



C.R.P.(MD)No.2367 of 2019

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : 22.02.2024

Pronounced on : 15.03.2024

CORAM:

**THE HON'BLE MR.JUSTICE K.MURALI SHANKAR**

C.R.P.(MD)No.2367 of 2019

1. Pappa

2. Kathiravan

3. Chellapoongani

... Petitioners/  
Petitioners/  
Defendants

Vs.

Kalisamy

... Respondent/  
Respondent/  
Plaintiff

**Prayer** : This Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the fair and decretal order dated 18.09.2019 passed in I.A.No.700 of 2014 in O.S.No.43 of 2011 on the file of the Sub Court, Tenkasi, and allow the present Civil Revision Petition.

For Petitioners : Mr.S.S.Thesigan

For Respondent : Mr.S.Kumar



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### **ORDER**

The Civil Revision Petition is directed against the order passed in I.A.No.700 of 2014 in O.S.No.43 of 2011 dated 18.09.2019 on the file of the Principal Subordinate Court, Tenkasi, dismissing the application filed under Section 5 of Limitation Act.

2. The respondent as plaintiff has filed a suit in O.S.No.43 of 2011 for recovery of Rs.6,01,350/- due on the promissory note executed by the deceased Madappan, from and out of the estate of the deceased Madappan. Admittedly, the revision petitioners/defendants are the wife, son and daughter of the deceased Madappan. The revision petitioners/defendants, after entering into appearance, have not chosen to file written statement and hence, they were set *ex parte* and that an *ex parte* judgment and decree came to be passed on 16.09.2011. The revision petitioners/defendants, by alleging that the second revision petitioner/second defendant was out of station for two months for his business purposes and hence, he could not meet their counsel, that since the revision petitioners 1 and 3/defendants 1 and 3 are ladies, they could not meet their counsel, that since they have not filed written statement, *ex parte* decree came to be passed, that there



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occurred 16 days delay in filing an application for setting aside the *ex parte* decree and that the revision petitioners/defendants will be put to irreparable loss and hardship, if the delay is not condoned, have filed an application under Section 5 of Limitation Act in I.A.No.700 of 2014 to condone the delay of 16 days. The respondent/plaintiff has filed a counter statement raising objections stating that the revision petitioners/defendants have not given any particulars regarding the second revision petitioner/second defendant's out of station business work, that the respondent/plaintiff has already filed an execution petition in E.P.No.185 of 2013 and after the receipt of Court notice, the revision petitioners 1 and 2/defendants 1 and 2 have entered into appearance on 28.03.2013 itself, that they have not informed about the filing of the present application immediately, that the revision petitioners/defendants have not assigned any reason for setting aside the *ex parte* decree and for condoning the delay and that the present application has been filed only to prevent the respondent/plaintiff from realizing the benefits of the decree. The learned Subordinate Judge, after enquiry, has passed the impugned order dated 18.09.2019 dismissing the application. Aggrieved by the order of dismissal, the present revision came to be filed.



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3. It is settled law that the word “sufficient cause” in Section 5 of Limitation Act should receive liberal construction to do substantial justice. It is also settled law that the length of delay is no matter, but acceptability of the explanation is the only criterion. In the case on hand, no doubt, there occurred 16 days delay in filing the application for setting aside the *ex parte* decree. But as rightly contended by the learned counsel appearing for the respondent, though the application under Section 5 of Limitation Act came to be filed in 2011, the same was returned for rectification of defects and after re-presentation, the same was returned again and again and that the application was taken on file on 05.12.2014 after the lapse of three years since the filing of the application.

4. It is pertinent to note that the respondent/plaintiff has already filed the execution petition in E.P.No.185 of 2013 and after the receipt of Court notice, the revision petitioners 1 and 2/defendants 1 and 2 have entered into appearance through their counsel on 28.03.2013 and that though notice was served on the third revision petitioner/third defendant subsequently, he has not chosen to appear.



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5. It is evident from the report received from the learned Principal Subordinate Judge, Tenkasi, that the execution petition was pending for counter of the defendants 1 and 2 for more than four months and filed their counter on 08.11.2013 and that thereafter they have filed a stay petition in E.A.No.47 f 2014 citing the pending of the application filed under Section 5 of Limitation Act.

6. As rightly contended by the learned counsel appearing for the respondent, the revision petitioners/defendants, in their affidavit filed in support of the present application, have not assigned any reason or ground for the delay occurred. Though the second revision petitioner/second defendant, who filed the affidavit in support of the present application, has alleged that he was in outstation for his business purposes for two months, he has not elaborated anything further. As rightly pointed out by the learned counsel appearing for the respondent, the revision petitioners/defendants have not stated as to when the second revision petitioner/second defendant went to outstation and as to when he returned and as to when he met his counsel and as to when he came to know about the *ex parte* decree. As rightly contended by the learned counsel appearing for the respondent, the affidavit was completely vague and bald.



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7. The learned counsel appearing for the respondent has relied on the decision of the Division Bench of this Court in ***Sundar Gnanaolivu represented by his Power of Attorney Agent Mr.Rukmini Vs. Rajendran Gnanavolivu represented by its Power of Attorney Agent Veina Gnanavolivu*** reported in **2003 1 L.W. 585** and the relevant passage is extracted hereinafter;

*“15. On a conspectus reading of the above principles set out in the various judgments, it is well settled that a liberal approach should be extended while considering the application for condonation of delay. Sufficient caution has been exhibited to note that wherever there is lack of bona fides or attempt of hood-wink the Court by the party concerned who has come forward with an application for condonation of delay, in such cases, no indulgence should be shown by condoning the delay applied for. It is also clear to the effect that it is not the number of days of delays that matters, but the attitude of the party which caused the delay. In other words when the Court finds that the party who failed to approach the Court within the time stipulated comes forward with an explanation for condoning the delay, the Court if satisfied that the delay occasioned not due to the deliberate conduct of the party, but due to any other reason, then by sufficiently compensating the*



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*prejudice caused to the other side monetarily, the condonation of delay can be favourably ordered."*

8. The above decision is squarely applicable to the case on hand. In the present case also, the attitude and the conduct of the revision petitioners/defendants is to be looked into. As already pointed out, though they have filed the application in 2011 itself, they have not chosen to rectify the defects pointed out by the Registry so as to enable them to take the application on file, but on the other hand, the application was represented again and again and after the lapse of three years, the application was taken on file. As already pointed out, though the revision petitioners 1 and 2/defendants 1 and 2 have entered into appearance in the execution proceedings, even thereafter they have not chosen to re-present their returned application under Section 5 of Limitation Act after rectifying the defects found therein and to get the application numbered.

9. At this juncture, it is necessary to refer the decision of this Court in the case of ***T.Natarajan Vs. Srivari Housing and Construction Ltd. and others*** reported in ***2020 SCC OnLine Mad 2355*** and the relevant passages are extracted hereunder;



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*“4.The law of limitation is substantive law. Condonation of delay is an exception. The Courts are bound to exercise discretionary power judiciously and by recording reasons. The Courts are bound to follow the law of limitation in all circumstances and only on exceptional circumstances, wherever the reasons are found genuine, then only the Courts can condone the delay and not otherwise. Mechanical approach in condonation of huge delay is unacceptable. In such an event, the Courts are diluting the law of limitation, which is impermissible. The power of discretion is to be exercised by recording reasons and it is not as if the Courts can condone the huge delay without any genuine reasons.*

....

7. ....

*16. The concepts such as “liberal approach”, “justice oriented approach”, “substantial justice” cannot be employed in jettison the substantial law of limitation. The law of limitation is substantial and therefore the principles laid down is to be scrupulously followed while condoning the delay under the law of limitation. The limitation has got a specific purpose and object and more specifically to avoid prejudice to the respective parties. In the event of prolongation or protraction of the litigation,*



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*undoubtedly and for an unspecified period when the specific law of limitation has got a specific purpose and object, then the power of discretion is to be exercised cautiously. Power of discretion cannot be exercised in the absence of any valid reason. In other words, powers can be exercised for the purpose of passing orders only by recording reasons which must be candid and convincing and must be passed on certain sound legal principles. Therefore, recording of reasons for exercising discretionary powers is one of the elementary principles of law. In the event of exercising discretionary powers without recording reasons, undoubtedly the same would cause not only prejudice and will set a bad principle and therefore, the Courts must be cautious while exercising power of discretion more specifically in such matters where the law of Limitation is substantial.”*

10. In the present, as already pointed out, the revision petitioners/ defendants have not assigned any reason or explanation for the delay. It is pertinent to mention that delay condonation petition should not be dealt with in a routine manner and mechanical approach in condonation of huge delay cannot be accepted.



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11. Considering the above, the impugned order dismissing the application filed under Section 5 of Limitation Act cannot be found fault with. Hence, this Court concludes that the revision is devoid of merit and the same is liable to be dismissed.

12. In the result, this Civil Revision Petition is dismissed. No costs.

**15.03.2024**

NCC :yes/No  
Index :yes/No  
Internet:yes/No  
csm

**To**

1. The Principal Subordinate Court,  
Tenkasi.
2. The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**K.MURALI SHANKAR,J.**

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**Pre-Delivery Order made in  
C.R.P.(MD)No.2367 of 2019**

**Dated : 15.03.2024**