

(2012) 10 MAD CK 0222

In the Madras High Court

Case No : C.R.P. (PD) No. 1484 of 2012 and M.P. No. 1 of 2012

Paramanandan

APPELLANT

Vs

Selvanayaki, Ponnusamy (Died) Ponnuvelu (Died),
Saraswathi, Mohanraj and Tharabai

RESPONDENT

Date of Decision : 18-10-2012

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2012) 6 CTC 58

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : S. Vijay Anand, for the Appellant; Auxilia Peter, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Ramanathan, J.—The Third Defendant/Third Respondent is the Revision Petitioner herein. The First Respondent herein filed the Suit in O.S. No. 4449 of 2001, on the file of the First Assistant Judge, City Civil Court, Chennai, for delivery of possession. The said Suit was dismissed. Challenging the same, she filed an Appeal, but, there happened to be a delay on 1670 days in filing the same. Therefore, she filed an Application u/s 5 of the Limitation Act to condone the delay of 1670 days in preferring the Appeal and that Application was allowed. Aggrieved by the same, the Revision Petitioner has filed the present Civil Revision Petition. The learned Counsel appearing for the Revision Petitioner submitted that the Suit was dismissed, on 24.12.2003, and for more than 4 years, the First Respondent/Plaintiff did not take any steps to file the Appeal, but, filed the same, after a delay of 1670 days and the only reason stated in the Affidavit filed in support of the Application is that, she got certain documents in her favour by applying through R.T.I. Act and that documents would prove her ownership and therefore, the Appeal was filed with a delay and such reason cannot be accepted and the parties cannot be permitted to agitate the matter,

after collection of evidence and she must be vigilant in collecting the evidence before filing the Suit and the Court below, without properly appreciating various judgments rendered by the Hon''ble Supreme Court, erred in condoning the delay.

2. The learned Counsel for the Revision Petitioner relied upon the following reported judgments of the Hon''ble Supreme Court in support of his case:

- (i) In the Balwant Singh (Dead) Vs. Jagdish Singh and Others,
- (ii) In the Lanka Venkateswarlu (D) by L.Rs. Vs. State of A.P. and Others,
- (iii) In the P.R. Sundaravadanam and Others Vs. P.R. Vimala and Another,
- (iv) and in the P.K. Ramachandran Vs. State of Kerala and Another,

3. The learned Counsel, by placing reliance upon the judgments referred above, submitted that the order of the Court below is liable to be set aside, as the discretion was not properly exercised by the Court below.

4. On the other hand, the learned Counsel for the First Respondent submitted that the Court below, on being satisfied with the reason that the Revision Petitioner was able to get certain documents to prove her title at a later point of time, allowed the Application and the said order cannot not be interfered with in Civil Revision Petition. The learned Counsel also relied upon a judgment reported in the Improvement Trust, Ludhiana Vs. Ujagar Singh and Others, in support of his contention.

5. In the judgment reported in the Popat and Kotecha Property Vs. State Bank of India Staff Association, the Hon''ble Supreme Court has held as follows:

The period of limitation is founded on public policy, its aim being to secure the quiet of the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. The statute i.e., the Limitation Act is founded on the most salutary principle of general and public policy and incorporates a principle of great benefit to the community. It has, with great propriety, been termed a statute of repose, peace and justice. The statute discourages litigation by burying in one common receptacle all the accumulations of past times, which are unexplained and have not from lapse of time become inexplicable. It has been said by John Voet, with singular felicity, that controversies are limited to a fixed period of time, lest they should be immortal while men are mortal.

6. In the judgment reported in the matter of Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation and another, 2010 (2) SCC 115, the Hon''ble Supreme Court has held as follows:

The law of limitation is founded on public policy. The legislature does not prescribed limitation with the object of destroying the rights of the parties, but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within

which legal remedy can be availed for redress of the legal injury. At the same time, the Courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963, and similar other statutes is elastic enough to enable the Courts to apply the law in a meaningful manner, which subserves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the Applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate.

7. In the judgment reported in Improvement Trust, Ludhiana Vs. Ujagar Singh and Others, the Hon"ble Supreme Court has held as follows:

While considering the Application for condonation of delay, no straitjacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not. Each case has to be weighed from its facts and the circumstances in which the party acts and behaves.

8. In the judgment reported in Balwant Singh (Dead) Vs. Jagdish Singh and Others, the Hon"ble Supreme Court has held as follows:

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. 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.

34. Liberal construction of the expression "sufficient cause" is intended to advance substantial justice, which itself presupposes no negligence or inaction on the part of the Applicant, to whom want of bona fide is imputable. There can be instances where the Court should condone the delay; equally, there would be cases, where the Court must exercise its discretion against the Applicant for want of any of these ingredients or where, it does not reflect "sufficient cause" as understood in law.(Advanced Law Lexicon, P. Ramanatha Aiyer, 2nd Edition, 1997)

35. The expression "sufficient cause" implies the presence of legal and adequate reasons. The words "sufficient cause" means adequate enough, as much as may be necessary to answer the purpose intended. It embraces no more than that which provides a plenitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. The sufficient cause should be such as it would persuade the Court, in exercise of its judicial discretion, to treat the delay as an excusable one. These provisions give the Courts enough power and discretion to apply a law in a meaningful manner, which assuring that the purpose of enacting such a law does not stand frustrated.

9. In the judgment reported in the Perumon Bhagvathy Devaswom, Perinadu Village Vs. Bhargavi Amma (Dead) by LR's. and Others, the Hon'ble Supreme Court has held as follows:

(i) The words sufficient cause for not making the Application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words "sufficient cause" in Section 5 of the Limitation Act, should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the Appellant.

(ii) In considering the reasons for condonation of delay, the Courts are more liberal with reference to applications for setting aside abatement, than other cases. While the Court will have to keep in view that a valuable right accrues to the legal representative of the deceased respondent when the Appeal abates, it will not punish an Appellant with foreclosure of the Appeal, for unintended lapses. The Courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.

(iii) The decisive factor in condonation of delay, is not the length of the delay, but sufficiency of a satisfactory explanation.

(iv) The extent or degree of leniency to be shown by a Court depends on the nature of Application and facts and circumstances of the case. For example, the Courts view delays in making Applications in a pending Appeal more leniently than delays in the institution of an Appeal. The Courts view Applications relating to lawyer's lapses more leniently than Applications relating to litigant's lapses. The classic example is the difference in approach of Courts to Applications for condonation of delay in filing an Appeal and Applications for condonation of delay in re-filing the Appeal, after rectification of defects.

(v) Want of "diligence" or "inaction" can be attributed to an Appellant only when something required to be done by him, is not done. When nothing is required to be done, the Courts do not expect the Appellant to be diligent. Where an Appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an Appellant is not expected to visit the Court or his lawyer every

few weeks to ascertain the position nor keep checking whether the contesting respondent is alive. He merely awaits the call or information from his counsel about the listing of the Appeal.

We may also notice here that this judgment has been followed with approval by an equi-Bench of this Court in Katari Suryanarayana and Others Vs. Koppiseti Subba Rao and Others,

10. Bearing these principles in mind, we will have to see whether the Court below has rightly exercised its discretion, while condoning the delay. Admittedly, the Suit is for recovery of possession on the basis of title and the Suit was dismissed, holding that the First Respondent/Plaintiff has not produced any documentary evidence to prove her title, though she marked 14 documents on her side. In the Affidavit filed in support of the Petition to condone the delay, it is stated that she has submitted the Application by invoking the provisions of RTI Act, in June, 2009, to get the particulars from Mylapore Triplicane Taluk Office. After getting the documents, the Appeal was filed on the ground that the documents obtained by her will prove her title and therefore, the delay has to be condoned.

11. According to me, such an explanation cannot be considered as sufficient cause for condoning the delay and if such explanation is accepted and the delay is condoned, there will be no end to the litigation and the party can approach the Court at any point of time, stating that he got the document to prove his case at a later point of time. Further, the party must be vigilant in conducting the case and by reason of the lapse of time, the right accrued to the Defendant in the Suit, that cannot be set at naught, by filing an Appeal, after a long gap of four years.

12. Further, the Court below condoned the delay by observing that the document could not be filed by the First Respondent during trial, as she was not having the document at that point of time and she was able to get the same, only after coming into force of RTI Act and therefore, there is a scope for further adjudication. The Court below ought not to have condoned the delay on the ground that the First Respondent has got favorable grounds in the Appeal and the Court below is expected to consider only the reason stated for condoning the delay and the merits of the case should not be taken into consideration, while considering the Application for condonation of delay. Hence, having regard to the law laid down by the Hon'ble Supreme Court, as stated supra and having regard to the nature of averments made in the Petition, in my opinion, the Respondent has withdrawn sufficient cause and the Court below erroneously exercised the jurisdiction conferred on it and condoned the delay. Hence, the impugned order is set aside and the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.