

(2014) 02 MAD CK 0218

In the Madras High Court

Case No : O.S.A. No. 26 of 2014 and M.P. No. 1 of 2014

R. Subramaniam

APPELLANT

Vs

India Cements Capital and Finance Ltd.

RESPONDENT

Date of Decision : 13-02-2014

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2014) 02 MAD CK 0218

Hon'ble Judges : P. Devadass, J;N. Paul Vasanthakumar, J

Bench : Division Bench

Advocate : G. Sundaram, for the Appellant; K. Rajasekaran, for the Respondent

Final Decision : Dismissed

Judgement

P. Devadass, J.—This Original Side Appeal has been directed by the Respondent as against allowing Application No. 148 of 2013, whereunder the Petitioner's I.P. No. 68 of 1999 has been restored. The Respondent sought for adjudication of the Appellant as an Insolvent. The Appellant is a guarantor, while the Respondent is a Petitioning Creditor. I.P. No. 68 of 1999 was pending for quite some time. Subsequently, it came to be dismissed for default on 21.3.2007. Application No. 148 of 2013 has been filed by the Petitioning Creditor to restore it. It was opposed by the Appellant. The learned Single Judge having satisfied that sufficient cause has been shown, restored the I.P. on condition that the Respondent pays a cost of Rs. 20,000/-.

2. The learned counsel for Respondent, reported that the cost was tendered and since it was not received, after obtaining permission, it was deposited in the office of the Official Assignee.

3. The learned counsel for Appellant would submit that Respondent was not diligent in prosecuting the I.P. There is unreasonable delay of 1464 days in filing the restoration application. Further, the learned counsel for Appellant would contend that actually the Respondent has not come forward with any settlement.

For allowing the Petition, some fault has been attributed on the Appellant. But factually it is not so. Learned counsel would further contend that Respondent is a Corporate body having three Officers. Yet, they did not take diligently steps. However, with false statement and averments in the affidavit accompanying the application, as well as in the better affidavit, they sought for condonation of delay. Learned counsel for Appellant would contend that in the facts and circumstances of this case, the discretion exercised by the learned Single Judge is not in accordance with law. Learned counsel for Appellant would cite *Amlendu Kumar Bera and Others Vs. The State of West Bengal, and The Administrator, Kancheepuram Kamakshiamman Co-operative Spinning Mills Ltd. Vs. M/s. Kakkera Brothers and Others*, .

4. The learned counsel for the Respondent would submit that how the delay had taken place has been properly explained and three Officers of the Respondent have also stated about the delay. Learned counsel for Respondent would contend that earlier a counsel was appointed by the Respondent, but because of change of counsel, a new counsel has filed fresh vakalat however after some time. The learned Single Judge having satisfied with the sufficient cause shown, has exercised his discretion. There is nothing to interfere with the same.

5. We have given our anxious consideration to the rival submissions, perused the materials on record, the impugned order and the decisions cited.

6. Respondent has filed I.P. No. 68 of 1999, to adjudicate the Appellant, as an Insolvent. The I.P. was dismissed for default on 21.3.2007. That was restored by the impugned order. Of course, in filing restoration petition, there was a delay of 1464 days.

7. There is a shift in the approach of Courts in matters concerning exercise of discretion relating to condonation of delay u/s 5 of Limitation Act. The earlier view has been gradually changed. Earlier, Courts viewed this kind of delay with tinged glasses. Courts expected explanation for each day of delay. But later, Courts have started taking a pragmatic view that it is not length of the delay, but substance that matters. However, while considering condonation of delay, Courts have also held that there need not be too much leverage, merely because applicant is a State. Plea of the State stating administrative delay have been not accepted by the Courts. On facts in the decisions cited by the learned counsel for the Appellant such a view was taken by the Hon''ble Apex Court and a Division Bench of this Court. But the fact situation here differ. Though there is no deviation in the principle that Court should adopt a liberal view, when considering the existence of triable issues and sufficient cause, the length of the delay pale into insignificance.

8. Now in this case, the materials show that at one point of time, the counsel engaged by the Respondent/Petitioning Creditor reported no instruction. Thereafter, a new counsel was engaged. Of course, there is delay in the counsel taking steps to file his vakalat. Thus, taking the matter as such, it comes to the

fault of a lawyer.

9. Clients entrust their briefs to the lawyers, as they are their saviors, agent and godly men and, forget about the case, because the lawyer is there. We cannot pass on the fault of the lawyer on the Client. We cannot attribute fault of the lawyer to the Client. Courts cannot penalise Clients for the fault of the lawyer, but that does not mean we can penalise the lawyers. Of course, it has been stated that the bundle has been misplaced, that is why the delay. Let us not give too much importance to this kind of usual pleas. But the point is whether any acceptable cause is shown. The point here is that the lawyer had failed to take diligent steps namely, filing of his vakalat etc.

10. When a Court exercised its discretion and condoned the delay, next Court will be slow in upsetting it unless there is any manifest error in the exercise of such judicial discretion.

11. Matters cannot be fought or concluded in delay condonation petitions itself. A cause cannot be thrown out by dismissing the delay condonation petition itself. Matters can be decided on merits. That will give quietus also.

12. As we have already stated that fault of the lawyer has been shown to the learned Single Judge that seems to have touched the conscience of the Court and enabled the Court to exercise its discretion. Further, there is no blanket order in allowing the Petition. The learned Single Judge saddled the client for the fault of his lawyer by imposing a cost of Rs. 20,000/- also. The cost also has been deposited. In view of the fore goings, this Original Side Appeal fails and it is dismissed. Since the I.P. is of the year 1999, we request the learned Single Judge to dispose of I.P. No. 68 of 1999 itself, preferably within a period of six months. We make it clear that Appellant as well as the Respondent shall extend their unstinted co-operation for the early disposal of I.P.

Consequently, M.P. No. 1 of 2014 is closed. No costs.