziz Ahmed Khan vs. I.A.Patel* reported in *AIR 1974 AP 1*;
- v. *R.Stella vs. V.Antony Francis* reported in *(2019) 5 LW 161*;
- vi. *Asma Lateef and another vs. Shabbir Ahmad and others* reported in *2024 (1) CTC 520*;
- vii. *M.K.Prasad vs. P.Arumugam* reported in *(2001) 6 SCC 176*;
- viii. *K.P.Natarajan and another vs. Muthalammal and others* reported in *2021 (4) CTC 570*; and
- ix. *J.Savithri and another vs. Selvaraj and others* reported in *2024 (1) MWN (Civil) 117*.

8. Further he also contended that the scope of revision petition under Article 227 of the Constitution of India is very limited and in the light



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of the discretion exercised by the learned lower appellate Court in condoning the delay, this Court cannot interfere with such discretion. In support of the said contention, he placed reliance on a decision of the Hon'ble Apex Court in *N.Balakrishnan vs. M.Krishnamurthy* reported in (1998) 7 SCC 123 as well as this Court in *Kottar Chettu Nainar Desika Vinayagar Devaswom Trust rep., by its Trustee vs. The Assistant Commissioner, H.R. And C.E., Department, Nagercoil* reported in 2016-1-L.W. 556.

9. Insofar as the decision relied upon by the learned counsel for the petitioners viz., *Esha Bhattacharjee (supra)* is concerned, the very same decision is also relied upon by the learned counsel for the respondents in support of his case. That is a case where general principles are laid down by the Hon'ble Apex Court as to how the approach of the Courts should be in the matter of considering the condone delay applications, what exactly the sufficient cause and it was held that substantial justice being paramount and pivotal, technical considerations should not be given undue and uncalled for emphasis. In the said decision, it was also held that there should be a



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liberal, pragmatic, justice-oriented non-pedantic approach while dealing with an application for condonation of delay and the Courts are not supposed to legalise injustice but are obliged to remove injustice. Thus, the said decision rather supports the case of the respondents than aiding the case of the petitioners herein. The other two decisions relied upon by the learned counsel for the petitioners are not relevant for the consideration in the facts and circumstances of the case and therefore, no detailed reference be made to the said decisions.

10. Then coming to the contentions raised and the decisions relied upon by the learned counsel for the respondents are concerned, in the cases of ***Tmt. Subbuthayammal*** (*supra*), ***Meenakshisundaram Textiles*** (*supra*), ***Sindha Beevi*** (*supra*), ***Aziz Ahmed Khan*** (*supra*), ***R.Stella*** (*supra*), ***Asma Lateef*** (*supra*) and ***M.K.Prasad*** (*supra*), the validity of an ex-parte decree and the manner in which the applications seeking condonation of delay in setting aside such ex-parte decrees are to be considered are discussed in elaborate and in almost all the said decisions, it was concluded that whatever may be the delay, once the judgment and decree are found to be



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not in accordance with law, the Courts have tilted towards condoning the said delay to set right the illegality committed by the Courts below, especially while exercising jurisdiction of the Court under Article 227 of the Constitution of India. As a matter of fact, the Courts have held that once it comes to the notice of the Court that the judgment is passed contrary to Order XX Rule 4(2) of the Civil Procedure Code, it is a duty of the Court to set aside such decree by exercising its power under Article 227 of the Constitution of India.

11. It is only by following some of the decisions referred to above rendered while dealing with Order XX Rule 4(2) of the Civil Procedure Code, the learned lower appellate Court condoned the delay by passing the order under revision. Further, as rightly contended by the learned counsel for the respondents, when the learned lower appellate Court exercised its discretion and condoned the delay by recording reasons, this Court while exercising its superintendent jurisdiction under Article 227 of the Constitution is not normally supposed to interfere with such discretion, unless such orders are found to be perverse or contrary to law. The scope of



revision under Article 227 of the Constitution of India was considered by the Hon'ble Apex Court in the case of **N.Balakrishnan** (*supra*) and it has been held 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 a want of acceptable explanation whereas in certain other cases, delay of a 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 revisional jurisdiction, unless the exercise of discretion was on wholly 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



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come to its own finding even untrammelled by the conclusion of the lower court.”

The revisional scope of the High Court was also considered by this Court in ***Kottar Chettu Nainar Desika Vinayagar Devaswom Trust (supra)***, wherein it has been held as under:

“17. Thus, from the above decisions of the Apex Court, it is clear that once the appellate Court accepts the reasons stated as sufficient cause and condoned the delay by exercising its discretion, this Court normally should not disturb such finding, unless such exercise of discretion was on wholly untenable grounds or in an arbitrary or perverse manner. In fact, the role of the revisional or appellate Court is very limited, while considering such revision or appeal filed against the order condoning delay, since the lower judicial forum, based on the facts and circumstances of the case, has accepted the reasons, exercised its discretionary power and condoned the delay. Unless such order exhibits any perversity on the face of it, interference against that order is not at all warranted. After all, by condoning the delay, rights of the parties on the merits of the case are not finally decided or adjudicated upon. On



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the other hand, if the Court below refuses to condone the delay and such an order is challenged, certainly the role of the revisional or appellate Court is not limited to ascertain as to whether such order exhibits any perversity alone. On the other hand, such revisional or appellate Court has to necessarily go into the totality of facts and circumstances of the case and find out as to whether such refusal to condone the delay has resulted in miscarriage of justice. It is to be borne in mind that if an application for condoning the delay in filing the appeal is dismissed, rights of the parties on the merits decided by the trial Court become final and conclusive without allowing the appellate Court to decide on merits the correctness or otherwise of the Judgment and the Decree passed by the trial Court. Therefore, refusal to condone the delay would seriously affect the parties whereas it is not so in the case where the delay is condoned. Moreover, the appellate Court, undoubtedly, is also a fact finding Court. Therefore, it is all the more necessary for the appellate Court to go into the totality of the facts and circumstances of a particular case, while considering the application for condoning the delay, in order to find out as to whether certain facts or question of law decided by the trial Court are required to be



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considered on merits once again, so as to see that failure of justice, does not result in, merely on the technical ground of delay in filing the appeal. At this juncture, I would like to rely on a decision of the Apex Court reported in 2013-2-L.W. 825 : (2013) 4 SCC 97 (Laxmibai v. Bhagwantbuva), wherein the Apex Court has observed at paragraph 49 as follows:—

“49..... When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred and the courts may in the larger interests of administration of justice may execute or overlook a mere irregularity or a trivial breach of law for doing real and substantial justice to the parties and pass orders will serve the interest of justice best.”

12. The learned lower appellate Court through the order under revision, condoned the huge delay of 5676 days, having taken note of the fact that the ex-parte judgment and decree that was passed in O.S.No.500 of 1997, dated 20.08.1998 was a cryptic order and not in compliance with the requirements of law as contemplated under Order XX Rule 4(2) of the Civil Procedure Code. Having come to such conclusion that the decree and judgment that was appealed against are not in compliance with law and are



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liable to be treated as illegal and void by following the decisions of this Court in ***R.Stella vs. V.Antony Francis*** reported in **(2019) 5 LW 161** and the decision of the Hon'ble Apex Court reported in **2013 (1) MWN (Civil) 797 (SC)**, the learned lower appellate Court condoned the huge delay, though the said delay was not properly explained.

13. In the light of the above, this Court while exercising its jurisdiction under Article 227 of the Constitution of India especially on perusing the ex-parte judgment that was passed in O.S.No.500 of 1997, is not inclined to interfere with the discretion exercised by the learned lower appellate Court while condoning the delay in filing the first appeal against the judgment and decree in O.S.No.500 of 1997 and accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

26.03.2024

NCC : Yes/No
Index : Yes
Internet : Yes
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To

The Principal Subordinate Judge,
Thanjavur.



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MUMMINENI SUDHEER KUMAR, J.

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Pre-delivery Order made in
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