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C.M.P.(MD) No.12136 of 2023
in W.A.(MD) SR. No.62794 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.P.(MD) No.12136 of 2023
in W.A.(MD) SR. No.62794 of 2023
and W.A.(MD) SR. No.62794 of 2023

1.The Secretary to Government,
Home (Police VI Department),
Secretariat,
Fort St. George,
Chennai – 600 009.

2.The Superintendent of Police,
Office of Superintendent of Police,
Nagercoil, Kanyakumari District.

... Petitioners in C.M.P./
Appellants in W.A.

-vs-

R.Jeyakumar

... Respondent in
C.M.P. & W.A.

PRAYER in C.M.P.(MD) No.12136 of 2023: Civil Miscellaneous Petition filed under Section 5 of Limitation Act, to condone the delay of 487 days in filing the Writ Appeal.



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PRAYER in W.A.(MD) SR. No.62794 of 2023: Writ Appeal filed under Clause 15 of the Letters Patent Act against the order dated 23.03.2022 passed in W.P.(MD) No.8194 of 2017 on the file of this Court.

For Petitioners in CMA and: Mr.T.Amjadkhan
Appellants in W.A. Government Advocate

For Respondent in CMA : Mr.B.Brijesh Kishore
and W.A.

ORDER

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

The Civil Miscellaneous Petition is filed for condoning the delay of 487 days in filing W.A.(MD) SR. No.62794 of 2023.

2. Heard Mr.T.Amjadkhan, learned Government Advocate for the petitioners and Mr.B.Brijesh Kishore, learned counsel for the respondent.

3. An appeal has to be filed within the stipulated period, prescribed under the law. Belated appeals can only be condoned, when sufficient reason is shown before the court for the delay. The petitioner who seeks condonation of



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delay therefore must explain the delay of each day. It is true that the courts should not be pedantic in their approach while condoning the delay, and explanation of each day's delay should not be taken literally, but the fact remains that there must be a reasonable explanation for the delay. In the present case, this delay has not been explained to the satisfaction of the court.

4. When the matter came up for hearing, after notice to the respondent, on 29.01.2024, at the instance of the petitioners for filing better affidavit, the matter was adjourned. Now better affidavit has been filed and the reason for delay has been stated at paragraph No.3 of the additional affidavit filed in support of the petition. In para No.3, it is stated that the order was passed on 23.03.2022 and the same was received by the second respondent on 19.05.2022. Legal opinion was obtained from the Government Pleader on 15.06.2022, wherein he opined that this is not a fit case for filling appeal. When the proposal was sent to the Director General of Police on 29.06.2022, he sent a letter dated 16.02.2023, seeking opinion from the Home Department, which in turn sent a letter dated 06.06.2023 to the learned Additional Advocate General seeking



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second legal opinion and the learned Additional Advocate General gave a opinion on 06.06.2023 to file an appeal. Thereafter, the present appeal was made ready and sent to the Director General of Police on 07.07.2023 and the same was forwarded to the Government on 18.07.2023 and after obtaining administrative sanction on 16.08.2023, the appeal was filed on 22.08.2023.

5. The respondent has filed a counter affidavit stating that the reason stated in the additional affidavit filed in support of the petition that the delay is caused due to administrative reasons is not acceptable as per various decisions rendered by this Court as well as the Supreme Court and this petition is filed only to escape from the contempt petition filed by the respondent.

6. Considering the submissions made on both sides, we are of the view that the petitioners have not satisfactorily explained the inordinate delay in filing the Writ Appeal and in the additional affidavit, they have merely stated the facts.



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7. 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 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



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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.”



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*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 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



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

8. In ***Esha Bhattacharjee v. Raghunathpur Nafar Academy [2013 (12) SCC 649]***, the Hon'ble Supreme Court has culled out the principles applicable to an application for condonation of delay and the same are reproduced



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hereunder:

“i).....

.....

iv) *No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*

.....

vii) *The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

..

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.*

.....”

9. In the light of the aforesaid decisions, we are of the view that in the absence of reasonable, satisfactory or even appropriate explanation, such inordinate delay of 487 days cannot be condoned and therefore, this application is liable to be dismissed.



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10. Accordingly, the Civil Miscellaneous Petition stands dismissed.

Consequently, connected W.A.(MD) SR. No.62794 of 2023 is rejected.

[D.K.K., J.] [R.V., J.]
12.02.2024

Index : Yes / No
Internet : Yes / No
SJ

To

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Secretariat,
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