
(1999) 07 MAD CK 0046
In the Madras High Court
Case No : C.R.P.No. 1452 of 1996

Edwin Alex

APPELLANT

Vs

Syndicate Bank

RESPONDENT

Date of Decision : 13-07-1999

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (1999) 2 CTC 623 : (1999) 3 MLJ 108

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : Mr. A. Chandrasekaran for Mr.R.S. Ramanathan, for the Appellant;

Judgement

1. The above Civil Revision Petition has been filed against the fair and decretal order dated 2.11.1995 made in E.A.No. 78 of 1993 in E.P.No. 28

of 1987 in O.S.No. 78 of 1976 by the Court of Subordinate Judge, Nagercoil, thereby allowing an application filed by the respondent u/s 5 of the

Limitation Act praying to condone the delay of 265 days caused in filing the petition to restore the Execution Petition dismissed for default.

2. A glance at the affidavit filed in support of the petition reveals that on behalf of the petitioner before the Execution Court, the Syndicate Bank,

Karingal Branch, represented by its Branch Manager, it would be contended that the above Execution Petition was posted for arguments after

many hearings and on 21.4.1992, when it was called, there was no representation on behalf of the petitioner and hence the said Execution Petition

was dismissed for default, about which the petitioner came to know only on 6.1.1993 through the Advocate's Clerk and as such a delay of 265

days in filing the petition to restore the said Execution Petition has become inevitable; that on account of family problems, their Advocate was not

able to attend to the Court in the last six months prior to filing the petition and that the delay was neither wilful nor wanton but in the circumstances stated above and would pray for condoning the same.

3. In the counter filed by the respondent before the lower Court, the averments in the petition would be generally denied and it would also be

alleged that the petition to excuse the delay is not permissible in Execution Proceedings; that no valid or tangible reason has been assigned for the

delay caused; that the petitioner has to explain the delay of each day and that the decree is already barred prior to filing of this petition and as such

the petition is not maintainable and would pray for dismissing the petition with costs.

4. The Execution Court, remarking that the petitioner before it, examining on its behalf P.W.1 and since no contra evidence was let in on the part

of the respondent and taking the reasons assigned on the part of the petitioner therein further justifying that since the Advocate for the petitioner did

not inform him of the position of the case, the Execution Petition had come to be dismissed and hence the delay had occurred, which has to be

condoned, would allow the petition without costs.

5. Aggrieved, the present petitioner, who is the respondent before the Lower Court has come forward to prefer the above Civil Revision Petition

on certain grounds such as (i) that the Lower Court without any reasons has condoned the delay; (ii) that the Lower Court failed to note that the

averments of the affidavit were not supported by the evidence of the respondent herein and on the new grounds offered, condoned the delay; (iii)

that the lower Court erred in holding that it was on account of the Advocate not informing the dismissal of the Execution Petition for default, the

delay had caused; and (iv) that the lower Court has failed to appreciate that the decree had been time barred even prior to filing of the application

to condone the delay.

6. During arguments, it is only the learned counsel for the petitioner appeared and neither the respondent nor his counsel made their appearance

and hence, upon hearing the arguments of the learned counsel for the petitioner and based on the materials available on record, the following order

is passed:

No doubt, the delay is inordinate numbering 265 days and very weak reasons

have been assigned on the part of the respondent herein. The allegation that their counsel did not inform them of the dismissal of the Execution Petition for default is not a good or acceptable reason. However, on behalf of the respondent herein, its officer got into the box and deposed to the facts of the case alleged and as it is contended on the part of the lower Court, since no evidence contra came forth, the lower Court trusted the evidence adduced on the part of the respondent and ultimately arrived at the conclusion to allow the application, thereby condoning the delay of 265 days.

7. The upper forums of law have often and again held that delay could occur but only unexplained delay would leave room for the petition to be dismissed. Moreover, even in such event, when the delay is quite long, the petitioner cannot be punished with denial of further opportunity to prosecute the main case in which event, the petitioner's entire rights regarding the suit properties would become jeopardized. Hence, proper course to adopt under such circumstances is not to punish the petitioner with the dismissal and denial of opportunity to carry on with the enquiry or trial of the main proceedings but to burden him with costs. Here, though the delay has been caused to the extent of 265 days, the lower Court has arrived at the right conclusion in so far as allowing the delay excuse petition. But still, the lower Court has not thought it fit to allow appropriate costs. Since the other side for a long time had. been kept in dilemma and to compensate such inconvenience or hardship, necessarily the Court below should have allowed substantial costs. Hence, while justifying the conclusions arrived at by the lower Court in condoning the delay of 265 days caused by the respondent herein in filing the petition for restoration of the Execution Petition, which was dismissed for default, the Lower Court should have allowed petition on substantial costs, which would have more fittingly served the ends of justice. Hence, it is decided to impose a cost of Rs.1,000 on the respondent herein.

In result, the above civil revision petition is dismissed. The fair and decretal order dated 2.11.1995 made in E.A.No. 78 of 1993 in E.P.No. 28 of 1987 in O.S.No. 78 of 1976 by the Court of Subordinate Judge, Nagercoil in so far as allowing the delay excuse petition is hereby confirmed.

The respondent who is mulcted with the cost of Rs.1,000 (Rupees One Thousand

Only) is directed to pay the same to the petitioner herein either in person or by depositing the same into the Execution Court, within one month from the date of receipt of this Order by the Lower Court so as to be paid to the petitioner.