

(2010) 08 MAD CK 0218

In the Madras High Court

Case No : C.R.P. (NPD) . No. 1906 of 2010 and M.P. No. 1 of 2010

Sakthivel

APPELLANT

Vs

John Victor

RESPONDENT

Date of Decision : 03-08-2010

Acts Referred:

Limitation Act, 1963 — Section 5
Motor Vehicles Act, 1988 — Section 166(1)

Citation : (2010) 08 MAD CK 0218

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : N. Suresh, for the Appellant; No Appearance, for the Respondent

Judgement

1. Animadverting upon the order dated 24.03.2010 passed in I.A. No. 1521 of 2007 in MACTOP No. 369 of 2002 by the learned Principal

Subordinate Judge, Motor Accidents Claims Tribunal, Villupuram, this civil revision petition is focussed.

2. Heard the Learned Counsel for the petitioner. Despite printing the name of the respondent after service, there is no response.

3. The short facts absolutely necessary and germane for the disposal of this revision would run thus:

The respondent filed MACTOP No. 369 of 2002 seeking compensation, by invoking Section 166(1) of the Motor Vehicles Act as against two

persons, so to say the revision petitioner herein and the alleged driver of the tractor. After receipt of notice in the MCOP, the revision petitioner

entered appearance and filed his counter contending that he was not in any way concerned with the tractor and the trailer. There is no Insurance

Company also figuring as a party, because it appears there was no insurance

coverage for the said vehicles.

4. The Learned Counsel for the revision petitioner would contend that the Tribunal passed an ex parte award, whereupon E.P. also was filed for arresting the revision petitioner herein. The revision petitioner could not participate in the proceedings, because he was suffering from jaundice and taking native medicine and hence he filed the application u/s 5 of the Limitation Act, to get the delay of 891 days condoned in filing the application under Order 9 Rule 13 of CPC to get set aside the ex parte award passed by the Tribunal.

5. During enquiry, the petitioner examined himself as P.W.1 and no other evidence was adduced. The lower Court after hearing both sides dismissed the application. Being aggrieved by and dissatisfied with the said order of dismissal, this revision has been filed on various grounds.

6. The Learned Counsel for the petitioner reiterating the grounds of revision, would develop his argument to the effect that the lower Court took a technical view of the matter and simply refused to condone the delay, even though the petitioner was not at all in any way concerned with the alleged offending vehicles.

7. The point for consideration is as to whether there is any sufficient cause for condoning the delay of 891 days in filing the application to get set aside the ex parte award?

8. A mere poring over and perusal of the order of the lower Court would reveal that the lower Court took into account the fact that the delay was enormous and the revision petitioner herein was not justified in simply allowing grass to grow under his feet and as such, he dismissed the said application.

9. At this juncture, I recollect and call up the recent decision of the Hon"ble Apex Court reported in 2010(2) Supreme 115 Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation and Anr. and an excerpt from it would run thus:

8. ...The law of limitation is founded on public policy. The legislature does not prescribe 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 other similar statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves 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 - Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , N. Balakrishnan Vs. M. Krishnamurthy, and Vedabai @ Vijayanatabai Baburao Pateil Vs. Shantaram Baburao Patil and Others,

10. One other decision of the Hon"ble Apex Court reported in AIR 2002 SC 1201 Ram Nath Sao alias Ram Nath Sahu and Anr. v. Gobardhan

Sao and Ors. also could fruitfully be cited; certain excerpts from it would run thus:

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the Court should lean against acceptance of the explanation. While condoning the delay, the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses.

(emphasis added)

It is therefore clear from the above decisions that if the delay is huge the Court has to take a strict view of the matter. Here the delay of 891 days is huge. However, the Learned Counsel for the petitioner would submit that he was suffering from jaundice and taking native treatment. The petitioner also alleged that earlier one application was filed but that application was missing etc. No doubt, mere bald allegations regarding ill health would

not be sufficient to condone the huge delay, but this is a peculiar case in which the contention of the petitioner is that he was not at all the owner of the offending vehicles and inasmuch as the Tribunal itself should have taken steps to find out as to who was actually the owner of the offending vehicles. According to the Learned Counsel for the petitioner, such an exercise was not undertaken by the lower Court. Even in the E.P., no doubt the petitioner could not appear and resist the matter. Here the nature of the defense taken by the revision petitioner in my opinion warrants deep scrutiny and it is not readily known as to whether any documentary evidence was adduced before the Tribunal to prove the ownership of the offending vehicles at the relevant time of the incident. The revision petitioner on oath gave evidence detailing and delineating his ill health.

11. In these peculiar circumstances, I would like to condone the delay of 891 days, however subject to imposition of a cost of Rs. 2,000/ -

(Rupees two thousand only) payable by the revision petitioner to the respondent on or before 15th August 2010. On such payment of cost, the

application u/s 5 of the Limitation Act shall be taken as allowed and whereupon, the Tribunal shall number the application under Order 9 Rule 13

of CPC and dispose it as expeditiously as possible. If there is failure on the part of the revision petitioner in complying with the condition, this order

will not enure to his benefit.

Accordingly, this civil revision petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.