



W.A.(MD)No.1140 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 12.07.2024

CORAM

**THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE G.ARUL MURUGAN**

**W.A(MD)No.1140 of 2024
and
C.M.P.(MD)No.8693 of 2024**

S.Srinivasagam

... Appellant

VS

**1.The Management,
Formerly Bank of Madurai Limited,
then ICICI Bank Limited, ICICI Tower,
Bandra-Kurla Complex,
Bandra (East) Mumbai -409 051.**

**2.The Joint Commissioner of Labour,
Ellis Nagar, Madurai.**

...Respondents

**PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside
the order of this Court dated 15.02.2024 passed in W.P(MD)No.25554 of
2022.**

**For Appellants
For R2**

**:Mr.S.Seenivasagam
:Mr.A.Kannan
Additional Government Pleader**



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JUDGMENT

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(Judgment of this Court was delivered by **G.ARUL MURUGAN, J.**)

This intra-Court appeal is filed challenging the order, dated 15.02.2024, made in W.P(MD)No.25554 of 2024, wherein, the Writ Petition challenging the order condoning the delay of nearly 20 years and 4 months was allowed.

2.The short facts to be noted for disposal of the appeal is that the appellant was originally appointed in the year 1972 as Clerk in the service of Bank of Maudra Limited and he had been thereafter, promoted as Scale I Officer in the year 1978 and Scale II Officer on 01.01.1981. He was transferred to the Mumbai Office of the first respondent, to which the Bank got merged. The appellant had requested the Bank to cancel the order of transfer and the same was considered and he was retained in the same branch. But, however, on the ground of some irregularities, he was placed under suspension and a charge memo was issued to the appellant on 30.07.1999 by the disciplinary authority. The appellant had appeared before the Enquiry Officer and several opportunities were provided to him. Even



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though initially, the appellant had participated in the enquiry proceedings, later, he did not choose to appear and the Enquiry Officer after completing the enquiry, submitted the report on 31.12.2001 holding that the charges levelled against the appellant are proved.

3.The appellant, while the proceedings were pending, had filed a suit in O.S.No.1215 of 2000 on the file of the Principal District Munsif Court, Madurai, seeking to declare the disciplinary proceedings initiated against him as *mala fide* and to declare the charge sheet, dated 30.07.1999 as null and void and further, the appointment of the Enquiry Officer is also in violation of employees regulation. Pending suit, on 31.12.2001, the appellant was dismissed from service and thereafter, the suit was also came to be dismissed on merits on 23.01.2017. Challenging the judgment passed in O.S.No.1215 of 2000, the appellant had filed an appeal in A.S.No.90 of 2017 before the II Additional Subordinate Court, Madurai. The first appeal also came to be dismissed on 04.08.2021 and the appellant had preferred a Second Appeal in S.A.(MD)No.2282 of 2022 before this Court and on 31.03.2022, the Second Appeal also ultimately came to be dismissed confirming the judgment and decree of the Courts below. However, liberty



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was given to the appellant to proceed against the final orders passed in the disciplinary proceedings in a manner known to law.

4.Pursuant to which, the appellant had filed an application before the second respondent under Section 41(2) of Tamil Nadu Shops and Establishment Act (hereinafter referred as “the Act”). Along with the appeal, he had also filed an application in I.A.No.14 of 2022 to condone the delay of 20 years and 4 months in filing the appeal. The second respondent, by order, dated 03.10.2022 allowed I.A.No.14 of 2022 by condoning the delay. Assailing the said order, the first respondent herein had preferred the Writ Petition. The Writ Court, after considering the issues, set aside the order passed by the second respondent in condoning the huge delay of 20 years and 4 months, as the appellant was not diligently prosecuting his case. Challenging the same, the first respondent in the Writ Petition had preferred the above appeal.

5.The learned Counsel for the appellant argued that the appellant has been *bona fide* pursuing his claim by filing a civil suit and even though the suit was dismissed, he had been contesting the proceedings continuously



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before the appellate Court and also before this Court and the period, which has been pursuing before a wrong forum, has to be excluded from the period of limitation. The learned Counsel further contended that when once the Second Appeal preferred by the appellant was dismissed and this Court had given liberty to the appellant to challenge the order passed in the disciplinary proceedings in a manner to known to law, the appellant had rightly approached the competent authority without any delay. The learned Counsel further submitted that only since the Bank had taken proceedings arbitrarily to victimise the appellant and since they did not have any authority to do the same and the proceedings were not as per the Banking regulation, he had rightly filed the suit to declare all the proceedings, as null and void.

6.It is his further contention that when once the proceedings initiated by the appellant were dismissed, but, however, since liberty was given, the claim had been preferred before the second respondent along with the petition to condone the delay, since the time was lost in adjudicating the proceedings before the wrong forum. The learned Counsel further contended that the second respondent, by considering the liberty granted to



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the appellant to challenge the orders passed in the disciplinary proceedings, had rightly entertained the appeal and had condoned the delay to adjudicate the claim on merits, which has been erroneously interfered with by the Writ Court. He further contended that in view of the orders passed, the claim would ultimately be decided on merits and otherwise, the appellant would be remediless and therefore, sought for interference of this Court.

7.The learned Additional Government Pleader appearing for the second respondent submitted that as the second respondent is the authority to consider any claim made under the Tamil Nadu Shops and Establishments Act and the appellant had filed a petition under Section 41(2) of the Act along with the application to condone the delay and this Court, also by order, dated 31.03.2022, in S.A.(MD)No.2282 of 2022, had given liberty to the appellant to challenge the order, the appeal has been entertained and the second respondent has passed orders by condoning the delay, which is perfectly justified, he contended.

8.Heard the learned Counsels on either side and perused the materials available on record.



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9.The appellant, who was in service of the first respondent Bank, was issued with an order of transfer to the Mumbai office of the first respondent on regular transfer. Pursuant to his request, he was retained at Madurai and due to certain irregularities found, he was issued with a charge memo, dated 30.07.1999. The reply submitted by the appellant was not satisfactory and the Enquiry Officer was appointed and the appellant also participated in the enquiry. Several opportunities were provided to the appellant in the enquiry and even though the appellant had initially participated in the enquiry, later, failed to appear before the Enquiry Officer. However, the Enquiry Officer completed the enquiry and submitted the enquiry report on 31.12.2001 and held that the charges as against the appellant are proved. Based on the enquiry report, the disciplinary authority, by order, dated 31.12.2001, had dismissed the appellant from service.

10.Even while the proceedings was pending, the appellant had filed a suit in O.S.No.1215 of 2000 before the Principal District Munsif Court, Madurai, to declare the charge sheet, dated 30.07.1999 as null and void and also challenging the appointment of the Enquiry Officer and the disciplinary



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proceedings initiated. Only pending this suit, the appellant was dismissed from service on 31.12.2001. Therefore, on the date of termination, in fact, the relief claimed in the suit has become infructuous. But, however, the suit was, ultimately, came to be dismissed on merits by judgment and decree, dated 23.01.2017. The trial Court, after holding that the appellant will not come under the definition of “*Labour*”, had held that the suit is maintainable and the civil Court has got jurisdiction to entertain the suit. By holding so, since the appellant had already been dismissed from service and his appeal filed thereon against the dismissal also came to be dismissed, the trial Court concluded that the suit has become infructuous

11. Even though the appellant had initially filed a suit challenging the charge memo and the disciplinary proceedings initiated against him, after the suit came to be dismissed on 23.01.2017, two things were clearly available before him. One, since the pending suit, his service came to be terminated, he could have challenged the order of termination before the competent forum or secondly, since in the suit, it has been decided that the suit is maintainable and the civil Court is having jurisdiction, the appellant could have challenged the order of dismissal from service by filing a fresh



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suit. The appellant did not choose to do either of the same. Instead, the appellant had consciously decided to file an appeal before the appellate Court.

12.At least, after the suit was dismissed on 23.01.2017, the appellant could have acted diligently by taking appropriate proceedings, but however, he had filed an appeal in A.S.No.90 of 2017 before the II Additional Subordinate Court, Madurai and after the first appeal came to be dismissed on 04.08.2021, he had further filed a Second Appeal in S.A.(MD)No.2282 of 2022 before this Court, which also came to be dismissed on 31.03.2022. Therefore, it is evident that the appellant had been making a continuous and fruitless litigations before the civil Courts. When atleast after he was terminated from service or after the suit was dismissed, he could have taken a vigilant and prudent decision, which he had failed to do so.

13.The learned Counsel for the appellant vehemently relied on the liberty granted when the Second Appeal came to be dismissed. The liberty granted to the appellant cannot in any way wipe out the enormous delay of 20 years 4 months in filing the petition before the second respondent under



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Section 41(2) of the Act. When I.A.No.14 of 2022 has been filed before the second respondent seeking to condone the prolonged delay of 20 years and 4 months in preferring the appeal, the second respondent ought to have independently applied his mind and considered the application on merits and the application could not have simply been allowed only by placing reliance on the liberty, that was granted to the appellant to challenge the order passed in the disciplinary proceedings in a manner known to law.

14.Only the proceedings, which has been *bona fidely* instituted and undertaken before a wrong forum, could be excluded as per Section 14 of the Limitation Act. When the delay occurred after contesting the suit in a civil Court for nearly two decades without approaching the right forum, the appellant cannot take the benefit under Section 14 of the Limitation Act for having prosecuted the case in a wrong forum, as it has not been prosecuted in good faith and due diligence and at least as indicated above, the proceeding initiated by the appellant atleast after the orders of termination and the dismissal of the suit is definitely frivolous and not taken in good faith.



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15. At this juncture, it will be useful to refer the decision of the Hon'ble Supreme Court in ***Consolidated Engineering Enterprises vs Principal Secretary and others***, reported in ***(2008) 7 SCC 169***, wherein, the Hon'ble Supreme Court has clearly set out the conditions under which the period could be excluded. The relevant paragraph of the judgment is extracted hereunder:

“21. Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:

- (1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;*
- (2) The prior proceeding had been prosecuted with due diligence and in good faith;*
- (3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;*
- (4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;*
- (5) Both the proceedings are in a court.”*

16. Further in the decision in ***M. Durga Singh and others vs Yadagiri and others***, reported in ***(2018) 6 SCC 209***, the Hon'ble Supreme Court held



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that after contesting the suit in civil Court for so long years without approaching the right forum, the party cannot now come to constitute proceedings under the concerned Act and also had imposed exemplary cost for taking several Courts for a ride through continuous and fruitless litigation. The relevant portion is extracted hereunder:

“13. We can only say that the appellants themselves approached the civil court and it is now too late for them to contend that they approached the wrong forum. If the appellants honestly believed that the civil court did not have jurisdiction to entertain the suit instituted by them, then the proper course of action would have been to withdraw the suits and proceed under the Act. Instead, as far as OS No. 991 of 1987 is concerned, after the dismissal of the suit for non-prosecution, the appellants preferred an application for restoration which was dismissed as also perhaps a revision petition. At least at that point of time, wisdom should have dawned upon the appellants that the civil court had no jurisdiction in the matter but quite to the contrary, they proceeded with the litigation and later instituted some more proceedings in the civil court.

14. It is quite clear to us that whatever be the position in law, the appellants invited trouble either by pursuing the litigation in the wrong forum or by not approaching the right forum. For this, the appellants have only themselves to blame and cannot hide behind the veil of a lack of jurisdiction of the civil court.

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20. In view of the above, we have no hesitation in concluding that the Special Court was fully justified in dismissing the land-grabbing case filed by the appellants and the High Court was also justified in dismissing the writ petition filed by them. We find absolutely no reason to interfere with the views expressed and accordingly we dismiss the appeal with costs of Rs 50,000 on



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the appellants for taking several courts for a ride through continuous and fruitless litigation spanning several decades.”

17.Further, the Hon'ble Supreme Court in Sesh Nath Singh and another vs Baidyabati Sheoraphuli Cooperative Bank Limited and another, reported in (2021) 7 SCC 313, held that only those cases prosecuted in good faith and due diligence will be excluded and not the time wasted by making meritless application or frivolous further proceedings after that. The relevant portion is extracted hereunder for easy reference:

“81. To cite another example, if civil proceedings were initiated in a wrong forum in good faith and prosecuted with due diligence, but after the proceedings ended, time was wasted by making frivolous, meritless applications, the applicant would only be entitled to exclusion of time from the date of initiation till the end of the proceedings initiated in good faith and bona fide and pursued diligently, and no more. The applicant would not be entitled to exclusion of any further time spent in pursuing frivolous further proceedings, or otherwise.”

18.From the above decisions, it is clear that the parties should have been diligently and bona fidely prosecuting his case before a wrong forum in good faith to take recourse under Section 14 of the Limitation Act and if any proceedings or a fruitless litigation, which has been undertaken before



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civil Courts for decades, the parties cannot be allowed to take the benefit under Section 14 of the Limitation Act, for those period to be excluded in considering the delay occurred in preferring the proper proceeding.

19.In the instant case, as referred earlier, though the appellant had initially filed a suit, pending suit, he was terminated from service and the civil suit also came to be dismissed on the ground that in view termination, it has become infructuous. But, however, the trial Court found that the suit filed is maintainable. Even after the conclusion of the trial Court proceedings, the appellant had consciously not chosen either to file a fresh suit or to take appropriate proceedings before the competent forum challenging the orders passed in the disciplinary proceeding, but had chosen to file a frivolous first appeal and further, second appeal, which all ultimately came to be dismissed. Now, the appellant had approached the second respondent and filed an application under Section 41(2) of the Act with a petition to condone the delay of 20 years 4 months, ie., more than two decades. The second respondent had passed orders condoning the huge delay simply by placing reliance on the liberty granted to the appellant when the Second Appeal came to be dismissed.



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20.The learned Judge, by considering all the above legal and factual aspects, have arrived at a conclusion that the appellant cannot be allowed to initiate fresh proceedings before the second respondent after several decades, since he had been conducting frivolous litigation before the other Courts. In our considered opinion, there is no error or infirmity in the order passed by the learned Judge and the same is accordingly, sustained.

21.In view of the above discussion, the Writ Appeal stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.S.K., J] & [G.A.M., J]
12.07.2024

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

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To

The Joint Commissioner of Labour,
Ellis Nagar, Madurai.

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R.SURESH KUMAR, J.

AND

G.ARUL MURUGAN, J.

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Judgment made in
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