

A Nos.1205 of 2025 and 1206 of 2025

in

A No.4818 of 2017

in

CS D No 25376 of 2014

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1. There are two applications filed by the applicant/plaintiff. A No.1205/2025 is filed to condone the delay of 2057 days in representing A.D.No.148530 of 2018 in A No.4818 of 2017 in CS D No.25376 of 2014. A.No.1206 of 2025 is filed to condone the delay of 2057 days in representing the A.D.No.148533 of 2018 in A.No.4818 of 2017 in CS D No.25376 of 2014.

2. The learned counsel for the applicant submitted that the Application in D No.148533 and 148530 of 2018 were filed to condone the delay and to restore the application in A.No.4818 of 2017 which was dismissed for non-prosecution. The said applications were returned on 06.05.2018 for certain compliance and thereafter due to Covid-19 pandemic situation curfew was imposed, thereafter due to shifting of the Advocate office the returned bundle was missed and misplaced with other bundles, due to work pressure their office forgot to attend the case and after long time when their client approached them they got remembered about the case and after hectic search the bundle was traced out and represented. Hence there was a delay of 2057 days in

representation of D.Nos.148530 and 148533 of 2018. The learned counsel further submitted that due to the mistake of advocate client should not be put on sufferance and the delay may be condoned. In support of his contentions, the learned counsel relied on the decisions in

(i) Lakshminarayanan vs Vaigundanamamani and another in Madras High Court Judgement 2000(2) CTC 321 is extracted hereunder:

In the light of the law laid down by the Apex court in the above referred case and in view of the explanation offered by the counsel by way of an affidavit, I am inclined to accept the explanation of the counsel who has shown sufficient cause for the delay. It is worth while to mention ther her there is no delay in filing the petition to set aside the exparte decree, the delay has occasioned only in representing the said petition and sufficient cause has been shown for the same. In similar circumstances a Division Bench of this Court in Y.Cusbar v K.Subbarayan,1994 M.L.J.(N.R.C) I has held thus:

“...If there is any undue delay in representing the papers the delay can be compensated by awarding costs. Therefore, the court is of the view that when the appeal has been filed in time, but there is inordinate delay in representing the papers, returned for rectification of the defects, by the appellate court, the delay can be condoned on taking a lenient view by compensating the other side on payment of costs”.

(ii) M.N.Abdul Wahab vs Salem City Municipality Corporation in Madras High Court Judgment (2006) 5 CTC 136(MAD),is extracted hereunder :

6.In the instant case, the Lower Court has exercised its discretion and condoned the delay therefore, It has to be seen as to whether the discretion exercised by the

Lower Court is within the principles laid down by the Supreme Court. The Honble Supreme Court, in 1998 2 SCC 533 (N.Balakrishnan vs. M.Krishanmurthy) in paragraphs 10 and 14 has held as follows:

10. It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the Lower Court.

14. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is put-forth as part of a dilatory strategy the court must show utmost

consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay of the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quiet a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party of his loss."

(iii) N.Sengoda Gounder vs R.Manickam on 20.10.2010 in Madras High Court

Judgement is extracted hereunder:

14. It has been categorically held by the Hon'ble Apex Court that liberal construction should have been given in condoning the delay when there is no inaction, negligence or laches imputable on the part of the person claiming condonation. This is a rule laid down by the Hon'ble Apex Court, even if, condonation under Section 5 of Limitation Act for the delay caused in filing an appeal or application, in which the period of limitation have been prescribed. As far as this case is concerned, the application to restore the suit was filed within the time as contemplated under the Limitation Act. Thereafter, the delay has been caused in re-presentation of the said application returned for some defects. Therefore, it has become necessary to hold that it has to be considered only in between the Court and the petitioner, claiming condonation for the delay of re-presentation. Even if, we take that the delay is equated to a delay caused in

condonation in preferring an appeal or application and thereby, where the period of limitation has been extended by such condonation, the petitioner has categorically shown to the Court that the negligence was only on the part of his counsel and nothing was imputable against him. The judgment of 1st bench of this Court reported in 1993 TLNJ 375 in between Y.Cusbar v. K.Subbarayan, it has been held that the delay in representation cannot be put to the account of the party. Therefore, the delay caused in re-representation was only because of the act of his counsel and not by the inaction of the petitioner. The suit was filed for specific performance and alternatively for refund of advance. The only inaction which could be attributed is that he has not contacted his counsel then and there, for enquiring about his application for restoring the suit. But, the very negligence is on the part of the advocate's office and it shall not penalise the litigant. Therefore, the principles laid down by the 1st Bench of this Court reported in 1993 TLNJ 375 in between Y.Cusbar v. K.Subbarayan, is squarely applicable to the facts of this case.

The learned counsel for the applicant read the relevant portions in the above said citations and pointed out that huge number of days of delay can be condoned by taking lenient view and liberal approach. Therefore he prayed this court to condone the delay and allow this application.

3. On perusal of the entire case record it is seen that the plaintiff had filed suit for recovery of money based on promissory note which was returned by this court for

certain compliances, thereafter the applicant represented the suit along with an application to condone the delay of 993 days in representation of the case papers which was numbered in A No.4818 of 2017 and the same was dismissed for non prosecution. No application was filed to restore the A.No.4818 of 2017 immediately. Thereafter the applicant filed D.Nos.148530 of 2018 and 148533 of 2018 to condone the delay of 378 days in filing the set aside application in A.No.488 of 2017 and to set aside the order of dismissal of A.No.4818/2017 respectively.

4.Admittedly the suit was filed in the year 2014. The applicant/plaintiff has committed several defaults consecutively. Firstly, he has not represented the suit in time and he has represented the suit along with a condone delay application to condone the delay of 996 days in representing the suit. Secondly, he has not proceeded with the case properly and left the application to be dismissed for non prosecution. Thirdly, he has not filed to restore the application A.No.4818 of 2017 in time. Fourthly, he has filed restoration application to restore A.No.4818/2017 with a delay of 378 days. Fifthly, once again when the said applications were returned he has not represented the said applications in time. The reason stated by the applicant for the delay in representing the A.D.Nos.148533/2018 and 148530/2018 is due to pandemic situation and thereafter the bundles got mixed up with other bundles while shifting the office of the advocate. Admittedly, there was a huge delay of 993 days in representing the suit at the first instance and thereafter, once again there was a delay of 378 days in filing an application to set aside the order of dismissal and restoration of A.No.4818/2017 and now another

huge delay of 2057 days in representing the said applications in A.D Nos.148530 and 148533/2018, it was a usual reason that was stated by the advocate for applicant that bundles were misplaced.

5.We all know that Covid lock down was imposed on 24.03.02020. After first lock down courts were operated in hybrid mode. Thereafter in 2021, second lock down was announced. After lifting lock down courts were functioned in restricted manner. The Hon'ble Supreme Court has excluded the period from 15.03.2020 to 28.02.2022 from the law of limitation and granted further period of 3 months to file or represent the matters which were affected by the law of limitation. Even for the sake of arguments if it is taken that that bundles were misplaced in the office of the applicant's advocate, no reason has been stated as to which prevented the applicant from approaching his advocate for a follow up of his case from March 2022 to January 2025. The reason stated by the applicant is unbelievable and no explanation is given for the period from March 2022 to January 2025 and why the applicant was dormant in that period. No justifiable or credible explanation is given by the applicant for the delay caused. The citations relied on by the applicant is not relevant to the facts and circumstances of this case, since in the case on hand there was a huge delay of 993 days in representing the suit at the first instance, once again there was a delay of 378 days in filing the application to restore the application in A.No.4818 of 2017 and now another huge delay of 2057 days in filing these applications to condone the delay in representation of A.D Nos.148533/2018 and 148530/2018.

6. In fine, this court is not inclined to condone the delay and this application is dismissed.

No costs.

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