
(2007) 06 MAD CK 0021
In the Madras High Court
Case No : C.R.P. (PD) No. 323 of 2005

D. Muralidharan

APPELLANT

Vs

Chinnappan (died), Pavathal, C. Padmavathi and C.
Shanmughasundaram

RESPONDENT

Date of Decision : 06-06-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 151
Constitution of India, 1950 — Article 227
Limitation Act, 1963 — Section 5

Citation : (2007) 4 MLJ 635

Hon'ble Judges : S. Rajeswaran, J

Bench : Single Bench

Advocate : N. Manokaran, for the Appellant; M.M. Sundaresh, for the Respondent

Final Decision : Dismissed

Judgement

S. Rajeswaran, J.—This Revision Petition has been filed against the order dated 6.1.2004, passed in I.A.No.122/2003 in unnumbered suit

on the file of the Principal Sub-Court, Erode (now numbered as O.S.No.105/2004 on the file of the Principal District Munsif's court, Erode).

2. The defendant in O.S.No.105/2004 on the file of the Principal District Munsif Court, Erode is the revision petitioner before this Court. He is

aggrieved by the order of the trial court dated 6.1.2004 made in I.A.No.122/2003 which the trial court condoned the delay of 1664 days in

representing the suit papers on condition that a sum of Rs.1,500/- to be paid to the other side as cost. Subsequent to the order dated 6.1.2004 the

suit was numbered as O.S.No.105/2004.

3. Heard the learned Counsel for the revision petitioner and the learned Counsel

for the respondents. I have also perused the documents filed and the judgments referred to by them in support of their submissions.

4. The learned Counsel for the revision petitioner strenuously contended that there is no difference in between a petition filed to condone the delay in presentation and the petition filed to condone the delay in representation and the trial court has failed to take note of the fact that a valuable right has accrued to the revision petitioner by condoning such a huge delay. He relied on the decision of this Court reported in 2006 (1) CTC 187 (Muthusamy, A. v. Muniammal) for the proposition that the very same principles as are applicable to condonation of delay in presentation would apply to the condonation of delay in re-presentation also. He relied on the decision of this Court reported in 2002 (1) L.W. 397 (Lalliammal v. Thulasi and 6 Ors.) for the proposition that when the counsel has not re-presented the papers within the time, that is nothing short of a negligence and whatever right accrued to the other side because of the delay could not be lightly treated. The learned Counsel relied on a decision of the Division Bench of this Court reported in 2003 (1) L.W. 585 (Sundar Gnanaolivu v. Rajendran Gnanavolivu) for the proposition that whenever there is lack of bonafide or attempt to hoodwink the court by the party by filing an application for condonation of delay no indulgence should be shown by the court.

5. Per contra, the learned Counsel for the respondents submitted that there is a difference between a petition filed for condoning the delay in filing and a petition filed to condone the delay in re-presentation and more liberal approach should be shown by the court in the case of the latter. For this proposition, he relied on the decision of this Court reported in 1978 TLNJ 332 (The General Manager, Heavy Vehicles Factory, Avadi and Anr. v. T.Shadrak) and the decision of the Division Bench reported in 1993 TLNJ 375 (Y.Cusbar v. K.Subbarayan). The learned Counsel relied on the decisions of the Supreme Court reported in N. Balakrishnan Vs. M. Krishnamurthy, and Bhagmal Vs. M.P. Cooperative Marketing and Consumer Federation Ltd. and Others, to contend that when the delay has been condoned by the court below by exercising its discretion, the same cannot be interfered with by the court either u/s 115 of C.P.C., or under Article 227 of the Constitution of India. He relied on the decision of

this Court reported in Yanaimal Thottam Trust Vs. B. Lakshmanan and B. Jayaraman, to submit that when technicalities and substantial justice are

pitted against each other, the courts should always be in favour of the substantial justice rather than technicalities. He also relied on the following

decisions to submit that the word ""sufficient cause"" is to be liberally interpreted and courts must adopt pragmatic approach in justice oriented

manner instead of technical detection of sufficient cause:

1)1995(2) L.W. 220 (Rama Iyer, P. v. V.Ramaswami Naidu)

2) State of Nagaland Vs. Lipok AO and Others,

3) Syed Nusarathullah Vs. Natarajan and Others,

4) S. Mohan Vs. Cruz Mary and Anbu,

5) Joint Commissioner, Hindu Religious and Charitable Endowment Department Vs. Ambasamudram Taluk, Am basamudram Vetta Thirukoil,

Paniyalargal Sangam and Others, .

6. I have considered the rival submissions with regard to facts and citations.

7. It is not in dispute that the suit was originally filed by R.Chinnappan whose Legal Representatives are the respondents herein. The suit was filed

for directing the defendant/revision petitioner to pay a sum of Rs.59,500/- with subsequent interest at 12% per annum till the date of realisation.

The suit claim was on the basis of the pronote executed by the revision petitioner on 6.11.1985 for a sum of Rs.50,000/-. It is also not in dispute

that the suit was filed within the limitation period of 3 years from the date of execution of the pronote. The suit papers were returned on 2.1.1998

granting one month time to rectify the defects and it was re-presented only in August 2002 with a petition to condone the delay of 1664 days in re-

presenting the suit and the petition filed in I.A.No.122/2003 was allowed by the trial court on condition that the original plaintiff should pay a sum

of Rs1,500/- to the other side on or before 12.1.2004. Aggrieved by this order only, the above Civil Revision Petition has been filed under Article

227 of the constitution of India.

8. First let me consider whether there is any difference between a petition filed for condonation of delay in the proper presentation pursuant to

Section 5 of the Limitation Act and the petition to condone delay in re-presentation u/s 151 of C.P.C.

9. In 1978 TLNJ 322 (cited supra), a learned Single Judge of this Court held that there is a difference between these two petitions and the considerations relevant for a petition filed to condone the delay in presentation for a proceeding will not apply to a petition filed to condone the delay in re-representation of papers. The learned Judge went on to hold that notice to respondent in a petition filed to condone the delay in re-representation is not necessary and if any order is passed in condoning the delay in re-presentation, the other side is not said to be the aggrieved party and he cannot challenge the order before the High Court under Sec. 115 of CPC. The relevant portion of the order reads as under:

I may point out in this context the difference between the condonation of delay in the proper presentation of a particular proceeding pursuant to Section 5 of the Limitation Act and the condonation of delay in the re-representation of a particular proceeding obviously under the inherent powers of the Court u/s 151 of Code of Civil Procedure. In the former case there is a specific provision in the statute, namely, the Limitation Act which imposes an obligation on the Court itself suo motu to reject a proceeding if it is barred by limitation. That strictness is not available or applicable to a case of a delay in the re-presentation of the proceeding in question. Consequently, the provisions and considerations applicable to excusing the delay u/s 5 of the Limitation Act will not apply to the question of excusing the delay in re-presenting the papers and therefore, the considerations relevant to excusing the delay with reference to petitions, disposable under the Limitation Act, will bear no analogy to those relevant to a decision of the question in the present controversy. I have proceeded on broad considerations and in particular with reference to the distinction between the delay in the presentation of a proceeding and the delay in the re-presentation of the papers with reference thereto. In view of the basis difference between the two, I am of the opinion that the considerations relevant to the former will not apply to the latter and in an application for excusing the delay in re-presenting the papers in any proceeding, whether it be a suit, a civil revision petition, a first appeal or a second appeal in any Court, notice to the respondent in the main case is not necessary and even if such notice is given to the respondent and he is heard and overruling his objection the delay is condoned, he cannot be said to have been aggrieved in the sense of there being a judicial

determination against him so as to entitle him to approach the High Court u/s 115 Code of Civil Procedure. In view of this, I hold that this petition

is not maintainable and reject the same.

10. A similar question came up before a Division Bench of this Court and the Division Bench in its decision reported in 1993 TLNJ 375 (Cited

Supra) held that delay in re-presentation of papers happens several times due to the mistake of the advocates or the advocate's clerk and if there

is undue delay in re-presentation of the papers it can be compensated by awarding costs. The relevant portion of the order reads as under:

This is not a case wherein the appeal has been filed out of time. This is a case in which the appeal is filed in time. Therefore, it cannot be said that

the decree under appeal has assumed finality and the right has been accrued to the respondent. The delay in re-presentation of the papers in the

instant case, cannot be put to the account of the party. Several times, it happens due to the mistake on the part of the advocate's clerk or the

advocates in presenting the appeal. Therefore, the Court has to take care to see that the justice does not suffer in such cases. If there is any undue

delay in re-presentation of the papers it can be compensated by awarding costs. Therefore, we are of the view that when the appeal has been filed

in time, but there is inordinate delay in re-presentation of 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.

11. From the above two decisions it is very clear that a petition to condone the delay in filing a petition and a petition to condone the delay in re-

presenting the papers filed within time, are not one and the same and a different consideration is warranted in the case of the latter. It is true that a

learned Single Judge of this Court in the decision reported in 2006(1) CTC 187 (cited supra) held that the principles applicable to the proceedings

under Sec. 5 of the Limitation Act are applicable while considering the delay in re-presentation of the papers. In view of the Division Bench

decision reported in 1993 TLNJ 375 (cited supra), I am bound to follow the above said Division Bench decision to hold that the courts should

have different consideration for a petition filed under Sec. 5 of the Limitation Act and for a petition filed to condone delay in re-presenting the

papers. Further the Division Bench judgment was not produced before the learned Single Judge who decided the case in 2006 (1) CTC 187

(cited supra).

12. The reason given by the plaintiff in O.S.No.105/2004 for condoning the delay of 1664 days in re-presenting the said papers is that the

advocate mixed up the suit papers with other old records and the same was not traced out by the advocate. Accepting the reason the trial court

exercised the discretion by condoning the delay at the same time awarding a cost of Rs1,500/- to the defendant. In such circumstances I do not

find any reasons to interfere with the order of the trial court. Further the delay in re-presentation cannot be put to the account of the party and the

court has to take care to see that justice does not suffer in such cases.

13. In the result, the above Civil Revision petition is devoid of merits and the same is dismissed. No costs. C.M.P.No.3151/2005 is also

dismissed.