
(2006) 09 MAD CK 0131
In the Madras High Court
Case No : C.R.P. (PD) No. 1235 of 2005

M.N. Abdul Wahab

APPELLANT

Vs

Salem City Municipality Corporation

RESPONDENT

Date of Decision : 06-09-2006

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2006) 5 CTC 136 : (2006) 4 LW 230

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : T.R. Rajaraman, for the Appellant; G. Sankaran, for the Respondent

Final Decision : Dismissed

Judgement

S. Manikumar, J.—Civil Revision Petition is filed against the order dated 29.06.2005 in I.A. No. 1913 of 2003 in O.S. No. 234 of 2003

on the file of I Additional District Munsif Court, Salem condoning the delay of 482 days in filing the petition to set aside the exparte decree.

2. The brief facts leading to the filing of the Civil Revision Petition are as follows:

(i) The petitioner/plaintiff is the owner of the suit building constructed on the land belonging to ""Sozha Velalar Samugam Trust"". The plaintiff took

the vacant site from the Trust long back and put up a tiled building to the knowledge of the Trust. The plaintiff has been paying the rent for the

vacant site to the then President of the Trust and then deposited the same into the Court in O.S. No. 1781/83 on the file of District Munsif court,

Salem. Now, he has filed O.P. No. 1/2003. The property tax was in the name of the plaintiff under assessment No. Old.15783, New No.

110201. The plaintiff and their men filed a suit in O.S. No. 1781/83 on the file of District Munsif, Salem. In the month of February 2002, there

was a fire accident in the suit building and some portion of the building has been damaged. The plaintiff has put up a terraced building with the

knowledge of the Trust and has been paying property tax regularly. While that be the position, the Salem Municipal Corporation, the respondent in

the Civil Revision Petition, at the instance of the Trust has ordered transfer of the name in the Property Tax Register, in respect of the suit property

without any notice and enquiry. The Trust has no title over the building and only the vacant site belongs to them. Hence the plaintiff filed a suit for

declaration that the transfer of the name is void, illegal and also sought for a direction to retransfer the name of the owner of the building in the

property tax demand register to his name. Since, no written statement has been filed, the suit was decreed on 27.06.2003.

(ii) An application to condone the delay of 482 days in filing a petition to set aside the exparte decree was taken out by the Corporation. The

Corporation came to know about the disposal of the suit only after filing of the E.P. The reason assigned by the Corporation was that the files were

misplaced by oversight and the same was traced out later on, that the corporation could not file necessary petition in time, due to administrative

problems and election work.

(iii) The petitioner has resisted the condone delay petition contending that the Corporation is a Public body, that there are separate Clerks for

doing legal work and there is no possibility or circumstances to misplace the files and the said reason is only imaginary. It was the further contention

of the petitioner that the suit was intentionally allowed to be decreed and the reasons given are not adequate. Insofar as administrative problems in

the Corporation are concerned, there was no election work during the relevant period and therefore, the reason is not acceptable. Each and every

day delay has also not been explained.

3. In the Lower Court, the Revenue Inspector of the Corporation had been examined as P.W.1. Taking advantage of the evidence of P.W.1 that a

parallel file was not misplaced in their office, the petitioner contended that the Corporation failed to substantiate its plea regarding misplacing of

files. The Lower Court considered that, the Corporation, a body constituted for the betterment of the society and defending many litigations should

not suffer on account of negligence of its subordinate officials. The Lower Court

also proceeded on the footing that no prejudice would be caused

to the petitioner, if the condonation petition is allowed and that there may be some communication gap between P.W.1, namely the Revenue

Inspector, who was examined on behalf of the Corporation and the Commissioner. Inasmuch as there was no complaint of any substantial injury to

the petitioner and taking into account the administrative delay, the Lower Court allowed the petition on payment of cost of Rs. 1,500/- to the

petitioner to be paid on or before 04.07.2005. Aggrieved against the said order, the revision petition is filed.

4. Learned Counsel for the petitioner submitted that the reason assigned by the respondent Corporation is vague and being a public body, it should

be more responsible in performing its duties. Placing reliance on a decision reported in P.K. Ramachandran Vs. State of Kerala and Another, ,

learned Counsel for the petitioner submitted that the Lower Court ought to have recorded its satisfaction that the explanation for the delay was

either reasonable or satisfactory. In that case, the order impugned reads as follows:

This is an application to condone the delay of 565 days in filing an appeal. The petition is seriously opposed by the respondent. But taking into

consideration the averments contained in the affidavit filed in support of the petition to condone the delay, we are inclined to allow the petition. The

petition stands allowed.

The Lower court has not recorded any satisfaction that the delay was either reasonable or satisfactory, which is an essential prerequisite for

condonation of delay. The order of the Lower Court was cryptic and without assigning any reason for accepting the explanation. Therefore the

Apex court was inclined to interfere.

5. Learned Counsel for the respondent submitted that there is no infirmity in the order of the Lower Court. The delay was purely due to

administrative reasons and that the petitioner has been adequately compensated.

6. In the instant case, the Lower Court has exercised its discretion and condoned the delay therefore, It has to be seen as to whether the discretion

exercised by the Lower Court is within the principles laid down by the Supreme Court. The Hon''ble Supreme Court, in 1998 2 SCC 533 (N.

Balakrishnan v. M. Krishanmurthy) in paragraphs 10 and 14 has held as follows:

10. It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion

can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion.

Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very

long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient it is the result of positive

exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of

discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In

such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its

own finding even untrammelled by the conclusion of the Lower Court.

14. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to

turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is put-forth as part of a dilatory strategy

the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party

deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay of the Court should not forget the

opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quiet a large litigation expenses. It would be a

salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party of his

loss.

7. In State of Nagaland Vs. Lipok AO and Others, , the Apex Court considering the delay of the State in filing an appeal, in paragraph 5 has held

as follows:

It is axiomatic that decisions are taken by officers/agencies proverbially at a slow pace and encumbered process of pushing the files from table to

table and keeping it on the table for considerable time causing delay - intentional or otherwise - is a routine. Considerable delay of procedural red

tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought

by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression

sufficient cause"" should, therefore, be considered with pragmatism in a justice - oriented approach rather than the technical detection of sufficient

cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would

be cognizant to and requires adoption of pragmatic approach in justice - oriented process. The court decides the matters on merit unless the case

is hopelessly without merit.

8. In the case on road, the Lower Court apart from other reasons has considered that the administrative delay caused due to the missing of the files

and the negligence of the subordinates should not be put against the Corporation. Further, the property demand register has already been changed

to the name of ""Sozha Velalar Samugam Trust"". Even the petitioner has admitted in his plaint that there are other suits pending in the Lower Courts

regarding the ownership of the building. The delay in filing the petition cannot be termed as dilatory tactics by the Corporation. Certain amount of

latitude is permissible in the case of government or a local body, which is working through its officers or servants. The Lower Court has exercised

its discretion properly and has adequately compensated the petitioner by awarding a cost of Rs. 1,500/- to be paid to him.

In view of the above, the order of the Lower Court does not require any interference. Therefore, the Civil Revision Petition stands dismissed. No

costs. Consequently, the connected C.M.P. No. 15375 of 2005 is closed.