



A.No.6229 of 2023

in

C.S.No.108 of 2022

MASTER

27.10.2025

ORDER

1. This application is filed by the applicants/defendants to condone the delay of 146 days in filing an application to set aside the decree dated 26.04.2023 passed in C.S.No.108/2022.

2. The applicants stated that the respondents have filed the above suit by invoking Order VII Rule 1 of original side rules for recovery of a sum of Rs.6,50,000/- with interest @ 14% per annum from the date of filing the suit till realization. The suit is based on an alleged loan confirmation and repayment agreement dated 29.12.2020, wherein an exparte decree was passed on 26.04.2023 and he came to know about the exparte decree only on receiving legal notice dated 22.09.2023 from the respondents counsel enclosing the Judgment and decree dated 26.04.2023 passed by this Hon'ble Court. On reading of the Judgment, they came to know that the summons in the above suit was sent to No.8, 5th East Main Road, Gandhi Nagar, Vellore – 6 and got returned and thereafter service completed by substituted mode of service by way of Paper publication in one issue Dina Thanthi



Vellore Edition on 02.01.2023. The applicants further submitted that they have shifted their residence from the address mentioned in the suit cause title to No.13, 3rd

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East Cross Road, Gandhi Nagar, Vellore-6 in the first week of December 2021 itself and therefore they remained oblivious about the summons and also about the Paper Publication in Daily Thanthi which they do not read. It is further submitted that the non appearance could be attributed to the shifting of the residence mentioned in the suit cause title to our present address and in view of the same the decree obtained by the respondents is liable to be set aside.

3. It is also further submitted by the 1st applicant that the counsel for the respondents as alleged that notice dated 14.07.2023 was sent and the same was received by his son, but on enquiry made with his son he could not recollect as to whether he received such a notice because at that time his co-brother N.Murthy had cerebral hemorrhage and got hospitalized on 28.06.2023 in Norway Hospital, Vellore. Though the applicants had no knowledge about the passing of the decree because summons were not served at the address since they have shifted their residence, the applicant filed this application to condone the delay of 146 days in filing an application to set aside the decree dated 26.04.2023 passed in C.S.No.108/2022 by way of caution. Hence, this application is to be allowed.



4. The respondents have filed their counter stating that Hon'ble Supreme Court and the Hon'ble Madras High Court have in a catena of Judgment stated that service of summons to the last known residence address of the defendants is treated to be valid service and in the case on hand it is pertinent to note that the applicants/ defendants entered into the loan agreement with the respondents/plaintiffs mentioning the address at No.8, 5th East Main Road, Gandhi Nagar, Vellore, Tamil Nadu 632 006 which is the last known residing address of the applicants and defendants.

5. Point for determination:

Whether this petition is to be allowed or not?

6. Heard both sides. Perused the written arguments filed by both sides and the materials on record. Perused the records. This petition is filed to condone delay of 146 days in filing an application to set aside the decree dated 26.04.2023 passed in C.S.No.108/2022. On the side of the Applicant, the 1st applicant was examined as PW1 and Ex.P1 to P13 marked. On the side of the respondent, the 1st respondent was examined as RW1 and Ex.R1 to R16 marked. In the course of cross examination of RW1, Ex.R17 was marked.

7. The learned counsel for the Applicant argued that the applicant had shifted his residence and so no summons was served on them in CS No.108 of 2022 and that the respondent herein has obtained substituted mode of service by way of paper publication of which also he is not aware and only on receipt of legal notice dated



22.09.2023 they came to know about the exparte decree and so the delay occurred.

He further submitted that non-service of summons is a sufficient ground to condone the delay. He relied on the Judgment in **Ramlal, Motilal and Chhotelal Vs Rewa**

Coalfields Ltd Civil Appeal No.276 of 1958 dated 04.05.1961 wherein our Hon'ble

Apex Court held that *"It is, however, necessary to emphasize that even after sufficient cause has been shown a party is not entitled to the condonation of delay in*

question as a matter of right. The proof of a sufficient cause is a condition precedent

for the exercise of the discretionary jurisdiction vested in the Court by s. 5. If

sufficient cause is not proved nothing further has to be done; the application for

condoning delay as to be dismissed on that ground alone. If sufficient cause is shown

then the Court has to enquire whether in its discretio it should condone the delay.

This aspect of the matter naturally introduces the consideration of all relevant facts

and it is at this stage that diligence of the party or its bona fides may fall for

consideration; but the scope of the enquiry while exercising the discretionary power

after sufficient cause is shown would naturally be limited only to such facts as the

Court may regard as relevant. It cannot justify an enquiry as to why the party was

sitting idle during all the time available to it. In this connection we may point out

that considerations of bona fides or due diligence are always material and relevant

when the court is dealing with applications made under S.14 of the Limitation Act.

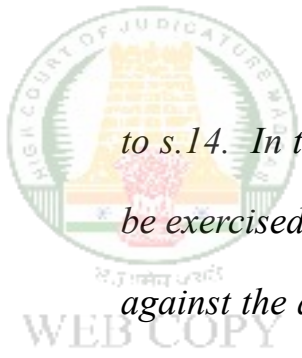
In dealing with such applications the Court is called upon to consider the effect of

the combined provisions of Section 5 and 14. therefore, in our opinion,

considerations which have been expressly made material and relevant by the

provisions of s.14 cannot to the same extent and in the same manner be invoked in

dealing with applications which fall to be decided only under s. 5 without reference



to s.14. In the present case there is no difficulty in holding that the discretion should be exercised in favour of the appellant because apart from the general criticism made against the appellant's lack of diligence during the period of limitation no other fact had been adduced against it. Indeed, as we have already pointed out, the learned Judicial commissioner rejected the appellant's application for condonation of delay only on the ground that it was appellant's duty to file the appeal as soon as possible within the period prescribed, and, that in our opinion, is not a valid ground”.

8. *Per contra*, the learned counsel for the respondent argued that the averments in the condone delay application suffer lack of bonafides and no sufficient cause is assigned for the delay and there is a deliberate inaction on the part of the petitioner who is seeking condonation of delay, so the length of delay is immaterial and condonation of such delay is strictly not to be allowed. The conduct of the applicants are malafide and they have not assigned any justifiable or sufficient cause for the delay and therefore, this application is to be dismissed. He relied on the Judgment in **Balwant Singh Vs.Jagdish Singh and Ors., Civil Appeal No.1166 of 2006** dated 08.07.2010 wherein our Hon'ble Apex Court held that *“The explained delay should be clearly understood in contradistinction to inordinate unexplained delay. Delay is just one of the ingredients which has to be considered by the Court. In addition to this, the Court must also take into account the conduct of the parties, bona fide reasons for condonation of delay and whether such delay could easily be avoided by the applicant acting with normal care and caution. The statutory provisions mandate that applications for condonation of delay and applications belatedly filed beyond the prescribed period of limitation for bringing the legal representatives on record,*



should be rejected unless sufficient cause is shown for condonation of delay. The larger benches as well as equi-benches of this Court have consistently followed these principles and have either allowed or declined to condone the delay in filing such applications. Thus, it is the requirement of law that these applications cannot be allowed as a matter of right and even in a routine manner. An applicant must essentially satisfy the above stated ingredients; then alone the Court would be inclined to condone the delay in the filing of such applications”.

9. Now, this court obliges to refer the judgment rendered by the Hon’ble Supreme Court in ***Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation and Another*** (2010)2 Supreme 115:LNIND 2010 SC 205:(2010) 4 MLJ 141: (2010) 5 SCC 459 and an excerpt from it would run thus:

“8.The law of limitation is found on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribed a period within which legal remedy can be availed for redress of the legal injury. At the same time, the Courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. The expression “sufficient cause” employed in Section 5 of the Indian Limitation Act, 1963 and other similar statutes is elastic enough to enable the Courts to apply the law in a meaningful manner which sub serves the



ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate.”

10. This Court also wants to bank upon the decision rendered by his lordship Hon’ble Mr.Justice K.T.Thomas, in *N.Balakrishnan v. Krishnamoorthy*, (1998) 7 SCC 122: 1999-1-L.W.739 in which it has been held that a lethargic litigant cannot be allowed to leisurely choose his own time in preferring application. The relevant excerpt would run thus:

“Rules of limitation are not meant to destroy the right parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis Mum (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do

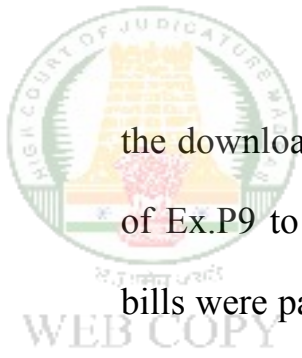


not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.”

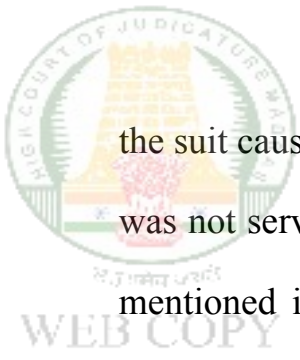
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11. From the light of the aforesaid precedents, it is manifestly enlightened that the delay may be condoned if the applicant shows sufficient cause for the delay; mere generosity or leniency is not enough. The court must examine whether the reasons advanced or bonafide, and whether prejudiced would result. Even very long delays may be condoned if the explanation is strong; conversely, short delays may be rejected if the reason is not convincing. Therefore, it is settled that delay is not a criterion whereas the sufficient cause is the norm.

12. In this case on hand, the only reason stated for delay is that the applicants have shifted their residence from the address mentioned in the suit cause title to the present address mentioned in the application and that they came to know about the exparte decree and Judgment dated 26.04.2023 only on receiving the legal notice dated 22.09.2023 sent by the respondents counsel. The burden of proof of shifting the residence from the address mentioned in the suit cause title to the present address mentioned in the application lies on the applicant. On perusal of the evidence of P.W1 who is the first applicant in the application it is seen that he has admitted that house No.8, 5th East Main Road, Gandhi Nagar, Vellore - 6 is owned by them. To substantiate that the applicants have shifted their residence, Ex.P9 to Ex.P11 has been marked. Ex.P9 is the downloaded copy of transfer of rental advance of Rs.90,000/- on 24.11.2021, Ex.P10 (Series 20 Nos.) are the downloaded copies of the transaction receipt of Rs.22,550/- from 12.01.2022 to 15.09.2023 and Ex.P11 (Series 6 Nos.) are



the downloaded copy of the transaction receipt of E.B dated 11.05.2022. On perusal of Ex.P9 to Ex.P11 the address for which rental advance, rental payments and E.B bills were paid for is not specified and nothing has been mentioned regarding that the applicants have made the said payments towards rental for their residential premises. Hence, Ex.P9 to E.P11 cannot be considered as a proper proof of shifting of residence by the applicants. Further, perusal of evidence of PW1 it is seen that PW1 has categorically deposed that he has not received any notice dated 14.07.2023 addressing his old address, whereas in his affidavit filed along with the application in Para 14 he has categorically stated that, "*in any event the alleged notice dated 14.07.2023 was received, we could not praise the same for the reason stated in my earlier affidavit*". Even in the same affidavit in Para 11 the applicant has stated that his son could not recollect as to whether he received such a notice. Further, having admitted the receipt of the legal notice dated 22.09.2023 the applicants in their written submissions have taken a contra stand that they came to know about the exparte decree dated 26.04.2023 only upon receiving the phone call from the office of Superintendent, Vellore regarding the complaint made by the respondents/plaintiffs to CM Cell for enquiry. These contradictory statements given by the applicant regarding the service of notice dated 14.07.2023 raises a doubt about the credibility of his case and show that the plea of non-service is not bonafide. Further, the applicant has admitted the receipt of legal notice dated 22.09.2023 enclosing the Judgment and decree passed by this court dated 26.04.2023 and the said legal notice is marked as Ex.R12 which is addressed to the applicants at No.8, 5th East Main Road, Gandhi Nagar, Vellore 632 006 which is the address mentioned in the suit cause title. The applicant having admitted the receipt of legal notice in the same address mentioned in



the suit cause title cannot now claim that he has shifted his residence and so summons was not served upon him. The receipt of legal notice by the applicant in the address mentioned in the suit cause title, which is also the address mentioned in the loan confirmation repayment agreement dated 29.12.2020 as admitted by the applicant himself in his affidavit, goes to show that the applicants is still having access to the said address and is having knowledge of the suit and still remained absent and so the plea of non-service for condoning the delay of 146 days cannot be considered as a sufficient cause. Further the applicant himself is not clear about the number of days of delay because in prayer portion mentioned as 146 and in Master summon mentioned as 176 days. The applicant failed to prove his contention that he has shifted the residence from the address mentioned in the suit cause title to the present address mentioned in the application and further on the one hand he pleads non-service of suit summons upon them, on the other hand admits the receipt of legal notice dated 14.07.2023 and 22.09.2023 addressed to the same address mentioned in the suit cause title which is also the address mentioned in the loan confirmation and repayment agreement dated 29.12.2020.

13. Therefore, the considered view of this Court is that the reason assigned by the Petitioner does not cover within the *sufficient cause* in section 5 of the Limitation Act. Thus, petitioner is not entitled for the relief as prayed for in this petition and the contentions of the petitioner is liable to be rejected and the argument of the Respondent in this regard is liable to be accepted by this court.

14. In fine, the petition being devoid of merits stands dismissed. No Costs.

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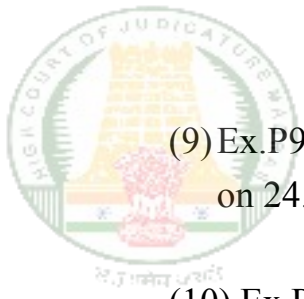


Petitioner side witness:

PW1 Mr.G.Mahalingam

Petitioner side Exhibits:

- (1) Ex.P1 is the original partnership deed dated 31.03.2004 of Sri Arunachalaa Packing Company, entered between the petitioner and M.Krishen Puri (Other side objected to mark the document. Objections noted. This document is marked subject to its admissibility, proof and relevancy).
- (2) Ex.P2 is the original reconstitution of partnership firm of Sri Arunachalaa Packing Company dated 20.10.2006 (Other side objected to mark the document. Objections noted. This document is marked subject to its admissibility, proof and relevancy).
- (3) Ex.P3 is the original reconstitution of partnership firm of Sri Arunachalaa Packing Company dated 01.04.2015.
- (4) Ex.P4 is the letter dated 29.06.2015 issued by Religare for the loan of Rs.4,10,00,000/- with repayment schedule.
- (5) Ex.P5 is the letter dated 20.02.2016 issued by Religare for the loan of Rs.71,00,000/-.
- (6) Ex.P6 is the downloaded copy of the account statement for the period from 30.06.2015 to 31.08.2021 for the repayment of loan amount of Rs.4,10,00,000/-.
- (7) Ex.P7 is the downloaded copy of the account statement for the period from 25.02.2016 to 31.08.2021 for the repayment of loan amount of Rs.71,00,000/-.
- (8) Ex.P8 (Series 23 Nos.) are the photocopies of the settlement letters dated 27.08.2021 in respect of the loan amounts of Rs.4,10,00,000/- and Rs.71,00,000/- (witness states that this document is filed as received by him, this document is marked subject to its admissibility, proof and relevancy).



(9) Ex.P9 is the downloaded copy of the transfer of rental advance of Rs.90,000/- on 24.11.2021.

(10) Ex.P10 (Series 20 Nos.) are the downloaded copy of the transaction receipt of Rs.22,550/- from 12.01.2022 to 15.09.2023.

(11) Ex.P11 (Series 6 Nos.) are the downloaded copy of the transaction receipt of E.B dated 11.05.2022.

(12) Ex.P12 is the photocopy of the discharge summary report along with lab investigations dated 28.06.2023 in respect of Mr.N.Moorthy (Compared with the original).

(13) Ex.P13 is the certificate under section 65 (B) of Evidence Act.

Respondent side Witness:

RW1 Mrs.Hema Padmanabhan.

Respondent side Exhibits:

(1) Ex.R1 (Series 11 Nos.) is the office copy of the notice dated 25.08.2021 sent by me to the 1st applicant along with track consignments.(This document is marked subject to objection raised by the applicant's counsel).

(2) Ex.R2 is the photocopy of no due letter dated 02.09.2021 issued by M/s.Religare along with the proof of payment made by the respondents. (This document is marked subject to its admissibility, proof and relevancy)

(3) Ex.R3 is the case status of cases STC No.38 of 2022 and STC No.39 of 2022 downloaded from eCourts to show the service of summons on the Judgement Debtors.

(4) Ex.R4 is the office copy of the private notice dated 14.09.2022 sent by me to all the applicant's.(This document is marked subject to its admissibility, proof and relevancy)



(5) Ex.R5 is the photocopy of the post office receipt along with tracking details of the invitation card sent to the 2nd Defendant. (This document is marked subject to its admissibility, proof and relevancy)

(6) Ex.R6 is the daily case status of case CS No.108/2022 downloaded from eCourts to show the service of the summons.

(7) Ex.R7 is the daily case status of case CS No.108/2022 dated 2.12.2022 directing me to effect paper publication, downloaded from eCourts to show the service of the summons.

(8) Ex.R8 is the copy of paper publication effected in one issue of Tamil daily “Dina Thanthi” dated 02.01.2023.

(9) Ex.R9 is the photocopy of the decree dated 26.04.2023 in CS No.108/2022 passed by this Hon'ble Court (This document is marked subject to its admissibility, proof and relevancy)

(10) Ex.R10 is the photocopy of the order dated 10.07.2023 in CP No.116/ (CHE)2022 passed by the NCLT (This document is marked subject to its admissibility, proof and relevancy)

(11) Ex.R11 is the office copy of the notice dated 14.7.2023 sent by me to the applicants informing about the decree dated 26.4.2023 along with tracking details (This document is marked subject to its admissibility, proof and relevancy).

(12) Ex.R12 is the office copy of the 2nd Notice dated 22.09.2023 sent by me to the applicants informing about the decree dated 26.4.2023 along with tracking details. (This document is marked subject to its admissibility, proof and relevancy).

(13) Ex.R13 is the photocopy of the complaint lodged by me with the Hon'ble Chief Minister's Cell (This document is marked subject to its admissibility, proof and relevancy).



(14) Ex.R14 is the original notice dated 19.10.2023 sent by the applicants to the respondents.

WEEDP (15) Ex.R15 is the case status of cases STC No.38 of 2022 and STC No.39 of 2022 downloaded from ecourts to show non bailable warrant issued against the 1st and 2nd applicant.

(16) Ex.R16 is the certificate under Section 65 (B) of the Indian Evidence Act, 1872.

Sd/-
MASTER