

(2005) 10 MAD CK 0077

In the Madras High Court

Case No : O.S.A. No. 231 of 2005 and C.M.P. No. 15663 of 2005

Gulf Air Company

APPELLANT

Vs

V.M. Rajalingam, Sole Proprietor `Bharathi Knitting Company'

RESPONDENT

Date of Decision : 20-10-2005

Acts Referred:

Citation : (2006) 2 CivCC 103 : (2005) 5 CTC 662 : (2005) 4 MLJ 676

Hon'ble Judges : S.R. Singharavelu, J;M. Karpagavinayagam, J

Bench : Division Bench

Advocate : P. Vasudevan, for the Appellant; Chitra Sampath, for the Respondent

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—The appellant is the defendant.

2. The plaintiff filed the suit for recovery of the money payable as damages for the delay in delivery of the goods. Despite service of summons, the defendant did not choose to appear. Therefore, ex parte decree was passed on 31.8.1995. When the notice was served in the execution petition filed in pursuance of the said decree, the applicant/appellant approached the trial Court for condonation of the delay of 3415 days (about 10 years) in filing the application to set aside the ex parte decree.

3. According to the learned counsel for the appellant, the fact that the ex-parte decree was passed on 31.8.1995 came to be known to the appellant only after service of E.P. notice on 14.9.2004 and therefore, there was a delay. The same can be condoned for the purpose of giving an opportunity to the defendant/appellant to contest the suit. He cited the following decisions:

- 1) Chhabi Kulavi and Another Vs. Ganesh Chandra Mondal, ;
- 2) G.P. Srivastava v. Shri R.K. Raizada and Ors. (JT 200(2) SC 569);
- 3) Rohini Prasad and Others Vs. Kasturchand and Another, ;

4) thirumurthy v. Muthammal (2003(3) M.L.J.369).

4. We have heard the counsel for the appellant/applicant company and the learned counsel for the respondent/caveator.

5. On going through the records, it is clear that the suit has been filed on 26.12.1991 and the suit summons was served on the applicant Company on 21.1.1995. Despite the service of notice, the applicant has not chosen to appear before the Court. Therefore, ex-parte decree was passed on 31.8.1995. Even in the affidavit filed by the applicant requesting for condonation of delay, he would admit that the suit summons was served on the applicant Company on 21.1.1995. Therefore, the learned single Judge has dismissed the application, since there is no sufficient cause shown to explain the delay. The learned single Judge further observed that even after coming to know about the ex parte decree on 14.9.2004, there is a further delay and the application to condone the delay in filing the application to set aside the ex parte decree was filed only on 4.2.2005 and this delay also has not been explained.

6. Now, the learned counsel for the appellant, on the strength of the above decisions, would contend that even assuming that there is no sufficient cause for the delay, this Court can consider the application for condonation of delay for the purpose of giving an opportunity to the appellant to contest the suit.

7. We are afraid that such a contention cannot be urged by the counsel for the appellant, as in our view, the same is untenable.

8. In this context, it would be better to look at the various decisions of this Court and the Supreme Court dealing with the question:

(1) In Indian Oil Corporation Ltd., Madras Vs. Mrs. Sakuntala Ganapathy Rao proprietor, Modern Home Agencies, , the Division Bench of this Court held that while considering whether there was sufficient cause, the Court should also take into account the legal right that had accrued in favour of the other side.

(2) In Ramnath Rao @ Ram Nath Sahu and Ors. v. Gobardhan Sao and Ors. 2002(1) CTC 769 the Supreme Court held that the expressions sufficient cause should receive liberal construction, so as to advance justice when no negligence, inaction or want of bona fide is imputable to the party and that pedantic and hypertechnical view should be taken and the explanation for the delay should not be rejected when, the stakes are high or where arguable points of facts and law are involved.

(3) In Sankaralingam and Anr. v. V. Rahuraman 2002 (3) CTC 13, this Court held that while dealing with the petition filed u/s 5, the Court should examine four aspects, namely:

(a) Whether petitioner has satisfactorily proved sufficient cause for delay;

(b) Whether petitioner is guilty of negligence or inaction or want of bona fide;

(c) Whether valuable right that he accrued to other party is likely to be defeated by condonation of delay; and

(d) Whether petitioner has arguable points on facts and law.

(4) In *Balakrishnan, N. v. M. Krishnamurthy* 1998 (II) CTC 533 the Supreme Court would hold that 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.

(5) In *Popat and Kotecha Property Vs. State Bank of India Staff Association*, , the Supreme Court would hold that the law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the 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.

(6) In *Binod Bihari Singh Vs. Union of India*, , the Apex Court would hold that when the party has come with a false plea to get rid of the bar of limitation, the Court should not encourage such person by condoning the delay.

9. It is clear from the decisions referred to above that the question whether sufficient cause has been made out and whether the party is bona fide would depend upon the facts of each case.

10. No doubt, it is true that the discretion of condonation of delay is with the Court and the Court should be liberal in the matter of condoning delay in the interest of justice.

11. When we take these principles into consideration, we are unable to hold that sufficient cause has been shown for the delay and any bona fide reason has been brought out to come forward with an application with huge delay of 10 years, namely 3415 days.

12. It is pertinent to note at this stage that the applicant Company itself in the affidavit would admit that the suit summons was served on the applicant Company on 21.1.1995 and however, they came to know about the ex-parte decree only after the service of E.P. notice, i.e. on 14.9.2004. When it is admitted that the suit summons was served on 21.1.1995, there is no reason shown in the affidavit, as to why the applicant Company kept quiet all along till the E.P. notice was served.

13. Further, it is not correct to contend that they had the knowledge about the ex parte decree only after service of E.P. notice in view of the fact that summons was served even according to the applicant Company on 21.1.1995. While explaining the same, it is contended by the counsel for the appellant that the suit

summons was served on the old address and at that time, the applicant Company shifted the office to the present premises.

14. This explanation cannot be held to be true. As correctly pointed out by the counsel for the caveator, both the suit summons and the E.P. notice had been admittedly served on the same office. Therefore, the belated explanation given for the delay in having knowledge has to be held as false.

15. There is a huge delay of 10 years. Having admitted that the suit summons was served on 21.1.1995, the counsel for the applicant Company cannot contend that there is a delay on the part of the respondent/plaintiff to file the execution petition. In our view, it is for the applicant Company to explain their delay in approaching the Court by giving bona fide reasons.

16. When we feel that no bona fide reason has been given and when we do not find any reason to hold that the order of the single Judge is wrong, we have no other alternative except to dismiss the appeal. Accordingly, the appeal is dismissed. Consequently, C.M.P. No. 15663 of 2005 is also dismissed. No costs.