

(1994) 07 MAD CK 0022
In the Madras High Court

P. Rama Iyer

APPELLANT

Vs

V. Ramaswami Naidu

RESPONDENT

Date of Decision : 05-07-1994

Acts Referred:

Citation : (1995) 2 LW 220 : (1994) 2 MLJ 481

Hon'ble Judges : Pratap Singh, J

Bench : Single Bench

Judgement

Pratap Singh, J.—This civil revision petition is directed against the order passed in E.A. No. 5 of 1986 in O.S. No. 32 of 1961 on the file of

the Assistant Judge, City Civil Court, Madras.

2. Short facts are: The revision petitioner had obtained a money decree against the respondent. He filed an execution petition to realise the decree

debt. That was returned. After return the execution petition was represented after a delay of three years and seven months with a petition in E.A.

No. 5 of 1986 for condoning the delay, that was resisted by the respondent. After enquiry, the court below has dismissed the petition praying for

condoning the delay. Aggrieved by that order, the petitioner in the court below has come forward with this revision petition.

3. Mr. S.Parthasarathy learned Counsel appearing for the petitioner, would submit that the execution petition was filed in time and so there was no

fault on the part of the revision petitioner that the delay was only in numbering the same and that if the delay is not condoned, he cannot execute the

decree at all inasmuch as 12 years period has expired. He further submitted that in the circumstances of the case for and the reason given in the

affidavit for the delay, the delay ought to have been condoned and the court

below was wrong in dismissing the same.

4. Per contra, learned Counsel for the respondent would submit that every day's delay ought to be explained, that valuable right had accrued to

the respondent and that cannot be disturbed by vague allegations and that on the materials placed before the court below, the order of the court

below is correct.

5. I have carefully considered the submissions made by learned Counsel on both sides. In *Y. Cusbar v. K. Subbarayan* 1933 T.L.N.J. 375, the

First Bench of this Court had occasion to consider a similar case in which there was delay of 1191 days in representing the papers and for

condoning the delay in representation of the papers an application was filed with a supporting affidavit by the Advocate's clerk explaining the

delay. On the above facts it was held as follows:

This is not case where in the appeal has been filed out of time. This is a case in which the appeal is filed in time. Therefore, it cannot be said that the

decree under appeal has assumed finality and the right has been accrued to the respondent. The delay in representation of the papers in the instant

case, cannot be put to the account of the party. Several times, it happens due to the mistake on the part of the advocate's clerk or the advocates in

presenting the appeal. Therefore, the court has to take care to see that the justice does not suffer in such cases, if there is any undue delay in

representation of the papers, it can be compensated by awarding costs.

6. In this case, the revision petitioner himself has filed an affidavit in support of the application and E.A. No. 5 of 1986. In it he has stated that he

filed execution petition and it was returned several times and after 23.2.1985, the bundle was misplaced and the same was traced and represented

and hence, the delay and occurred. He has also stated that he was away from Madras for about one year to his native place for the treatment of

his wife. This affidavit would show that because of the misplacement of the bundle and since the petitioner was away from Madras for one year,

the delay has occurred. In the counter affidavit filed by the respondent it stated that this delay should be explained, that he has acquired a valuable

right and it cannot be disturbed. So far as the contention that every days delay should be explained is concerned, such a view has been reversed by

the Supreme Court in several decisions. Such a theory is now absolute. A liberal

approach is taken while condoning the delay and at the same time

if the delay remains totally unexplained, it will not be condoned. Taking into consideration the fact and circumstances of the case, I am clear that

this is a case in which the decision in Y. Cusbar v. KSubbarayan 1993 T.L.N.J. 375, has to be applied and the application has to be allowed on

payment of costs.

7. In the result, this civil revision petition is allowed setting aside the order of the court below. Consequently, E.A. No. 5 of 1986 shall stand

allowed on condition that the petitioner herein paying a cost of Rs. 1,000 within a period of four weeks from today to the learned Counsel

appearing for the respondent or depositing the amount in the court below, failing which the application shall stand dismissed.