



WEB COPY



CRP. PD. Nos.297 & 298 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:03.07.2025

Pronounced on:28.07.2025

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

CRP. PD. Nos.297 & 298 of 2024

Mr.S.Sivakumar

Petitioner in both CRPs

Vs

M/s.Essjohn Pharma,
Represented by its Proprietor,
Mrs.N.Esmin G.Leelabai,
W/o.Mr.F.Samson Chandramohan,
153, Yamuna Street, 1st Floor,
Palaniappa Nagar, Valasaravakkam,
Chennai -87.

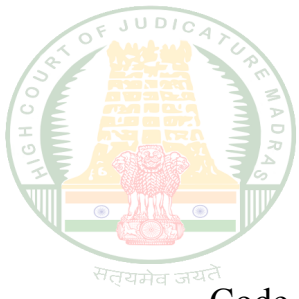
Respondent in both CRPs

COMMON PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to aside the fair order dated 10.04.2023 in I.A. No.02 of 2022 & I.A. No.03 of 2022 in O.S. No.2609 of 2021 on the file of the V Assistant City Civil Judge, Chennai.

For Petitioner : Mr.P.Sunil in both CRPs

For Respondent : Mr.M.Sneha in both CRPs

COMMON ORDER



CRP. PD. Nos.297 & 298 of 2024

The plaintiff in a summary suit filed under Order XXXVII of the Code of Civil Procedure, 1908 (in short 'CPC'), aggrieved by the order condoning delay in filing the leave to defend the petition, at the instance of the defendant and also simultaneously allowing the leave to defend petition, is before this Court, by way of the above two revision petitions.

2. I have heard Mr.P.Sunil, learned counsel for the revision petitioner/defendant and Ms.Sneha, learned counsel for the respondent/plaintiff in both revisions.

3. The learned counsel for the revision petitioner would submit that the suit has been filed as an under chapter suit, invoking provisions under Order XXXVII of CPC. The defendant, despite service of summons for judgment on them, did not file a leave to defend petition for almost a year and thereafter, they came up with an Application under Section 5 seeking to condone the delay of 364 days in filing the leave to defend petition and also seeking leave to defend the suit claim, contending that triable issues arised for consideration in the suit.

4. The learned counsel for the petitioner would further submit that the defendant took a false plea that the documents filed along with the

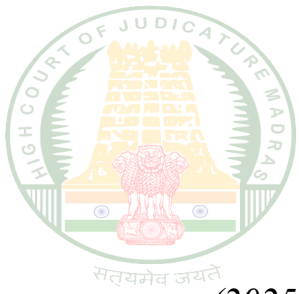


plaint were not served on the defendant and therefore, there was a delay in filing a leave to defend petition. He would however refer to the findings of the Trial Court which confirmed that the defendant had in fact received the documents and the reason assigned by them was not acceptable.

5. He would further state that once the Court finds that a false reason has been given, then the Court ought not to have shown any indulgence or sympathy to the petitioner and the only option open to the Court was to dismiss the Application for condonation of delay. He would further state that the Trial Court also erred in deciding taking up both the Section 5 Application as well as the leave to defend petition and passing orders on the same date was not proper and contends that the Section 5 Application ought to have been taken up first and decided, before going on to consider the leave to defend Application.

6. The learned counsel for the petitioner would rely on the following decisions:

(i) *Basawaraj and another Vs. Special Land Acquisition Officer*, reported in (2013) 14 SCC 81;



CRP. PD. Nos.297 & 298 of 2024

(ii) *Thirunagalingam Vs. Lingeswaran and another*, reported in (2025) SCC Online SC 1093;

(iii) *A.S.Jahangir Vs. M/s.Operating Lease and Hire Purchase Company Limited and Others*, reported in 2022 AIR CC 2504;

(iv) *K.P.Chandra Rao Vs. K.Ravindranath Tagore*, reported in 2021(220) AIC 735;

(v) *Zala Industries Vs. M/s.Radakash Petrochem Private Limited*, reported in 2023 NCGUJHC 45602;

(vi) *Palanisamy Vs. Kamala*, reported in 2011 (3) MadWM (Civil) 141; and

(vii) *M/s.Escorts Finance Limited Vs. Nielcon Limited*, reported in 2000 SCC Online Del 39.

7. Per contra, the learned counsel for the respondent, Ms.Sneha would submit that the order passed by the Trial Court does not suffer from any infirmity and the Trial Court, in fact, put the defendant on terms by directing deposit of Rs.2,50,000/-. She would therefore contend that, unconditional leave has also not been granted and the interest of the plaintiff has also been duly protected. She would further contend referring to the Order XXXVII Rule 7, the cause shown is not for delay but for



leave to defend and therefore, there is nothing wrong in the Trial Court having taken up simultaneous enquiry in both the Applications and disposing of the condonation of delay petition as well as the leave to defend petition together. She would further state that after grant of leave and deposit of Rs.2,50,000/-, the defendants have also filed a written statement and issues have also been framed in the suit. She would therefore state that there is no infirmity in the orders passed by the Trial Court warranting interference under Article 227 of the Constitution of India.

8.I have carefully considered the submissions advanced by the learned counsel on either side.

9. Admittedly, upon service of summons for judgment as contemplated under Order XXXVII Rule 4, the defendant has not filed an Application seeking leave to defend, within the prescribed period of 10 days as contemplated under Rule 5. After a lapse of 364 days, the leave to defend petition came to be filed along with a condonation of delay petition under Section 5 of the Limitation Act, seeking to condone the said delay of 364 days. The reason assigned for the delay is that the



plaintiff has not complied with the mandate of Order XXXVII Rule 3 (1) which requires a copy of the plaint and annexures to be served on the defendant. However during enquiry, the Trial Court has found that the defendant has taken a false plea and documents were in fact served on the defendants.

10. Despite finding that the defendant has given a false reason and no sufficient cause was made out, the Trial Court has delved into the merits of the case and directed the defendant to deposit a sum of Rs.2,50,000/-, as a condition for grant of leave to defend the suit. It is the contention of the learned counsel for the petitioner that under Order XXXVII, the sufficient cause to be shown is one step more than what is required under Order IX Rule 13 CPC, the object of a summary procedure itself being expeditious disposal of certain kinds of claims to which the order applies.

11. The Hon'ble Supreme Court in *Basawaraj's* case (referred hereing supra) has held that in a condonation of delay application, the Applicant has to explain as to what 'sufficient cause' prevented the Applicant to approach the Court within a period of limitation and further held that a party found to be negligent or for want of bona fides on his



part or not having acted diligently, then the delay cannot be condoned.

The Hon'ble Supreme Court further held that if there is no sufficient cause to prevent a litigant to approach the Court in time, then condoning the delay without any justification, putting any condition whatsoever would amount to violating the statutory provisions and tantamounting to only a show of disregard to the legislature.

12. The Hon'ble Supreme Court in *Thirunagalingam's* case (referred hereing supra), has held that the first and foremost duty of the Court is to ascertain the bonafides of the explanation offered by the party seeking condonation, rather than the merits of the matter and only if sufficient cause has been assigned for the delay and the opposition of other side is equally balanced or stand on equal footing, the Court can consider the merits of the main matter, for the purpose of condoning the delay. The Hon'ble Supreme Court has further held that the delay cannot be condoned as an act of generosity and pursuit of doing substantial justice must not come at the cost of causing prejudice to the opposite parties.

13. In *A.S.Jahangir's* case (referred herein supra), this Court held



that when false averments have been made, discretionary power conferred under Section 5 of the Limitation Act should not be extended to the Applicant who is guilty of making such false statement.

14. In *M/s. Escorts Finance Limited's* case, (referred herein supra), it was also arising out of a summary suit and a delay of 33 days was sought to be condoned. The Delhi High Court found that the delay was only occasioned because of '*ipsi dixit*' of the Applicant and no sufficient cause was shown and the Application was held to be lacking in bonafides.

15. In the decision on which the learned counsel for the respondent has placed reliance namely, *B.L. Kashyap and Sons Limited Vs. JMS Steels and Power Corporation and another*, reported in 2022 (3) SCC 294, the Hon'ble Supreme Court has held that while dealing with an Application seeking leave to defend, the correct approach is grant of leave, being the rule and denying leave, being an exception.

16. The learned counsel for the respondent has also relied on Order XXXVII Rule 3 (7) and contended that the sufficient cause to be shown is only for seeking leave to defend and not for the delay. I am not able to



countenance the said argument. Order XXXVII, Rule 3 (7) read as follows:

WEB COPY

“(7) The Court or Judge may, for sufficient cause shown by the defendant, excuse the delay of the defendant in entering an appearance or in applying for leave to defend the suit.”

The said provision cannot be interpreted to mean that the defendant has to show cause only for grant of leave to defend the suit, which has according to the learned counsel for the respondent, rightly been exercised by the Trial Court. The arguments of the learned counsel for the respondent is that the focus is not on the sufficient cause being shown for delay, but sufficient cause to be shown for seeking leave to defend the suit.

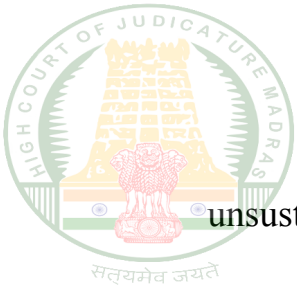
17. On a conjoint reading of the Order XXXVII Rule 3, Sub Rules 1 to 7, it is clear that the delay can be occasioned on the side of the defendant under two circumstances viz., one at the time of entering appearance as set out under Order XXXVII Rule 3 (1) within 10 days of service of summons or secondly, when an application seeking leave to defend is not filed within 10 days as contemplated under Sub Rule 5 of Rule 3. Therefore, Order VII or Sub Rule 7 only means that when there is delay occasioned in either of these two circumstances, if sufficient cause



is shown by the defendant, then the Court may excuse the delay. The interpretation sought to be given by the learned counsel for the respondent is therefore fallacious.

18. Further, as regards to the findings of the Trial Court that the respondent/defendant has given a false reason and having found that the documents were in fact served on the defendant, the only option available to the Trial Court was to reject the Application for condonation of delay, since a false reason has been given by the defendant for condonation of delay of almost a year.

19. No party can get away by giving false reasons and as held by the Hon'ble Supreme Court, merely imposing conditions under the garb of doing substantial justice would actually only cause injustice to the opposite party. Imposition of costs or conditions is not a panacea, especially when the affidavit in support of the application seeking condonation of delay is found to be false. Unfortunately, the Trial Court has proceeded to direct deposit of Rs.2,50,000/- as a condition for grant of leave and simultaneously, the delay of 364 days has also been condoned. The orders of the Trial Court are wholly perverse and



CRP. PD. Nos.297 & 298 of 2024

unsustainable and liable to be set aside.

WEB COPY

20. For all the above reasons, these Civil Revision Petitions are
allowed. No costs.

28.07.2025

rkp
Index : Yes
Internet : Yes

To:

The V Assistant City Civil Judge,
Chennai.

P.B.BALAJI, J.,

rkp



WEB COPY



CRP. PD. Nos.297 & 298 of 2024

Pre-delivery order in
CRP. PD. Nos.297 & 298 of 2024

28.07.2025