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**(2011) 01 MAD CK 0347**

**In the Madras High Court**

**Case No :** C.R.P. (NPD) (MD) No. 1084 of 2004 and C.M.P. (MD) No. 240 of 2006

P. Jayaraman, A. Murugesan and A.R. Subramaniam

APPELLANT

Vs

Sri Rajeswari Finance

RESPONDENT

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**Date of Decision :** 31-01-2011

**Acts Referred:**

**Citation :** (2011) 8 RCR(Civil) 2304

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

**Bench :** Single Bench

**Advocate :** R. Subramanian, for A2, for the Appellant; Sarvabhauman Associates, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

M. Venugopal, J.—The Petitioners/Petitioners/Defendants have projected the present Civil Revision Petition as against the order dated 22.12.2003 in I.A. No. 349 of 2001 in I.A. No. 408 of 1996 in O.S. No. 5 of 1995 passed by the learned sub-Judge, Paramakudi.

2. The trial Court while passing the order in I.A. No. 349 of 2001 on 22.12.2003, has inter alia observed that "with a view not to pay the due amount to the Decree-holder/Execution Petitioner and also to deceive him and further with a view to procrastinate the matter, the present application has been filed with a delay wherefrom a motive has been seen and the suit has been filed in the year 1995 and disposed of in the year 1996 and also again to pass orders as regards the restoration of the suit and if that application is to be allowed that already pending numerous lakhs of cases which are not to be disposed of and moreover, in all the Courts, hundreds of cases are pending and as such, by allowing the present application, the suit will get pending and if the persons are not respected the Court orders then an atmosphere of encouraging they will be created and viewed in the perceptive in the interest of justice as dismissed the application with said costs".

3. Feeling aggrieved against the order of dismissal dated 22.10.2003 in I.A. No. 349 of 2001 in O.S. No. 5 of 1995 passed by the learned sub-Judge, Paramakudi, the Revision Petitioners/Petitioners/ Defendants as aggrieved persons have projected this present Civil Revision Petition before this Court.

4. The learned Counsel for the Revision Petitioners/Petitioners/Defendants urges before this Court with the order of the trial Court in I.A. No. 349 of 2001 dated 22.10.2003, in O.S. No. 5 of 1995 is contrary to law and the same is vitiated by material irregularities and if the same is not interfered with by this Court then it will occasion a failure of justice and cause an irreparable injury to the Petitioners.

5. Continuing further, it is the submission of the learned Counsel for the Petitioners/Defendants that the trial Court has fail to appreciate the simple fact that I.A. No. 349 of 2001 has been filed by the Petitioners/Defendants praying to condone the delay of 796 days in representing the I.A. filed to restore the I.A. No. 408 of 1996.

6. According to the learned Counsel for the Petitioners/Defendants, the case of the Petitioners is that the returned papers were misplaced in an Advocate's Office and the same could not be represented in time.

7. In short, the submission of the learned Counsel for the Petitioners is that an opportunity may be provided to the Petitioners to enable them to take part in the main arena of suit proceedings so as to sub serve the ends of justice.

8. Per contra, the learned Counsel for the Respondent/Plaintiff submits that it is wrong to state that the ex-parte application has been misplaced and only when the cases have been transferred to Parmakudi sub-Court and when an endeavour has been made search for the bundle in the office of the Advocate at the time only a petition to set aside the ex-parte has been found out is not a correct one. Furthermore the Paramakudi sub-Court has started functioning from 02.11.2000 and only after four months later when the application has been presented in the month of March 2001 the motive of the Petitioners will be quite evident and in short the Petitioners have not represented the set aside application in time and only as an after thought has represented the same with a delay of 796 days.

9. A plea of limitation which affects the inter alia application has also been taken by the Respondent/Plaintiff.

10. It is to be noted that I.A. No. 349 of 2001 has been filed by the Revision Petitioners/Defendants before the trial Court praying to condone the delay of 796 days in representing the application. "As a matter of fact, delay in representation" is a matter strictly between the Applicants and the concerned Court. The Respondents/Plaintiffs or any one for that matter has no say in this regard. But, in the instant case on hand, their appears to be a delay of 796 days. It is true that a valuable right accrued to the party by means of decree obtained in this regard cannot be easily set aside by a Court of law. At a time when a substantial justice is to be delivered to the parties overriding the technicalities,

generally/ordinarily length and breadth of delay are not relevant or vital factors. By allowing a representation delay application the maximum that can happen is an opportunity will be provided to the concerned party to take part in the main stream of legal proceedings and their cause will be decided on merits. By projecting representation delay interlocutory application belatedly, ordinarily a litigant will not file the same with a bad motive or intention. Since the delay in representation subject matter is purely within a realm or purview of the concerned Court and in the present case on hand the Revision Petitioners in their I.A. No. 349 of 2001 before the trial Court has assigned the reasons of when the application has been returned for rectifying the certain defects and when the said application has been returned on 11.12.1998, after taking of the return the said application is said to have been himself placed in the Advocate's Office and when at Paramakudi sub-Court has been formed and at the time of searching the case papers those representation application has been found out and hence in this regard there has occasioned a delay of 796 days in representing the I.A. No. 349 of 2001.

11. The Petitioners take a stand that the delay of 796 days in representing the I.A. No. 349 of 2001 is not an intentional one but the stand taken by the Petitioners have been stoutly denied by the Respondent/Plaintiff.

12. It is to be remembered, when a Court of law deals with an application to condone the delay in representing the matters then a pedantic approach ought not to be adopted by it. Instead, a pragmatic, a commonsense approach in a practical way will have to be adopted by a Court concerned, in the considered opinion of this Court. Also, it is to be pointed out that a judiciary is respected not on account of its power to legalise injustice and technical grounds but it is capable of removing injustice and is expected to do so.

13. On a careful consideration of respective contention and in view of the fact that the Petitioners in I.A. No. 349 of 2001 have assigned a reason of misplaced the return of the interlocutory application in their Advocate office and later it has been found out in the said Advocate's Office while searching the case papers when sub-Court, Paramakudi, has been formed, this Court by taking a lenient and liberal view to advance the substantial cause of justice and also with a view to provide one opportunity to the Petitioners allows the Civil Revision Petition by accepting the reasons assigned by the Revision Petitioners in I.A. No. 349 of 2001 and consequently allows the Civil Revision Petition to prevent an aberration of justice.

14. In the result, the Civil Revision Petition is allowed, leaving the parties to bear their own costs. The order in I.A. No. 349 of 2001 dated 22.10.2003, passed by the learned sub-Judge, Paramakudi, in O.S. No. 5 of 1995 is set aside for the reasons assigned by this Court in this Revision. Consequently, connected C.M.P. No. 240 of 2006 is closed.

15. Earlier, this Court in C.M.P. No. 240 of 2006 in C.R.P.(NPD) No. 1084 of 2004

on 21.09.2006, has passed an order of Interim stay on condition that the Petitioners shall deposit a sum of Rs. 60,000/- (Rupees Sixty Thousand only) within a period of six weeks to the credit of O.S. No. 5 of 1995, on the file of trial Court. The learned Counsel for the Petitioners brings to the notice of this Court that the Petitioners complied the order passed in C.M.P. No. 240 of 2006 and accordingly the sum of Rs. 60,000/- (Rupees Sixty Thousand only) has been remitted to the credit of O.S. No. 5 of 1995, on the file of trial Court. Since the said sum of Rs. 60,000/- is lying to the credit of O.S. No. 5 of 1995 on the file of trial Court and the trial Court is directed to invest the said amount of Rs. 60,000/- (Rupees Sixty Thousand only) initially for a period of two years in a fixed deposit or under some keen yielding higher returns and further the trial Court is to take into consideration this amount of Rs. 60,000/- (Rupees Sixty Thousand only) with an accrued interest at a time of disposal of the main suit. The parties are directed to abide the result of the suit and it is open to the concerned party at a later point of time to project the necessary payment out application as per Rules 161 and 162 of CPC for taking out the sum of Rs. 60,000/- (Rupees Sixty Thousand only) along with accrued interest thereto. The trial Court is further directed to dispose of the I.A. No. 408 of 1996 soon after restoration of the same to its file within a period of one month from the date of receipt of a copy of this order.