



C.R.P.(MD)No.3283 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 27/03/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD)No.3283 of 2023

and

CMP (MD)No.16930 of 2023

1.T.Kalyani
2.T.Venkatesh
3.T.Janani

: Petitioners/Petitioners/
Defendants

Vs.

A.Sowkath Ali

: Respondent/Respondent/
Plaintiff

PRAYER:-Civil Revision Petition has been filed under section 115 of the Civil Procedure Code, to call for the records relating to the dismissal order, dated 19/10/2023 made in IA No.341 of 2022 in OS No.84 of 2018 on the file of the Principal District Judge, Pudukottai and set aside the same.

For Petitioners : Mr.B.A.Murugananthan

For Respondent : No appearance

O R D E R

This civil revision petition is filed seeking in order to set aside the order, dated 19/10/2023 passed in IA No.341 of 2022 in OS No.84 of 2018 by the Principal District Judge, Pudukottai.



2. The facts in brief:-

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The suit in OS No.84 of 2018 was filed by the plaintiff namely the respondent herein seeking the relief of recovery of Rs.10,36,333/- with interest. The defendants entered appearance, filed written statement, later remained *ex-parte*. To set aside the *ex-parte* judgment and decree, dated 07/12/2019, he filed IA No.341 of 2021. That came to be dismissed by the trial court.

3. Against which, this civil revision petition is preferred.

4. The averments made in the petition filed by petitioners in IA No.341 of 2022 is that the date of hearing was not informed to them by the Advocate. Their Advocate colluded with the opposite party. So, they could not appear, on 03/12/2019. They did not aware of the *ex-parte* decree and judgment, till they received the notice in the execution petition. So, they approached their Advocate and there was no proper information by him. So, they have engaged an Advocate from Madurai and filed a petition.



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5.That was resisted by the respondent herein by filing counter stating that the reason assigned by the petitioner is not proper and acceptable one.

6.The trial court recorded a finding that absolutely, no evidence has been produced by them to show that the Advocate appearing for them colluded with the opposite party and did not inform about the court proceedings. On that account, it came to be dismissed.

7.Against which, this civil revision petition is preferred.

8.The learned counsel appearing for petitioners has also reiterated the very same averments made in the petition.

9.Consideration for considering this sort of petition is now more or less well settled. In **Esha Battacharjee's** case, the following principles have been dedicated.

"15.From the aforesaid authorities the principles that can broadly be culled out are:



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(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(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.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required



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to be vigilant so that in the ultimate eventuate there is no real failure of justice.

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

(viii)There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(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.

(x)If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other



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side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

(a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.



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(b)An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(c)Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(d)The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters."

10.No doubt that disposing the condone delay application under section 5 of the Limitation Act, the law is more or less well settled.

11.Now, we can test the reason assigned by the petitioners on the parameters set out by the Hon'ble Supreme Court in ***Esha Bhattacharjee Vs. Managing committee of Raghunathpur Nafar Academy and others (2013-5-LW.20)***.



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12.As observed by the trial court, there is no evidence on record that the Advocate, who appeared for them colluded with the opposite party, did not inform them about the court proceedings. As a dutiful litigants, the petitioners ought to have been vigilant in prosecuting the matter properly.

13.It is also seen that EP No.118 of 2022 is filed to attach and sell the immovable property. The petitioners filed EA No.62 of 2022 to stay the execution proceedings. But in view of pendency of IA No.341 of 2022, that was not pressed by them. Later, filed IA No.1 of 2003 to stay the execution proceedings till the disposal of CRP before this court.

14.The development before this court shows that the petitioners want to drag on the matter endlessly. So, when the reason assigned by the petitioners is not acceptable and not supported by any materials, then they are not entitled for discretionary relief. It has been rightly dismissed by the trial court, which requires no interference by this court.



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15.In the result, this civil revision petition stands **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

27/03/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Principal District Judge,
Pudukkottai.
- 2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN, J

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C.R.P (MD) No. 3283 of 2023

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