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CRP NPD.No.4039 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 09.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP [NPD] No.4039 of 2024 & CMP.No.22216 of 2024

S.Kannappan

. . . Petitioner

Versus

G.Ramasubramaniam

. . . Respondent

PRAYER : Petition filed under section 115 of Code of Civil Procedure to set aside the fair Order in I.A.No.700 of 2018 dated 19.06.2024 in O.S.No.127 of 2011 on the file of the learned District Munsif, Mettupalayam, Coimbatore District and allow the Civil Revision Petition.

For petitioner : Mr.P.Rengaraju

ORDER

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Challenging the order of the trial Court dismissing the application filed by the petitioner to condone the delay of 728 days in filing an application to set aside the *ex parte* decree, the present revision petition has been filed.

2. The suit in O.S.No.127 of 2011 has been originally filed by the respondent for permanent injunction and mandatory injunction as against the petitioner. In the said suit, the petitioner/defendant was set *ex parte* and an *ex parte* decree came to be passed on 04.08.2016. Thereafter, the petitioner has come forward with the present application to condone the delay of 728 days in filing an application to set aside the *ex parte* decree.

3. It is the contention of the petitioner that he was suffering from jaundice and took Ayurvedic treatment at Gobichettipalayam. Therefore, he could not contact his counsel and give instructions to file written statement. Hence, the delay had occurred. The respondent opposed the application filed to condone delay on the ground that there is no details as to the period when he was not well and when he recovered and the petitioner has not explained each



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and every day delay and no documents have been filed to substantiate the case of the petitioner. The trial Court, taking note of the fact that no documents have been filed in support of the contentions of the petitioner and there is no sufficient cause to condone the delay, dismissed the application by an order dated 19.06.2024. Challenging the same, the present revision has been filed.

4. Heard the learned counsel appearing for the petitioner and perused entire materials available in record.

5. The reason assigned for delay in the affidavit is that he was suffering from jaundice and he was taking Ayurvedic treatment in Gobichettipalayam and therefore, he was not able to contact his counsel to give instructions to file written statement. The trial Court taking note of the fact that sufficient cause to condone the delay of 728 days has not been explained by the petitioner and the petitioner had not shown sufficient cause and dismissed the application.

6. Though the word “sufficient cause” under Section 5 of the Limitation Act is elastic enough to enable the Court to apply law in a meaningful manner



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to subserve the ends of justice, the fact remains that, to enlarge such discretion to the parties to advance substantial justice, the reasons assigned by the parties should be true and justifiable and there must be sufficient cause.

7. In *Basawaraj and another v. Special Land Acquisition Officer [2013 (4) SCC 81]*, the Apex Court has held that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case and 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 therein that, even though limitation may harshly affect the rights of a party, it has to be applied with all its rigour when prescribed by statute and 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 further observed that each application for condonation of delay has to be decided within the framework laid down by the Hon'ble Supreme Court. It is further observed that, if Courts start condoning delay where no sufficient cause is made out imposing conditions, then that would amount to violation of statutory principles and showing utter disregard



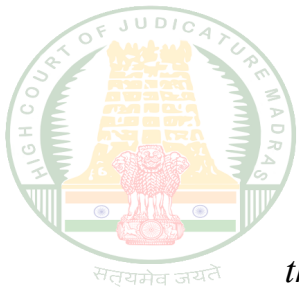
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to legislature. The said judgment has also been followed by the Hon'ble Supreme Court in ***Majji Sannemma @ Sanyasirao v. Reddy Sridevi and others [Civil Appeal No.7696 of 2021, dated 16.12.2021]***.

8.Further, the Hon'ble Supreme Court in ***Thirunagalingam v. Lingeswaran and another [Unnumbered Civil Appeal arising out of SLP (C) No.17575 of 2023, dated 13.05.2025]***, has held as follows :

“31.It is a well-settled law that while considering the plea for condonation of delay, the first and foremost duty of the court is to first ascertain the bona fides of the explanation offered by the party seeking condonation rather than starting with the merits of the main matter. Only when sufficient cause or reasons given for the delay by the litigant and the opposition of the other side is equally balanced or stand on equal footing, the court may consider the merits of the main matter for the purpose of condoning the delay.

32.Further, this Court has repeatedly emphasised in several cases that delay should not be condoned merely as an act of generosity. The pursuit of substantial justice must not come at

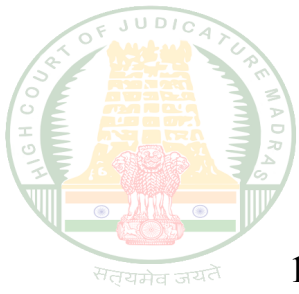


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the cost of causing prejudice to the opposing party. In the present case, the respondents/defendants have failed to demonstrate reasonable grounds of delay in pursuing the matter, and this crucial requirement for condoning the delay remains unmet.

33. Therefore, in the case at hand, once it has been established that the reasons provided for condoning the delay in the application filed are not sufficient, we are not inclined to go into the merits of the contentions raised by the learned counsel of Respondents regarding Section 14 of the Limitation Act, 1963.”

9. Therefore, without assigning *bona fide* and justifiable reasons, as a matter of right, the petitioner cannot seek indulgence of this Court for his negligence in not prosecuting the matter. Having allowed the suit to be decreed *ex parte*, the petitioner has waken up from a deep slumber for more than two years, and now seeks to unsettle the settled issues. The only reason assigned by the petitioner is that he was suffering from jaundice and taking treatment in Gobichettipalayam and hence, he was not able to give instructions to his counsel to file the written statement.

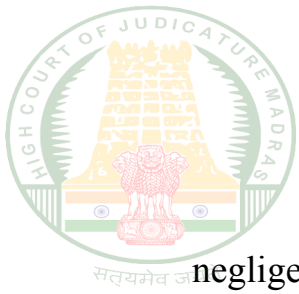


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10.The Court, in exercising discretion, particularly in these types of petitions, has to see the conduct, behaviour and attitude of a party relating to its inaction or negligence. The above factors are relevant to be taken into consideration, as the fundamental principle is that 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. There is an increasing tendency to perceive delay even in a non-serious matter. Hence, the delay due to the lackadaisical attitude should be curbed at the initial stage itself. The petitioner has given a casual explanation that he was suffering from jaundice and was taking treatment in Gobichettipalayam and hence, he was not able to contact his counsel and give instructions to file the written statement. Such a reason, in the view of this Court, is invented only for the purpose of filing the present application. Therefore, it is very clear that the petitioner has shown his negligent attitude towards the litigation, though aware of the consequences of the judicial proceedings.

11.Once the delay has not been explained to the satisfaction of the Court, as a matter of right, the petitioner cannot seek to condone his



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negligence. Even for the Court to extend its discretion to lien in favour of a party, he/she should assign *bona fide*, justifiable and probable reasons. The parties who seek such a relief must show sufficient cause. The petitioner has not shown any sufficient cause to condone such a huge delay. Hence, this Court is of the view that the order of the trial Court dismissing the application, requires no interference.

12. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet: Yes
Speaking/non speaking order

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To,

The District Munsif,
Mettupalayam, Coimbatore.

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N. SATHISH KUMAR, J.

VTC

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