
(1995) 03 MAD CK 0034
In the Madras High Court
Case No : C.R.P. No. 515 of 1993

R.S. Munirajan

APPELLANT

Vs

Jaya Theatre and Others

RESPONDENT

Date of Decision : 10-03-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10A, 151
Limitation Act, 1963 — Section 5

Citation : (1995) 1 CTC 587

Hon'ble Judges : Thanikkachalam, J

Bench : Single Bench

Advocate : G. Subramaniam for R. Swaminathan and Sathish Rajan, for the Appellant; R. Balasubramanian, for S. Krishnaswamy, for Respondents 1 and 2, R. Krishnamoorthy for R. Muthukumaraswamy for Respondents 3 to 5, for the Respondent

Final Decision : Allowed

Judgement

Thanikkachalam, J.—This revision is directed against the order passed in I.A. No. 393 of 1992 filed in O.S. No. 105 of 1991. The plaintiff

is the petitioner herein. The suit was filed for specific performance of the contract for sale of the suit property. The plaint was filed on 17.3.1992

and the same was returned for complying with certain defects on 8.6.1992. The plaint was re-presented with a delay of 102 days. According to

the plaintiff the reason for the delay is that the plaint and other connected papers got mixed up with other case bundles and could not be traced and

represented in time. Hence it was submitted that the delay is due to the above said bona fide fact. However, the delay was not condoned. It is

against that order, the present revision has been preferred by the plaintiff.

2. Learned senior counsel Mr. G. Subrmaniam appearing for Mr. R. Swaminathan,

learned counsel appearing for the petitioner submitted that the
plaint was returned with a direction to re- present the same after complying with
the return on or before 8.2.1992. But it was not represented in
time. It was represented with a delay of 102 days. According to the petitioner
the delay was not deliberate and wanton and therefore the delay in
representing the plaint should be condoned. In order to explain the delay in
representation, the Advocate clerk of the plaintiff was examined and in
his oral evidence he clearly stated the reasons for the delay. He also filed an
affidavit stating the reason for the delay of 102 days in representing the
plaint. It was therefore submitted that the trial court ought to have condoned the
delay in representing the plaint. It was further submitted that the
suit was valued and a court-fee of Rs. 75,000/- was paid u/s 27-C of the Tamil
Nadu Court Fees and Suits Valuation Act. When the plaintiff has
paid so much of court-fee, it is not correct to state that the plaintiff was
deliberately delayed the representation of the plaint. It was therefore
submitted that the delay of 102 days in representing the plaint should be
condoned and the plaintiff should be permitted to prosecute the suit on
merits.

3. On the other hand, learned counsel, Mr. R. Balasubramania, appearing for
respondents 1 and 2 vehemently contended that the plaintiff was
deliberate and negligent in committing the delay in representing the plaint.
According to him, the suit was filed on the basis of an oral contract.
Therefore the suit filed by the plaintiff is a vexatious litigation. According to
learned counsel, after the delay was not condoned, certain further
developments took place and on account of which, the suit property improved in
its value to a very great extent. Under such circumstances, if the
delay in representation is condoned and the plaintiff is permitted to prosecute
the suit on merits, that would cause great hardship to the interests of
the respondents. He further submitted that the oral evidence given by the
Advocate clerk of the plaintiffs counsel is not only false but also
unbelievable. For all these reasons it was submitted that the trial court was
correct in not condoning the delay and rejecting the plaint.

4. Learned senior counsel, Mr. R. Krishnamurthy (Advocate General) appearing
for learned counsel Mr. R. Muthukumaraswamy, for respondents
3 to 5, submitted that there was no contract for sale in favour of the plaintiff. The

suit property belongs to a partnership firm consisting of two partners - defendants 1 and 2. They have no authority to enter into any contract of sale to sell that suit property with the plaintiff. The suit filed by the plaintiff is liable to be dismissed in limine, since there is no valid contract for sale of the suit property in favour of the plaintiff. Since the delay in representing the plaint was deliberate, the trial court refused to condone the delay in representation. If the delay is condoned and the plaintiff is permitted to prosecute the suit, that would cause great hardship to these respondents. It was therefore pleaded that no interference is called for with the order passed by the trial court.

5. Learned counsel appearing for respondent 6 supported the arguments advanced by the learned senior counsel appearing for respondents 1 to 5.

6. I have heard the rival submissions.

7. The fact remains that there was a delay of 102 days in representing the plaint. The reason given for such delay is that the plaint and other connected papers were got mixed up with other case bundles and the same could not be traced and represented in time. The trial court rejected the reason given for the delay in representation and dismissed the petition filed to condone the delay. It is against that order the present revision is preferred by the plaintiff.

8. Learned appearing for the petitioner submitted the delay occurred due to the bona fide reason as stated above and there was no deliberate delay on the part of the plaintiff in representing the plaint in time. On the other hand, learned senior counsel appearing for the respondents herein submitted that the delay occurred due to the negligent on the part of the plaintiff and if the delay is condoned and the plaintiff is permitted to prosecute the suit on merits that would cause great hardship to the defendants since certain subsequent events took place after the rejection of the plaint, and no account of which large amounts were invested in the suit property.

9. Before the plaint is numbered whatever happens in the numbering of the plaint is a matter between the plaintiff and the court. The defendants would come into picture only after the plaint is numbered and suit summons are served upon them. In the present case the plaint was returned to the plaintiff for carrying out certain rectification of defects, before it was numbered. The plaint was represented with a delay of 102 days. The

reason for the delay, according to the plaintiff, is that the plaint and other connected records were got mixed-up with other case bundles and the

same could not be traced in time. In order to explain the delay the advocate clerk of the plaintiff has been examined and in his deposition he has

explained the reason for the delay. He also filed an affidavit stating the reasons for the delay in representation of the plaint.

10. The question of condonation of delay in representation came up for consideration before a Division Bench of this Court in *Y. Kusbar v.*

Subbarayan 1993 TLNJ 375. According to the facts arising in that case there was a delay of 191 days in representing the papers. While

considering this aspect, the Division Bench held as under:-

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

decree under appeal has assumed finality and the right has been accrued to the respondents. 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 under delay in

representation of the papers it can be compensated by awarding costs. Therefore, we are of the view that when the appeal has been filed in time,

but there is delay in representation of the papers returned for rectification of the defects by the appellate court, the delay can be condoned on

taking a lenient view by compensating the other side on payment of costs".

11. A similar question came up for consideration before this Court in the case of *General Manager, HVF, Avadi v. D. Shadhak()*, wherein this

Court held as under:-

There is a clear distinction between the delay in representation of a proceeding and the delay in representation of the papers with reference

thereto. In view of the basic difference between the two, the consideration relevant to the former will not apply to the latter and an application for

excusing the delay in representing the papers in any proceeding whether it be a suit, a civil revision petition, a first appeal or a second appeal in any

court, notice to the respondent in the main case is not necessary and even if such notice is given to the respondent and he is heard and overruling

his objection, the delay is condoned, he cannot be said to have been aggrieved in the sense that there being a judicial determination against him so

as to entitle him to approach the High Court u/s 115 of C.P.C." In the above said decision, it was further held "that in this context the difference

between the condonation of delay in the proper presentation of a particular proceedings pursuant to Section 5 of the Limitation Act and the

condonation of delay in representation of a particular proceeding obviously u/s 151 C.P.C. has to be noticed. In the former case there is a specific

provision in the statute, viz. the Limitation Act, which imposes an obligation on the court itself suo motu to reject a proceeding if it is barred by

limitation. The decision is not available or applicable to case of delay in the representation of papers in question. Consequently, the provision and

consideration applicable to excusing the delay u/s 5 of the Limitation Act will not apply to the question of excusing the delay in representing the

papers.

12. Similarly, in *Khalilur Rahman v. Rajagopal Gounder and Ors.* 1983 TLNJ 37, this Court, while considering the delay in representation the

plaint held that, "there was a delay on the part of the plaintiffs to represent the plaint, which was returned by the Court for some compliance. When

representing the plaint after delay, the plaintiffs filed an affidavit explaining the reasons therefor. The Court was satisfied with the plaintiffs

explanation and accepted the plaint on representation after excusing the delay. This civil revision petition has been brought by parties who are

named as defendants in the plaint. The Suit has not yet been numbered. Because the plaintiffs committed an indiscretion in giving notice to them of

their application for excusing the delay was considered by the Court below after notice to the parties who figured as defendants, naturally those

individuals had the opportunity of making their representation against the plaint being represented after delay. The fact that the Court below had

gone into their objections itself might be regarded as a good ground for dismissing the present civil revision petition filed by those parties, for that

shows that the Court did not shut them out. But I wish to affirm the order of the lower court on a broader principle, a principle which goes counter

to the procedure adopted by the court in this Case". It was further held that, "the parties proposed to be added as defendants to the suit, in my

judgment, do not have any locus-standi to figure in the preliminaries before the suit gets numbered and suit summons goes to them. Admission of the plaintiff is the court's job. The condonation of the delay in representation of the plaintiff is strictly a matter between the court, on the one hand, and the defendant, who has filed the proceeding on the other. At that stage and for those limited purposes persons who are proposed as the opposite parties in the plaintiff really have no locus standi. They cannot have any say in the matter of delay or its condonation".

13. In *Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others*, the Supreme Court while considering the provisions of

Section 5 of the Limitation Act held that, "the legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation

Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause

employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice

that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal

approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And

such a liberal approach is adopted on principle as it is realised that:-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other said cannot claim to have vested right in justice being done because of a no-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does

not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of

removing injustice and is expected to do so

14. However, a Divisional Bench of this Court in *M. Subramania Mudaliar v. K. Janardhanam and Ors.* 1994 I MLJ 152, while considering a delay

of six years in representation held that, "the reasons given by the junior advocate for condonation of delay in representation of six years is not

convincing. Therefore the delay was not excused". This decision was rendered on the facts and circumstances arising in that case. I have also gone

through the other decisions cited by the learned counsel appearing for respondents 1 and 2 and the same are not helpful to the respondent to

pursue their line of arguments.

15. In the present case, there was a delay of 102 days in representing the plaint. The delay occurred since the plaint and other papers were got

mixed up with other case bundles and the same could not be traced and represented in time. The advocate clerk of the plaintiff filed an affidavit

setting out the reason for the delay and he also deposed the same in his oral evidence. Thus, considering the facts arising in this case in the light of

the judicial pronouncements cited supra and in the interest of justice, I hold that the delay of 102 days in representing the plaint can be excused

since the plaintiff has made out a case of condoning the delay in representation. Accordingly, the delay of 102 days in representing the plaint is

condoned. The trial is directed to number the plaint if it is otherwise in order.

16. In the result, the civil revision petition is allowed. No Costs.