

(2012) 11 MAD CK 0069

In the Madras High Court

Case No : C.R.P. (NPD) . No. 1192 of 2005 and C.M.P. No. 8432 of 2005

Government of Tamil Nadu and Another

APPELLANT

Vs

Ramakkal

RESPONDENT

Date of Decision : 07-11-2012

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2013) 1 MLJ 70

Hon'ble Judges : T. Mathivanan, J

Bench : Single Bench

Advocate : T. Jayaramaraj, for the Appellant; R. Meenal, for the Respondent

Final Decision : Allowed

Judgement

T. Mathivanan, J.—This memorandum of civil revision petition appears to have been filed against the fair and decretal order dated

22.3.2004, and made in I.A. No. 12 of 1997 in C.F.R. No. 9912 of 1996 on the file of the learned Principal Sub-ordinate Judge,

Gobichettipalayam. The respondent herein has filed the suit in O.S. No. 562 of 1989 against the revision petitioners being the Government of Tamil

Nadu represented by District Collector, Periyar District, Erode and the Tahsildar, Sathiyamangalam seeking the relief of declaration and perpetual

injunction in respect of the suit property.

2. Despite the contest made by the civil revision petitioners, the present suit was decreed as prayed for with costs by the respondent herein.

Impugning the decree and judgment dated 6.10.1994 and made in O.S. No. 562 of 1989 on the file of the learned District Munsif,

Sathiyamangalam, the revision petitioners have filed an appeal before the learned Principal Sub-ordinate Judge, Gobichettipalayam. It is manifested

that there is a delay of 761 days in filing the appeal and in order to condone the delay, the revision petitioners have filed an interlocutory application

in I.A. No. 12 of 1997 but that application was dismissed by the learned Principal Sub-ordinate Judge, Gobichettipalayam on the ground that the

reason of administrative delay has not been justified. Being aggrieved by the order of dismissal, the revision petitioners have preferred this

memorandum of Civil Revision.

3. When the matter came up for hearing, the learned Special Government Pleader appearing for the revision petitioners submitted that the judgment

was pronounced by the learned District Munsif, Sathiyamangalam on 6.10.1994 and the Court was on vacation from 8.10.1994 to 16.10.1994.

Thereafter on 17.10.1994, the revision petitioners had made an application in I.A. No. 1117 of 1994 for getting the certified copy of the judgment.

Since printing charge was not paid, that application was struck off on 31.10.1994.

4. Thereafter on 7.11.1994, another application was made for getting the certified copy of the judgment and thereafter, the revision petitioners

were able to receive it only on 26.10.1995 and after getting the certified copy of the judgment, they had entrusted the papers with the learned

Government Advocate to prefer an appeal. But unfortunately, to get the opinion, there was an administrative delay of 761 days in filing the appeal.

Under these circumstances, the learned Special Government Pleader has submitted that the property which is in question in the above suit is

absolutely belonged to the Government and that the land was given on conditional assignment which means that it shall not be alienated or

encumbered upto 10 years. The assignment was given on 1968 and the respondent had purchased the property during the year 1971, on account

of the above said reasons, the revision petitioners have made out a prima facie case justifying in passing the reassignment of lands but the intrinsic

grounds have not been properly waived by the trial Court and proceeded to pronounce the judgment on 6.10.1994 without having proper

appreciation of the evidences on record.

5. He would further submit that the revision petitioners are having fair chance of success in the appeal and the non consideration of their case in

condoning the delay of 761 days would definitely cause prejudice to the revision petitioners. In support of his contention, the learned Special

Government Pleader placed reliance on the decision in Uma Nath Pandey and Others Vs. State of U.P. and Another, . In this case in para 7, his

Lordship Honourable Mr. Justice Dr. ARIJITH PASAYAT while speaking on behalf of the Division Bench of the Apex Court has observed that

the expressions ""natural justice"" and ""legal justice"" do not present a water-tight classification. It is the substance of justice which is to be secured by

both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal

justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord

Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants" defence.

6. At the end of para 8, His Lord has also observed that ""Even God did not pass a sentence upon Adam, before he was called upon to make his

defence. ""Adam"" says God, ""where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat"".

7. On the other hand, the learned counsel for the respondent Ms. R. Meenal has submitted that grounds of administrative delay assigned by the

revision petitioners was not satisfactorily explained and therefore, the appellate Court was not prepared to admit the petition and proceeded to

dismiss the petition to condone the delay of 761 days and hence, she has vehemently objected and urged to dismiss the civil revision petition.

8. In order to support her contention, she has placed reliance upon the following two decisions:

1) United India Insurance Company Ltd., Division Office Vs. Pravin Paul and Another,

2) Indian Oil Corporation Ltd., Madras Vs. Mrs. Sakuntala Ganapathy Rao proprietor, Modern Home Agencies,

In this case, the Division Bench of this Court has explained the meaning of "sufficient cause" to condone the delay. It appears that there was a

delay of 64 days in filing original side appeal challenging the order of the learned single judge modifying the interest from 19% to 12% on the

ground of want of jurisdiction to interfere with consent award and error in not granting pre- reference in interest. The reason assigned was

administrative delay. In this connection, the Division Bench has held that the delay cannot be excused where a party was not under a disability and

was aware of the judgment a right is created when the stipulated time expires.

9. On coming to the instant case on hand, this Court has perused the judgment of trial Court and also perused the materials available on record, the

revision petitioners have made out a prima facie case that they are having a fair chance of success in the appeal and this Court has also perused the

order wherein the Appellate Court has superficially observed that mere administrative delay could not be the reason to condone the delay of 761

days.

10. Section 5 of the Limitation Act confer the discretionary power of the Appellate Court to condone the delay and that discretionary power must

be exercised judicially and not on capricious and on whims and fancies of the Court. It is admitted fact that the delay is inexcusable unless sufficient

cause is shown. At the same time, the Court shall bear in mind that it should be liberal in condoning the delay. In Ramlal, Motilal and Chhotelal Vs.

Rewa Coalfields Ltd., the Apex Court has held that ""In construing Section 5 of the Limitation Act, it is relevant to bear in mind two important

considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour

of the decree holder to treat the decree as binding between the parties. The other consideration which cannot be ignored is that if sufficient cause

for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred

on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice.

11. In Krishna v. Chathappan, ILR 14 Mad 269 this Court in para 20 has observed that Section 5 gives the Court a discretion which in respect of

jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood:

the words "sufficient cause" receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona

fide is imputable to the appellant.

12. For the application of Section 5 of the Limitation Act, the following condition must be satisfied:

1) That the proceedings are of a Judicial nature.

2) That such proceedings are pending before a Court.

3) That a period had been prescribed for the institution of such proceedings.

13. In *Karim Baksh v. Daulat Ram* 183 P.R. 1888 (F.B.) PLOWDEN, J., has expressed that "All that Section requires in express terms as a

condition for the exercise of the discretionary power of admission of an appeal presented after time is sufficient cause for not presenting the appeal

within the prescribed period. If such can be shown, the Court may, in its discretion, which is, of course, a judicial, and not an arbitrary discretion,

admit the appeal.

14. In the present case on hand, the revision petitioners are representing the Government. Every body knows that the Government being a major

litigant is having practical administrative difficulties in getting opinion from appropriate authority for making the appeal and even the Government

Pleader who is representing the State cannot act on his own accord without giving proper approval from the concerned authority. This Court on

perusal of averments of the plaint, written statement as well as the judgment in O.S. No. 562 of 1989 is of the considered view that the revision

petitioners are having fair chance of success in the appeal. But the impugned order itself would go to show that the petition in I.A. No. 12 of 1997

in condoning the delay of 761 days has been dismissed arbitrarily by the learned Principal Sub-ordinate Judge, Gobichettipalayam. Therefore, this

Court keeping in view of the above cited decisions, is of considered view that the Civil Revision Petition may be allowed on payment of costs and

the impugned order be set aside after allowing the I.A. No. 12 of 1997 to condone the delay. In the result, the Civil Revision Petition is allowed

and the impugned order dated 22.3.2004 is set aside and the petition in I.A. No. 12 of 1997 is allowed and the delay of 761 days is condoned on

condition that the petitioner deposit a sum of Rs. 2,000/- to the Tamil Nadu State Legal Service Authority, Chennai within ten days from today.

Consequently, connected Miscellaneous Petition is closed.