

(2009) 08 MAD CK 0127

In the Madras High Court

Case No : CRP. NPD. No. 3045 of 2008 and M.P. No. 1 of 2008

S. Kadirvel

APPELLANT

Vs

Executive Engineer

RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Citation : (2009) 08 MAD CK 0127

Hon'ble Judges : V. Periya Karuppiah, J

Bench : Single Bench

Advocate : S. Venkateswar, for the Appellant; Sudharsana Sundar, for the Respondent

Final Decision : Dismissed

Judgement

V. Periya Karuppiah, J.—This revision has been filed by the respondent before the lower appellate Court against the order passed by the lower appellate Court in condoning the delay of 539 days in filing the appeal by the petitioner before the lower appellate Court, against the decreeing of the suit in favour of the respondent before the lower appellate Court. The petitioner herein was the respondent before the first appellant Court and the plaintiff in the suit.

2. The revision petitioner herein, as plaintiff, had filed the suit O.S. No. 419 of 2003 for permanent injunction restraining the defendants from withholding the payment to be paid to the revision petitioner/plaintiff for the construction of the water tank in Kodukkur Village. The learned trial Judge, after considering the evidence of both sides, had allowed the suit in favour of the plaintiff/revision petitioner. Aggrieved by the Judgment passed by the trial Court, the 2nd defendant has filed an appeal before the first

appellate Court with an application viz., I.A. No. 583 of 2006 to condone the delay in filing the appeal. The said I.A. No. 583 of 2006 was allowed by the first appellate Court, which necessitated the plaintiff to prefer this revision petition.

3. In the application to condone the delay the 2nd defendant has pleaded as follows:- The 2nd defendant contested the suit on behalf of the 1st defendant also. The suit was decreed against the defendants by the trial Court on 15.2.2005 granting a mandatory injunction against the defendants not to stop payment to the plaintiff. The copy application to obtain the certified copies of judgment and decree was filed in time and the certified copies were obtained by the defendants on 09.06.2006. The second defendant had applied to his higher authorities for getting permission to file the appeal. Necessary permission was granted to the second defendant after getting the legal opinion to file the appeal. In the mean time, there was a delay of 539 days in filing the appeal. The said delay was only a procedural delay and it was neither willful nor wanton. The defendants have fair chance of success in the appeal. Hence, the defendants requested the Court to condone the delay in filing the appeal.

4. The respondent contested the said I.A. No. 583 of 2006 by filing a counter statement contending that the reason given by the defendants that there was a delay in getting the permission from the higher authority is not acceptable. He further contended that the defendants have not given proper reason for the delay in filing the appeal. Hence, the plaintiff submitted that the application to condone the delay in filing the appeal is liable to be dismissed.

5. The lower Court had, after recording the evidence on either side, come to the conclusion of condoning the delay of 539 days in preferring the appeal and thereby allowed the petition. Accordingly, the appeal preferred by the petitioner before the lower appellate Court was ordered to be numbered and it was numbered as A.S. No. 43 of 2008 on the file of the Principal Subordinate Court, Villupuram. Aggrieved by the said order of condonation, the respondent before the lower Court has preferred this revision petition.

6. Heard S. Venkateswar learned Counsel for the petitioner and Mr. Sudharsana Sundar learned Counsel for the respondent.

7. The learned Counsel for the revision petitioner would submit in his argument that the lower appellate Court had erred in allowing the application filed by the respondent for condonation of delay of 539 days as there was no sufficient cause spoken by the petitioner/respondent herein for condonation of the delay. He would further submit in his argument that the revision petitioner was seriously prejudiced due to the condonation of delay and on the contrary the decision of the lower appellate Court that the revision petitioner was not prejudiced due to the condonation is not based upon any proof. He would further submit that the respondent did not show or produce any document to show that they have applied for necessary permission from the higher authorities for filing the appeal. He would also submit that the respondent herein being one of the witnesses of the Government, cannot be given any privilege, since it is also a party before the Court. He would further submit in his argument that the respondent herein did not produce any evidence to show that there was sufficient cause to condone the delay of 539 days in not preferring the appeal and the reasons stated by the petitioner therein/respondent herein will not satisfy the requirement as per the meaning of sufficient cause. He would cite a judgment of this Court reported in 1993(1) LW 68 in between United India Insurance Company Ltd. v. Previn Paul and Anr. to the proposition that the reason showing an administrative delay is not amounting to sufficient cause. He would also cite a Judgment of this Court reported in 1998 (3) LW 780 in between Indian Oil Corporation Ltd. v. Sakuntala Ganapathy Rao, in order to show that the mentioning of an administrative delay by the Government Department cannot be considered as a sufficient cause. Therefore, he would request the Court to interfere with the order passed by the lower appellate Court and to dismiss the petition seeking for condonation of delay of 539 days in filing the appeal and thereby to allow the revision petition.

8. The learned Counsel for the respondent Mr. Sudharsana Sundar would submit in his argument that the lower Court had applied its mind correctly and had come to a conclusion of condoning the delay of 539 days caused in preferring the appeal by the respondent herein and the respondent herein was examined as P.W.1 and he had spoken about the administrative delay caused in preferring the appeal for seeking

permission to file the appeal and the lower Court was convinced with the evidence and had condoned the delay and there cannot be any prejudice cause against the revision petitioner and the lower appellate Court had correctly exercised its discretion and passed the order. He would submit a judgment of this Court made in C. Subramaniam Vs. Tamil Nadu Housing Board, to the principle that there cannot be any dilatory tactics for prolonging the case by Government Department and sufficient cause should have been liberally construed to do substantial justice. He would also insist that once the lower Court had accepted the explanation furnished for the delay the superior Court should not normally disturb such finding unless the discretion is found to have been exercised on a wholly untenable or perverse grounds. He would further submit in his argument that the respondent herein being the government body cannot act as a private party in order to protract the case and therefore, there is a justification in seeking for condonation of delay of 539 days and the lower Court had rightly exercised its discretionary jurisdiction and had allowed the condonation application and therefore, there is no necessity for interfering with the order passed by the lower appellate Court. Accordingly, he would request the Court to dismiss the revision petition.

9. I have given anxious thoughts to the arguments advanced on either side. The revision petitioner, as respondent, had contested the application filed by the respondent herein before the lower Court to condone the delay of 539 days in preferring the appeal against the judgment and decree passed by the trial Court against the respondent herein. The admitted facts are that the respondent herein had preferred the appeal before the lower Court along with the petition for condonation of delay of 539 days. P.W.1 was examined on the side of the respondent herein and the reason for condonation of delay was spoken by him. According to the said oral evidence, the delay has been caused due to the time taken for getting permission to prefer the appeal from the higher authorities of the respondent and it was purely an administrative delay. Actually the certified copies of the decree and judgment were obtained by the respondent only on 9.6.2006 despite the judgment was pronounced on 15.2.2005. It was also seen that the respondent had, after obtaining the certified copies, sought for permission for preferring the appeal and there was a delay of

539 days caused in obtaining such permission and also in preferring the appeal.

10. The judgment of this Court reported in 1993(1) LW 68 in between United India Insurance Company Ltd. v. Previn Paul and Anr. would run

as follows:

The petitioner has not chosen to give any sufficient cause for the delay of 131 days. The averment that the administrative delay cannot be avoided

in Government undertaking for more reasons than one cannot be accepted and that it is not a valid reason to condone the delay. The petitioner had

failed to come forward as to how the delay has occurred. He must give fuller details with dates as to when the papers were sent to the Regional

office, when the Managers concerned were deputed to attend policy matters of importance, when they advised the petitioner to file appeal and

why such delay has occurred. The affidavit is bereft of details. It is well established that everyday's delay has to be explained properly and there

must be reasonable and acceptable explanation for the delay. In this case except the averment that the administrative delay cannot be avoided,

there is no acceptable reason for the delay, with all particulars.

Similarly in the judgment reported in 1998 (3) LW 780 in between Indian Oil Corporation Ltd. v. Sakuntala Ganapathy Rao, it has been held as

follows:

In the absence of proper explanation with details regarding delay, we find that there is no sufficient cause to condone the delay of 64 days and the

same is fatal. Mere stating "'administrative delay'" does not constitute sufficient cause and such an explanation is liable to be rejected.

In the aforesaid decisions of this Court, it has been categorically stated that the mentioning of administrative delay in the affidavit without any further

details or explanation cannot be considered as a sufficient cause for condoning the delay put forth by them. However, in the judgment cited by the

learned Counsel for the respondent reported in C. Subramaniam Vs. Tamil Nadu Housing Board,

, it has been categorically held as follows:

To turn up the legal position_ (1) the word "sufficient cause" should receive liberal construction to do substantial justice; (2) what is "sufficient

cause" is a question of fact in a given circumstances of the case; (3) it is axiomatic that condonation of delay is discretion of the Court; (4) length of

delay is no matter, but acceptability of the explanation is the only criterion; (5) once the Court accepts the explanation as "sufficient", it is the result of positive exercise of discretion and normally the superior court should not disturb in such finding unless the discretion was exercised on wholly untenable or perverse. (6) The rules of limitation are not meant to destroy the rights of the parties but they are meant to see that the parties do not resort to dilatory tactics to seek their remedy promptly. (7) Unless a party shows that he/she is put to manifest injustice or hardship, the discretion exercised by the lower Court is not liable to be revised. (8) If the explanation does not smack of mala fides or it is put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor. (9) If the delay was occasioned by party deliberately to gain time, then the court should lean against acceptance of the explanation and while condoning the delay, the Court should not forget the opposite party altogether.

In the aforesaid judgment we could see that the superior Court should not normally disturb the findings of the lower Court unless such discretion is exercised on a wholly untenable or perverse grounds. So far as this case is concerned, we can see that the averments made in the affidavit have been spoken through the evidence of P.W.1 and the explanation has been submitted by him for the cause of the delay in preferring the appeal.

Therefore, it cannot be said that there was no explanation as to the cause of delay in preferring the appeal as mentioned in the judgment of this Court cited by the petitioner. The respondent had let in evidence for explanation of the delay. The lower Court had come to a conclusion after considering the evidence adduced on either side and had ordered the condonation of delay. In the said circumstances, the order passed by the lower Court cannot be found as either perverse or untenable. According to the judgment of this Court reported in C. Subramaniam Vs. Tamil Nadu Housing Board,

, the discretion exercised by the lower Court cannot be set aside as it had accepted the explanation for the delay as sufficient cause to condone the delay. Therefore, I could see that the order of the lower Court is based upon sound principles and on the explanation offered by P.W.1 for the delay caused in preferring the appeal and therefore, and there is nothing to interfere with the order passed by the lower Court. Therefore, I have no

hesitation to accept the order passed by the lower Court.

11. In the result, the revision petition is dismissed. Connected miscellaneous petition is also dismissed. No costs.