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C.M.P.(MD) No.9483 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.03.2024

CORAM:

THE HONOURABLE **MR.JUSTICE D.KRISHNAKUMAR**

AND

THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

C.M.P.(MD)No.9483 of 2023

and

W.A.(MD)SR.No.49892 of 2023

- 1.The Joint Director,
Department of Elementary Education,
College Road, Chennai-06.
 - 2.The District Elementary Educational Officer,
O/o. The District Elementary Educational Officer,
Pudhukkottai, Tuticorin.
 - 3.The Assistant Elementary Educational Officer,
Karungulam Union, Tuticorin District.
- ... Petitioners

-Vs-

- 1.P.Seetha Pirati
 - 2.The Headmistress,
Hindu Jeyalakshmi Middle School,
Kilakulam, Karungulam Union,
Tuticorin District.
- ... Respondents

PRAYER in C.M.P.(MD)No.9483 of 2023: Petition filed under Section 5 of Limitation Act, praying this Court to condone the delay of 475 days in filing the Writ Appeal against the order made in W.P.(MD)No.13904 of 2018, dated 16.02.2022.



C.M.P.(MD) No.9483 of 2023

PRAYER in W.A.(MD)SR.No.49892 of 2023: Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order made in W.P.(MD)No. 13904 of 2018, dated 16.02.2022 on the file of this Court.

For Petitioners : Mr.D.Sadiq Raja,
Additional Government Pleader
For Respondent : No Appearance

ORDER

[Order of the Court was made by *D.KRISHNAKUMAR, J.*]

This petition is filed to condone the delay of 475 days in filing the above Writ Appeal.

2.Though notice served on the respondents and the name is printed in the cause list, none appeared for the respondents.

3.On perusal of the entire affidavit filed in support of this petition, it is seen that there is no satisfactory explanation given by the petitioners for such inordinate delay in filing the appeal and we are not satisfied with the reasons stated therein.



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4.The Hon'ble Supreme Court of India in the case of **Majji Sannemma @ sanyasirao Vs. Reddy Sridevi & Ors**, in Civil Appeal No.7696 of 2021, dated 16.12.2021 has held as follows:

“7. At this stage, a few decisions of this Court on delay in filing the appeal are referred to and considered as under:

7.1 In the case of Ramlal, Motilal and Chhotelal (supra), it is observed and held as under:

In construing s. 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decreeholder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decreeholder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decreeholder by lapse of time should not be lightly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in Krishna v. Chattappan, (1890) J.L.R. 13 Mad. 269, "s. 5 gives the Court a discretion



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which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant."

7.2. In the case of P.K. Ramachandran (supra), while refusing to condone the delay of 565 days, it is observed that in the absence of reasonable, satisfactory or even appropriate explanation for seeking condonation of delay, the same is not to be condoned lightly. It is further observed that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds. It is further observed that while exercising discretion for condoning the delay, the court has to exercise discretion judiciously.

7.3. In the case of Pundlik Jalam Patil (supra), it is observed as under:

"The laws of limitation are founded on public policy. Statutes of limitation are sometimes described as "statutes of peace". An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. The principle is based on the maxim "interest reipublicae ut sit finis litium", that is, the interest of the State requires that there should be end to litigation but at the same time



laws of limitation are a means to ensure private justice suppressing fraud and perjury, quickening diligence and preventing oppression. The object for fixing timelimit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.”

7.4 In the case of Basawaraj (supra), it is observed and held by this Court that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case. It is further observed that the expression “sufficient cause” cannot be liberally interpreted if negligence, inaction or lack of bona fides is attributed to the party. It is further observed that even though limitation may harshly affect rights of a party but it has to be applied with all its rigour when prescribed by statute. It is further observed that in case a party has acted with negligence, lack of bona fides or there is inaction then there cannot be any justified ground for condoning the delay even by imposing conditions. It is observed that each application for condonation of delay has to be decided within the framework laid down by this Court. It is further observed that if courts start condoning delay where no sufficient cause is made out by imposing conditions then that would amount to violation of statutory principles and showing utter disregard to legislature.

7.5 In the case of Pundlik Jalam Patil (supra), it is



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observed by this Court that the court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The Courts help those who are vigilant and “do not slumber over their rights”.

8. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the averments in the application for condonation of delay, we are of the opinion that as such no explanation much less a sufficient or a satisfactory explanation had been offered by respondent Nos.1 and 2 herein – appellants before the High Court for condonation of huge delay of 1011 days in preferring the Second Appeal. The High Court is not at all justified in exercising its discretion to condone such a huge delay. The High Court has not exercised the discretion judiciously. The reasoning given by the High Court while condoning huge delay of 1011 days is not germane. Therefore, the High Court has erred in condoning the huge delay of 1011 days in preferring the appeal by respondent Nos.1 and 2 herein – original defendants. Impugned order passed by the High Court is unsustainable both, on law as well as on facts.

9. In view of the above and for the reasons stated above, the present Appeal is Allowed. The impugned order dated 16.09.2021 passed by the High Court condoning the delay of 1011 days in preferring the Second Appeal by respondent Nos.1 and 2 herein is hereby quashed and set aside. Consequently, Second Appeal No.331 of 2021 preferred by respondent Nos.1 and 2



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herein stands dismissed on the ground of delay. The present Appeal is accordingly Allowed. However, there shall be no order as to costs.”

5.In the light of the aforesaid decisions, we are of the view that in the absence of any reasonable, satisfactory or even appropriate explanation, such inordinate delay of 475 days cannot be condoned and therefore, this application is liable to be dismissed, accordingly, it is dismissed. Consequently, connected W.A. (MD)SR.No.49892 of 2023 is rejected at SR stage itself.

[D.K.K., J.] & [R.V., J.]
07.03.2024

NCC : Yes / No
Index : Yes / No
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