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**(2015) 06 MAD CK 0292**

**In the Madras High Court**

**Case No :** C.R.P. Nos. 4004, 4005 of 2014 and M.P. No. 1 of 2014 (2 in Nos.)

K. Kalaiyarasan and Others

APPELLANT

Vs

K. Selvi and Others

RESPONDENT

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**Date of Decision :** 19-06-2015

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 4(2), Order 8 Rule 10, 2(9)  
Limitation Act, 1963 — Section 5

**Citation :** (2015) 06 MAD CK 0292

**Hon'ble Judges :** M. Duraiswamy, J

**Bench :** Single Bench

**Advocate :** T.R. Rajagopalan, Senior Counsel for P. Veena Suresh, for the Appellant; S. Parthasarathy, Senior Counsel for Vijay Anand for Sree Sun Associates, Advocates for the Respondent

**Final Decision :** Dismissed

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**Judgement**

M. Duraiswamy, J.—Aggrieved over the fair and final orders, passed in I.A. No. 57 of 2012 in O.S. No. 85 of 2006 and I.A. No. 58 of 2012 in O.S. No. 87 of 2006 on the file of II Additional District Court, Salem, the plaintiffs have filed the above Civil Revision Petitions.

2. Since similar facts and circumstances are involved in both the Civil Revision Petitions, they are disposed of by this Common Order.

3. The plaintiffs filed suits in O.S. Nos. 85 of 2006 and 87 of 2006 for Specific Performance or in the alternative for refund of the advance money.

4. The defendants filed the written statement in the respective suits and were contesting the suit. While so, on 17.8.2009, the trial Court decreed the suit ex-parte, for the reason that the defendants failed to appear before the trial Court on the said date. Thereafter, the defendants filed applications in I.A. No. 57 of 2012 in O.S. No. 85 of 2006 and I.A. No. 58 of 2012 in O.S. No. 87 of 2006, to condone the delay of 873 days in filing the petitions to set aside the ex-parte

decree, passed in O.S. Nos. 85 of 2006 and 87 of 2006 on 17.8.2009. The petitions were contested by the plaintiffs before the trial court.

5. The trial Court, after taking into consideration the case of both the parties, condoned the delay in filing the petitions to set aside the exparte decree passed in O.S. Nos. 85 of 2006 and 87 of 2006 and allowed both the applications. Aggrieved over the same, the plaintiffs have filed the above Civil Revision Petitions.

6. Heard Mr.T.R. Rajagopalan, learned Senior Counsel appearing for the petitioners and Mr.S. Parthasarathy, learned Senior Counsel appearing for the respondents.

7. Mr.T.R. Rajagopalan, learned Senior Counsel appearing for the petitioners/ plaintiffs submitted that the defendants have not explained the reasons for the delay in a proper manner. Therefore, the trial Court ought not to have condoned the delay. Further, the learned Senior Counsel submitted that after passing of the ex-parte decree in the suits, the defendants received the Notice in the Execution Petitions in REP Nos. 4 and 5 of 2005, however, they did not appear before the Executing Court on 25.2.2010, therefore, the defendants have been set exparte in the Execution Petitions also. In support of his contention, the learned Senior Counsel relied upon the following judgments:

(i) B. Madhuri Goud Vs. B. Damodar Reddy, (2012) 7 SCALE 230 : (2012) 12 SCC 693 , wherein the Hon"ble Supreme Court has held as follows:

6. " The expression "sufficient cause" used in Section 5 of the Limitation Act, 1963 and other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which serves the ends of justice. No hard-and-fast rule has been or can be laid down for deciding the applications for condonation of delay but over the years courts have repeatedly observed that a liberal approach needs to be adopted in such matters to that substantive rights of the parties are not defeated only on the ground of delay."

7. "In Collector (LA) v Katiji this Court made a departure from the earlier judgments in which strict interpretation was placed on the expressioin "sufficient cause"and observed: (SCC pp.108-09, para 3)

"3. The legislature has conferred the power to condone delay by enacting Section 5 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause"employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice - that being the life-purpose for the existence of the instution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realised that:

(1) Ordinarily a litigant does not stand to benefit by lodging an appeal late.

(2) Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

(3) "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

(4) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

(5) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

(6) It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the "State" which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the "State" is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits."

(ii) *Lanka Venkateswarlu (D) by L.Rs. Vs. State of A.P. and Others*, AIR 2011 SC 1199 : (2011) 112 CLT 152 : (2011) 2 RCR(Civil) 880 : (2011) 2 SCALE 703 : (2011) 4 SCC 363 : (2011) 3 SCR 217 : (2011) AIRSCW 1459 : (2011) 2 Supreme 174 , wherein, the Apex Court has held as follows:

"23. The concepts of liberal approach and reasonableness in exercise of the discretion by the courts in condoning delay, have been again stated by this Court in Balwant Singh, as follows:(SCC p.696, paras 25-26) "

25. We may state that even if the term "sufficient cause"has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of "reasonableness"as it is understood in its general connotation."

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise (sic a lis). These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly."

iii) Basawaraj and Others Vs. The Spl. Land Acquisition Officer, AIR 2014 SC 746 : (2013) 13 JT 469 : (2014) 1 RCR(Civil) 603 : (2013) 10 SCALE 391 : (2013) 14 SCC 81 , wherein the Hon"ble Supreme Court has held as follows:

"15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause"which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."

(iv) Palanivel Vs. The Government of Tamilnadu, The Principal, Kolanchiappar Government Arts College, The Divisional Engineer, Public Works Department and The Executive Engineer, Public Works Department, Industrial Technical Education Division, (2013) 8 MLJ 291 : (2014) 1 RCR(Rent) 101 , wherein this Court has held as follows:

"7. In my considered view, giving an opportunity to contest the matter cannot be a criteria for considering an application under Section 5 of the Limitation Act. Such consideration arises only when the petitioner who files a petition under Section 5 of the Limitation Act, satisfies the Court with sufficient cause and reasons for non-appearance on the particular date. If the reasons stated are not true or found to be false, then the question of considering or granting of sufficient opportunity does not arise. May be the defendants are representing the Government. That itself will not give them any immunity from the scope of the Limitation Act. In fact, in a recent decision rendered by the Hon"ble Supreme Court in Amlendu Kumar Bera and Others Vs. The State of West Bengal, (2013) 4 AD 289 : (2013) 2 RCR(Civil) 534 : (2013) 4 SCALE 639 : (2013) 4 SCC 52 , it has been held that merely because the respondent is the State, delay in filing the appeal or revision cannot and shall not be mechanically considered and in the absence of "sufficient cause", delay shall not be condoned. In another decision of the Apex Court reported in Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai, AIR 2012 SC 1629 : (2012) 114 CLT 847 : (2012) 3 RCR(Civil) 73 : (2012) 4 SCALE 248 : (2012) 5 SCC 157 : (2012) AIRSCW 2412 : (2012) 2 Supreme 674 , it has been held as follows:

"25. In cases involving the State and its agencies/instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision- making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and/or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest".

8. Countering the submissions made by the learned counsel for the petitioners, Mr.S. Parthasarathy, learned Senior Counsel appearing for the respondents submitted that the respondents have given sufficient cause for condoning the delay of 873 days, in filing the petition to set aside the exparte decree and taking into consideration the reasons stated by the respondents, the trial Court has rightly condoned the delay. Further, the learned Senior Counsel submitted that the respondents are having a strong case in the suits and therefore, the exparte decree is liable to be set aside.

9. That apart, the learned Senior Counsel also submitted that the petitioners/ plaintiffs have no right to get a decree as against the respondents/defendants for the reason that one Arumugasamy had already obtained an exparte decree in respect of the suit property in Survey Nos. 10/3B and 34/1. The learned Senior Counsel also submitted that the trial Court had mechanically decreed the suits exparte, without taking into consideration the merits of the case. In support of his contention, the learned Senior Counsel relied on the following judgments:

(i) M.K. Prasad Vs. P. Arumogam, AIR 2001 SC 2497 : (2001) 6 JT 55 : (2001) 4 SCALE 600 : (2001) 6 SCC 176 : (2001) 2 UJ 1352 : (2001) AIRSCW 2810 : (2001) 5 Supreme 420 , wherein the Hon"ble Supreme Court has held as follows:

10. In the instant case, the appellant tried to explain the delay in filing the application for setting aside the *ex parte* decree as is evident from his application filed under Section 5 of the Limitation Act accompanied by his own affidavit. Even though the appellant appears not to be as vigilant as he ought to have been, yet his conduct does not, on the whole, warrant to castigate him as an irresponsible litigant. He should have been more vigilant but his failure to adopt such extra vigilance should not have been made a ground for ousting him from the litigation with respect to the property, concededly to be valuable. While deciding the application for setting aside the *ex parte* decree, the court should have kept in mind the judgment impugned, the extent of the property involved and the stake of the parties. We are of the opinion that the inconvenience caused to the respondent for the delay on account of the appellant being absent from the court in this case can be compensated by awarding appropriate and exemplary costs. In the interests of justice and under the peculiar circumstances of the case, we set aside the order impugned and condone the delay in filing the application for setting aside *ex parte* decree. To avoid further delay, we have examined the merits of the main application and feel that sufficient grounds exist for setting aside the *ex parte* decree as well.

(ii) *Balraj Taneja and Another Vs. Sunil Madan and Another*, AIR 1999 SC 3381 : (1999) 6 JT 473 : (1999) 5 SCALE 400 : (1999) 8 SCC 396 : (1999) 2 SCR 258 Supp : (1999) AIRSCW 3345 : (1999) 8 Supreme 27 , wherein the Hon"ble Supreme Court has held as follows:

"44. In *Thippaiah vs Kuri Obaiah* it was laid down that the Court must state the grounds for its conclusion in the judgment and the judgment should be in conformity with the provisions of Section 2(9) of the Code of Civil Procedure. In *Dineshwar Prasad Bakshi vs Parmeshwar Prasad Sinha* it was held that the judgment pronounced under Order 8 Rule 10 must satisfy the requirements of "judgment" as defined in Section 2(9) of the Code."

45. Learned counsel for respondent 1 contended that the provisions of Order 20 Rule 4(2) would apply only to contested cases as it is only in those cases that "the points for determination" as mentioned in this rule will have to be indicated, and not in a case in which the written statement has not been filed by the defendants and the facts set out in the plaint are deemed to have been admitted. We do not agree. Whether it is a case which is contested by the defendants by filing a written statement, or a case which proceeds *ex parte* and is ultimately decided as a *ex parte* case, or is a case in which the written statement is not filed and the case is decided under Order 8 Rule 10, the Court has to write a judgment which must be in conformity with the provisions of the Code or at least set out the reasoning by which the controversy is resolved.

(iii) *Mrs. Chitrakala Vs. P. Mahesh, Mrs. Rajeswari,, M/s. C.K.S. Enterprises and M/s. Palani Murugan Silks*, (2013) 4 CTC 545 : (2013) 5 LW 468 : (2013) 4 LW 1 : (2013) 8 MLJ 295 , (to which, one of us was a party), wherein, this Court has held as follows:

"16. In the present case, the Plaint itself indicates that there are disputed questions of fact involved in the case giving rise to two versions. Therefore, it is not safe for the Court to record an exparte judgment without directing the plaintiff to prove the facts so as to settle the factual controversy. It is also well acknowledged by the legal dictum that assertion has no proof and hence, the burden lies on the Plaintiff to prove that the property is available for partition. Even if there was no Written Statement to the contrary or any evidence of rebuttal, the burden is on the plaintiff to prove his case.

17. In our view, the Trial Court clearly adopted an erroneous approach inferring that merely because there was no evidence of denial or rebuttal, the plaintiff's case can be held to have been proved. Therefore, we are of the view that the judgment and decree of the Trial Court are liable to be set aside and the matter should be remitted back to the Trial Court for fresh disposal."

(iv) Ajay Kumar Gulecha Vs. J. Vijayakumar and Others, (2015) 1 CTC 811 , wherein, this Court has held as follows:

16. As already stated, the Law of Limitation cannot be invoked for destroying the rights of the parties. No prejudice would be caused to the petitioner, if the first respondent is given an opportunity to contest the case on merits. If the petitioner is so sure about the case that he can get favourable order on merits instead of getting exparte Decree, as the First Respondent has denied the petitioner's claim and many issues are to be adjudicated after full pledged trial. While comparing the loss to the petitioner and the loss to be caused to the first respondent, namely loss of property worth about crores, the delay has to be excused and the case has to be decided on merits."

10. On a careful consideration of the materials available on record and the submissions made by the learned Senior Counsel on either side, it could be seen that the plaintiffs filed the suits in O.S. Nos. 85 and 87 of 2006 on the file of District Court, Salem for Specific Performance. The defendants filed their written statement and were contesting the suits. Since they failed to appear before the Trial Court, an exparte decree was passed on 17.8.2009. There was a delay of 873 days in filing the petition to set aside the exparte decree. Hence the defendants filed applications in I.A. Nos. 57 and 58 of 2012 to condone the delay.

11. In the affidavits, filed in support of the petitions, the plaintiffs have stated that the second defendant's brother was hospitalised during the month of June 2006 due to sickness and for his medical expenses, they have borrowed money from one Vadivel, who had obtained the signature of the deceased Shanmugasundaram and the defendants in blank stamp papers, pronotes and white sheets and had fabricated the same as sale agreement and filed the suits. The second defendant was aged 75 years in the year 2012 and she has stated that she is an illiterate and that, they are depending upon their counsel, but their counsel had failed to inform them about the exparte decree. Further, the second defendant has stated that one Arumugasamy filed suits in O.S. Nos. 1037 and

1039 of 2008 on the file of District Munsif Court, Salem in respect of the property in Survey Nos. 10/3B and 34/1 and also obtained an ex parte decree for declaration and also registered the decree in the Sub Registrar's Office, Valapady. Further, the second defendant has stated that the defendants have not been served with any summons in those suits and they came to know about the suits at a later point of time and that they have taken steps to set aside the ex parte decree.

12. The petitioners/plaintiffs filed their counter, disputing the averments stated in the affidavit.

13. Admittedly, the second defendant Rajamanickam is an old lady and the first defendant is working as a Teacher at Thirupathur. They have stated that they believed their counsel, however, their counsel failed to inform them about the ex parte decree, passed on 17.8.2009. The second defendant has also stated that she is an illiterate and could not read and write.

14. The Trial Court, after taking into consideration the averments stated in the affidavit, found that the defendants have satisfactorily explained the reasons for the delay. The Hon'ble Supreme Court, in the judgments relied on by the learned Senior Counsel for the petitioner, held that a party should show sufficient cause for condoning the delay.

15. In the case on hand, the defendants have stated that the second defendant is an old lady, aged 75 years and the first defendant is employed as a Teacher at Thirupathur and therefore, they could not get the information about the ex parte decree, passed on 17.8.2009, immediately.

16. Further, the suits have been filed by the plaintiffs for Specific Performance. The Trial Court also took into consideration the decree obtained by one Arumugasamy in the suits in O.S. Nos. 1037 and 1039 of 2008, which were marked as Exs.P.3 and P.4 and found that if the ex parte decree is not set aside, it will lead to multiplicity of proceedings and in the interest of justice, the Trial Court condoned the delay, on payment of cost of Rs. 10,000/- in each of the applications. There is no dispute with regard to the ratio laid down in the judgments, relied on by the learned Senior Counsel, appearing on either side.

17. The Law of Limitation cannot be invoked for destroying the rights of the parties. Further, if the ex parte decree is set aside and the defendants are given an opportunity to contest the case, no prejudice would be caused to the plaintiffs. If the plaintiffs are definite about their case that they can get a decree, on merits, instead of getting an ex parte decree, the plaintiffs can face the trial. If the delay is not condoned, the defendants would be put to hardship and prejudice.

18. By preventing the defendants from contesting the suits, they would lose their valuable rights and also their properties. The trial Court also condoned the delay, on payment of cost of Rs. 10,000/- in each of the applications. The delay of 873



days in filing the petition to set aside the exparte decree was rightly condoned by the trial court, by compensating the plaintiffs, by awarding the cost of Rs. 10,000/-, in each of the applications. In the interest of justice, the defendants should be given an opportunity to contest the suits, on merits.

19. In these circumstances, the orders passed by the trial court are just and proper and I do not find any error or irregularity in the Orders passed in I.A. Nos. 57 and 58 of 2012 in O.S. Nos. 85 and 87 of 2006 on the file of II Additional District Court, Salem and the Civil Revision Petitions are liable to be dismissed as devoid of merits. Accordingly, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected MPs are closed.

20. Since the suits are of the year 2006, I direct the II Additional District Judge, Salem to dispose of the suits in O.S. Nos. 85 and 87 of 2006, on merits and in accordance with law, within a period of three months from the date of receipt of copy of this order.