
(1991) 08 MAD CK 0054

In the Madras High Court

Case No : C.M.P. No. 8250 of 1990 in SR. No. 29026 of 1990 (Writ Appeal No...)

P.K. Ramakrishnan

APPELLANT

Vs

The Tamil Nadu Electricity Board

RESPONDENT

Date of Decision : 21-08-1991

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (1991) 08 MAD CK 0054

Hon'ble Judges : A.S. Anand, C.J.;Kanakaraj, J

Bench : Division Bench

Advocate : Vijay Narayan, for the Appellant; R. Muthukumaraswamy, for the Respondent

Judgement

1. Against the Judgment of a learned single Judge in W.P. No. 2016 of 1980 decided in 10.7.1986 a writ appeal has been preferred in this Court 1256 days after the expiry of the period of limitation for filing a writ appeal. Through this application, condonation of delay is sought for. In the affidavit filed in support of this application, it has been stated that the applicant had engaged M/s. I. Mahaboob Sheriff and M.A. Abdul Rahim as his advocates and that the writ petition was admitted in 1980. After the admission of the writ petition, he had been making enquiries from the counsel regarding the progress of the case. In paragraph 4 of the affidavit it is stated that after May 1987 the applicant spoke to his counsel at Madras over the telephone to find out about the fate of his case and his counsel informed him that the matter was still pending. It is then stated that on 16.12.1989 the applicant found from the Indian Express that one S.V. Angappan, who was the General Secretary of the Union to which the applicant belonged, had obtained an order from the High Court regarding his reinstatement in service and since the writ petition of Angappan had been filed after the writ petition had been filed by the applicant, he was surprised to find out that the writ petition of Angappan had been disposed of while his was still pending. The applicant then goes on to state that he made a trip to Madras towards the end of January 1990 and visited Mr. Mahaboob Sheriff. He was

informed by Mr. Sheriff that his writ petition had been dismissed as early as on 10.7.1986. On the enquiry of the applicant as to why he had not been informed about the posting of the case and the final orders, the counsel is reported to have called his clerk who stated that he had not written a letter to the applicant to inform him about the order in the writ petition. The writ papers were then traced out and handed over to the Union representative Mr. N. Muruganandam on 10.2.1990. Thereafter, the writ appeal was filed and according to the applicant, the delay was solely due to the father of his counsel and his clerk to promptly inform him about the order of this Court dismissing the writ petition and in case the period of limitation is to start from the date of knowledge of the order the delay in filing the appeal would only be two or three weeks.

2. On a notice issued in this application, a counter had been filed on behalf of the respondents in which it is stated that the allegations made in the affidavit were vague and after thought. It has also been stated that the applicant has not made out any sufficient cause for the condonation of delay as he has placed no material to support his averments contained in the affidavit. It is then pointed out in the counter that the impugned order of dismissal of the applicant was made on 4.6.1976 which was confirmed by the appellate authority on 14.2.1977 and finally on 8.5.1979. The writ petition was filed in 1980 and disposed of on 10.7.1986 and that there were no valid grounds made out for condonation of the inordinate delay since the writ appeal was filed after an inordinate delay of 1256 days.

3. The question which requires our consideration is, whether the applicant is entitled, in the circumstances of the case, to condonation of the delay in filing of writ appeal and whether he has satisfactorily explained the delay in terms of S.5 of the Limitation Act.

4. To answer the aforesaid question, we are required to first consider whether the applicant can be penalised for the negligence of his counsel, assuming that the counsel was negligent

5. Where a litigant engages and properly instructs a counsel to prosecute his case and does all that he expected of him to do in that behalf he bona fide expects the counsel to act in his best interests and functions in a responsible manner, expected from a member belonging to the noble profession of law. If the counsel acts negligently then generally speaking, the litigant ought not to be penalised for the established negligence of the counsel unless there has been remissness on his own part as well. The counsel may, in such a case be guilty of not discharging his professional duties properly but his proved negligence may afford, in a given case, sufficient cause for seeking condonation of delay in prosecuting further remedies. It is, however, not possible or even desirable to lay down any hard and fast rule in that behalf. It is for the applicant to establish the facts and circumstances of the case and the court cannot be left to guess whether the litigant was to blame or his counsel. The allegations made, therefore, in that behalf must be definite and precise and they must be fully

proved. However, by engaging a counsel only a party to the case is not relieved of his duties and obligations in the matter. Where a party either does not fully brief the counsel or keeps no contact with him, it is the party who is really in default and negligent and shall have to bear the consequences. Where the litigant himself is prima facie in default, the mere negligence of the counsel also cannot come to his aid in a claim or application to establish sufficient cause for condonation of delay. On these broad principles, we shall examine the facts of the case.

6. Although it is stated in the affidavit filed by the applicant that after the writ petition was admitted in 1980, the applicant had been making enquiries and that an enquiry was made by the applicant in May 1987 on telephone from the counsel and the counsel informed him that the writ petition was still pending, it is not stated in the affidavit on what date the telephone call was made. Be that as it may, it is difficult for us to accept this plea of the applicant. Since the writ petition, admittedly had been dismissed on 10.7.1986, it does not stand to reason why false information should have been given to the applicant by the counsel. It is not a case of the alleged negligence of the counsel but falsehood is attributed to the counsel by stating that he misled the applicant in May 1987, to believe that his writ petition which had actually been dismissed on 10.7.1986, was still pending. The allegation is rather of a serious nature against a member of the profession. The plea is much too vague and nonspecific and does not warrant its acceptance. The applicant has filed along with the memorandum of appeal a copy of the Judgment of the learned single Judge. It shows that the counsel had applied for a carbon copy of the Judgment on 10.7.1986 the date of judgment, itself. The copy was made ready on 22.1.1987 and was delivered to the counsel on 29.1.1987. Why then should the counsel tell falsely to the applicant in May 1987, as alleged, that the writ petition was still pending? We find nothing from the record to suggest a reason for the counsel to mislead the applicant. It appears to us that the plea now put forward is only afterthought and irresponsible allegations have been made against a counsel only to cover up the default of the litigant himself. In all probability the applicant kept no contact with his counsel. If the allegation of the applicant that when he contacted this counsel, the clerk of the counsel (name not disclosed) confessed that he had not informed the applicant about the final order was correct, the applicant would have at least secured the affidavit of the clerk and filed it with his application. He did nothing of the kind and we cannot, therefore accept the (sic) present case of the applicant.

7. That apart, the applicant has stated in the affidavit that he came to know from the Indian Express dt. 16.12.1989 that relief had been granted to S.V. Angappan in the matter of his restatement and that made him wonder why the writ petition filed by him was still pending. As a prudent person, one would have expected the applicant to have immediately contacted his counsel and rushed to Madras. On the own showing of the applicant, he made a trip to Madras towards the end of January 1990 and visited Shri Mahaboob Sheriff. This, certainly is not the

conduct of a diligent litigant. Why did the applicant wait from 16.12.1989 to the end of January 1990? No explanation is forthcoming on the record and there is not even a whisper in the affidavit for the inaction on the part of the applicant during that period. The applicant then goes on to state that the case papers were not readily available with the counsel and were later on traced and handed over to the Union representative Sri. M. Muruganandanam on 10.2.90. There is no affidavit of Sri. Muruganandanam filed to support this plea either. Ignoring this aspect for the time being let us now look to the subsequent conduct of the applicant.

8. We find from the record that the writ appeal was filed on 29.3.90. The explanation which the applicant offers for explaining the period between 10.2.90 and 29.3.90 is that the time was spent to take legal advice. The explanation is wholly unsatisfactory. The facts and circumstances of the case clearly go to show that the applicant had not done all that was required of him as a diligent litigant and he has been grossly negligent in pursuing his case. No explanation, much less, a satisfactory, cogent or even a plausible one, has been furnished by the applicant to explain the delay, even if it is assumed for the sake of argument that he derived knowledge of the dismissal of the writ petition only towards the end of January 1990 since the appeal was filed on 29.3.90. It appears to us that in attempting to seek condonation of the delay, the applicant has attempted to place blame on his counsel. The material on the record is wholly insufficient to return a finding that the counsel had, in fact, been negligent. The allegations are not definite and precise, and in fact they are vague. On these allegations the court cannot come to the conclusion that the delay in filing of the writ appeal has been caused due to the negligence of the counsel.

9. In our opinion, the applicant himself was negligent and careless and that negligence is also wanton. The applicant has, thus, not been able to make out a sufficient cause for condoning the delay in filing the writ appeal. The conduct of the applicant even after 16.12.1989 exposes his negligence and carelessness. Thus, considered in the facts and circumstances of the case, we find that the applicant has not made out any sufficient cause for condonation of the delay and has failed to explain the delay satisfactorily. This application, therefore fails and is dismissed. As a result, the writ appeal W.A.S.R. No. 29026 of 1990 shall also stand dismissed as barred by time.