

(2015) 01 MAD CK 0174

In the Madras High Court

Case No : M.P. No. 1 of 2014 in W.A. No. SR 101706 of 2014

Secretary to Government and Others

APPELLANT

Vs

R. Velayutham and Others

RESPONDENT

Date of Decision : 19-01-2015

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2015) 01 MAD CK 0174

Hon'ble Judges : M. Venugopal, J.; Satish K. Agnihotri, J.

Bench : Division Bench

Advocate : Jayaprakash Narayanan, Special Government Pleader, for the Appellant

Final Decision : Dismissed

Judgement

1. This is a petition filed under Section 5 of the Limitation Act to condone the delay of 3,189 days in filing the writ appeal against the order dated 21.03.2006 passed by the Writ Court in W.P. No.14444 of 2005.

2. Indisputably, the period specified for preferring the intra court appeal against the order passed by the Writ Court is 30 days. The reason assigned by the petitioners in the affidavit is that a copy of the order passed by the Writ Court was received on 20.04.2006, without specifying as to when the application was made for the supply of the certified copy of the order dated 21.03.2006. Thereafter, the officers who were holding office prior to the third petitioner/third appellant, had addressed letters to the second petitioner/second appellant about the case. Aftermath the judgment dated 29.11.2013 rendered by the Full Bench of this Court in S. Dhanasekaran and Others Vs. Government of Tamilnadu and The Commissioner, Madurai Corporation, on the same subject, the same was communicated by the learned Special Government Pleader to the second petitioner/second appellant on 11.12.2013, who, in turn, took some time and issued a Circular to all the Municipalities on 20.03.2014 and directed the third petitioner/third appellant to prefer an appeal challenging the order passed by the

Writ Court and nearly 8 months thereafter, the instant appeal with the application for condonation of delay was presented on 27.11.2014.

3. Thus, it could be seen that one of the main reasons assigned by the petitioners for the delay in preferring the appeal is the rendering of the Full Bench judgment on 29.11.2013. This reason, assigned by the petitioners, has to be brushed aside at the threshold for the simple reason that though the copy of the order passed by the Writ Court was received by them as early as on 20.04.2006, there is no whisper in the affidavit as to what steps were taken by them from the date of receipt of the order copy, i.e. 20.04.2006, till the judgment of the Full Bench was rendered on 29.11.2013, that is to say, for over a period of seven long years.

4. The object of prescribing the time limit for preferring an appeal to the higher forum is to set the controversy at rest. Secondly, rights which accrued in favour of the successful party cannot be jeopardised by filing the appeal with an inordinate delay. The petitioners, in the instant petition, have not specified any reason specifying the requirement for condonation of delay, except the aforestated reasons, which, by themselves, do not constitute proper and sufficient reasons for condonation of delay. It is also required that the petitioners seeking condonation of delay in favour of the appeal must specify that no right has accrued in favour of the other party after the specified limitation period is over and the other party will not be prejudiced in any manner.

5. The Supreme Court, in Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others, after analysing all cases, laid down the following principles for condonation of delay :

"21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect

public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12. (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

22.1. (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2. (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3. (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4. (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters."

6. The petitioners have failed to establish their bona fides and also that if the delay is not condoned, injustice would perpetuate. It is well settled principle of law, as aforestated, that if there is inordinate delay, strict approach for condonation of delay has to be followed. It is also not a case of failure of justice, if such inordinate delay is not condoned.

7. In the instant case, the petition is de hors of necessary elements relevant for the purpose of condonation of delay. Thus, we are of the view that the petitioners have not made out a case for condonation of such an inordinate delay in preferring this intra-court appeal.

8. As a result, the miscellaneous petition is dismissed. Consequently, the writ appeal is rejected at the SR stage itself.