

(1996) 11 MAD CK 0091
In the Madras High Court
Case No : C.R.P. 2978 of 1994

The District Collector, Salem and The District Forest Officer,
Salem, (presently Attur Division at District Forest Officer,
Attur.)

APPELLANT

Vs

Ponnusamy and nine others

RESPONDENT

Date of Decision : 06-11-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Limitation Act, 1963 — Section 5

Citation : (1996) 11 MAD CK 0091

Hon'ble Judges : Jagadeesan, J

Bench : Single Bench

Advocate : Titus Jesudoss Additional. Government Pleader Forests, for the
Appellant;

Judgement

Jagadeesan, J.—The revision has been filed by the petitioners against the order dismissing an application filed by them u/s 5 of the Limitation Act to condone the delay in filing the application under order 9, Rule 13, C.P.C. The petitioners are the defendants in O.S. 571/89 on the file of the District Munsif Court, Attur. The respondents herein have filed the said suit for declaration of their title to the suit property which forms part of the reserve forest. The suit was posted on 18.7.91. On that day, the suit was decreed ex parte, since the petitioners did not file the written statement and failed to appear in court. The petitioners were not able to file the application to set aside the ex parte order within time. The reason for their absence as well as not filing the application under Order 9, Rule 13 is that there was a bifurcation of the divisional office and Attur had been made independent from Salem. The files have not been transferred to Attur division office from Salem and in view of the bifurcation there is some confusion in transferring the file and noting the hearing dates. Hence neither the absence nor the delay in filling the application under Order 9, Rule 13 is wanton or wilful.

2. The respondents herein filed counter stating that the explanation given by the

petitioners cannot be accepted. As the petitioners did not file the written statement in spite of several adjournments, the suit was decreed ex parte and the division of divisional office has nothing to do with the inaction on the part of the petitioners.

3. The lower court had dismissed the application filed by the petitioners. As against this, the present revision has been filed.

4. Though the respondents have been served, they have not chosen either to appear in person or through counsel.

5. The learned counsel for the petitioners contended that the suit property is notified as forest land and as such the respondents herein cannot claim any title to the suit property. Of course the suit had been decreed ex parte on 18.7.91 and the petitioners came to know about the ex parte decree only on 18.1.93. The petition to condone the delay in filing the application for setting aside the ex parte decree was filed on 20.1.93. Originally there was only one Forest Range for Salem District. On 17.8.90, for administrative reasons, the Government had divided the Attur Forest Circle and made it an independent one. As the properties are within the jurisdiction of Attur and the case is also pending on the file of the District Munsif Court, Attur, the Salem Forest officials ought to have transferred the case file to the Attur circle office with due instructions. Since the Attur Circle office did not receive the case file, they could not attend the matter in the court on 18.7.91. Hence the nonappearance of the petitioners is neither wanton nor wilful. The delay is also neither wanton nor wilful as the application for setting aside the ex parte decree had been filed within two days from the date of knowledge of the petitioners.

6. I have carefully considered the contention of the counsel for the petitioners. The petitioners' explanation for their non-appearance on 18.7.91 on the ground that the papers had not been transferred to the Attur range office can be accepted without any hesitation in view of the division of the office of the District Forest Range, Salem. But, originally, the District Forest Officer, Salem is the second defendant in the suit. As such the District Forest Officer, Salem ought to have been in charge of the matter. Till the file is transferred to the newly constituted office of the Forest Range of Attur, the District Forest/Range Officer, Salem should have taken care of the matter. There is absolutely no explanation in the affidavit filed by the petitioner as to why the District Forest Range Officer, Salem, has failed to give due instructions to the Government Pleader to file the written statement for more than one year. It is seen from the records that the suit has been decreed not for the non-appearance of the parties, but because of the non-filing of the written statement for considerably long period.

7. Equally no explanation is forthcoming from the petitioners as to why the case file had not been transferred from the District Forest Range Officer, Salem to the Attur Range Office, immediately after the constitution of the new office. The suit had been decreed ex parte nearly after one year after the constitution of the

Range Office at Attur. Further the petitioners have not revealed the source through which they came to know about the *ex parte* decree. Considering these aspects of the matter, the petitioners had not made out a case for condoning the inordinate delay of 551 days in filing the application for setting aside the *ex parte* decree.

8. But, however, in a case of this nature, I am of the view that the interest of the State has to be taken into consideration. By allowing the *ex parte* decree to stand, the State would stand to lose much extent of forest land if really the suit property is notified as forest land. If the suit property is a reserve forest land, then the individuals are not entitled to get any patta. Hence if the order of *ex parte* decree is allowed to stand. I am of the opinion that the respondents would become the owners of the land to which they are not legally entitled to. When the State is put to loss, the court has to take a lenient view. The conduct of the respondents also reveals that being satisfied with the *ex parte* decree, they are not interested to appear before this court to oppose the revision.

9. In fact in a recent judgment, reported in *State of Haryana v. Chandra Mani* (1996 (II) CTC 109(1996-2-L.W. 18) the Supreme Court has held as follows:

It is notorious and common knowledge that delay in more than 60 percent of the cases filed in this Court - be it by private party or the State - are barred by limitation and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits. It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in an even - handed manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file - pushing, and passing - on - the - back ethos, delay on the part of the State is less difficult to understand though more difficult to approve but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay - intentional or otherwise - is a routine. Considerable delay of procedural red - tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice -oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice - oriented process.

As observed by the Supreme Court in the judgment referred to *supra*, the public exchequer should not be put to loss by the lapse on the part of the officials of the

government. If the government is to loose by such lapse of its officers, it is clear that no person is individually affected, but what in the ultimate analysis suffers, is public interest. Basing upon the above laid principles, I am of the view that it is a fit case where the delay has to be condoned.

10. Setting aside of the ex parte decree without imposing any terms may be construed as the order of the day by the officials who had committed lapses and they may be emboldened to think that they can continue such lapses in future also. As observed already, the District Forest Officer, Salem had not only failed to forward the case file to the District Forest Range Officer, Attur on the formation of the new office; but also failed to take care of the matter till the papers are transferred to the new office. Immediately on receipt of the summons in the suit, the officer is duty bound to get the sanction for the defence and to hand over the papers to the Government Pleader for further action. There is no explanation as to why the written statement has not been filed for more than one year and further there is no explanation as to why the papers had not been transferred to the Attur Range Office, which was newly constituted.

11. Hence while allowing the Civil Revision Petition, I direct the petitioners to pay a cost of Rs. 3,000/-. Since the respondents are not represented through counsel, I direct the petitioners to pay the cost to the Madras High Court Advocates Association and the Bar Association equally within three weeks from today, failing which the Civil Revision shall stand dismissed.

12. The Chief Secretary, on behalf of the Government of Tamil Nadu is directed to hold an enquiry with regard to the lapse on the part of the concerned officer and to recover the cost of Rs. 3,000/- from the said concerned authority, so that he will be at least hereafter diligent enough to take care of the government matters.

13. The apex court has held in a case reported in Union of India (UOI) and Another Vs. Rahul Rasgotra and Others, as follows:

Before parting with this case, we are constrained to place on record our deep distress at the manner in which the cases on be half of the Government are generally conducted even in this Court and also when the Government comes to this Court-to overcome the consequence of an ad verse order made against it. We do so with a feeling almost of despair since our constant lament orally and, at times, even in writing has so far evinced no appropriate response for improvement. On a similar occasion, this Court in Union of India and others Vs. A. Radhakrishnan and others, observed thus.

This matter brings to the fore once again the ineptitude with which litigation is conducted quite often on behalf of the Government of India and State Governments even when important issues having lasting and wide repercussions-are involved. The point in this case relates to the validity of a police of the railway administration and is likely to affect the staff pattern in several units. In spite of this fact, to support validity of the impugned policy the required materials were not produced in the High Court and to overcome the adverse

decision several opportunities given by us to produce the entire relevant record were not availed. The learned Additional Solicitor General informed us after several adjournments that better performance is not possible. We, therefore, concluded the hearing and proceed to decide on the available materials. It is indeed fortunate for the appellants that our conclusion is in their favour.

There is no improvement in the situation. An argument was advanced on behalf of the respondents that the cadre allocation to respondent No. 1 was made prior to allotment of the Service to him on account of which it was invalid. Material documents to negative the same must be in possession of the Government of India but they were not produced before the Tribunal or even before us, in spite of opportunity given by us. The learned Additional Solicitor General expressed his utter helplessness in the matter and informed us that his efforts to obtain and produce those documents from the concerned authorities had failed. This shows the apathy of the persons responsible for the conduct of the case on behalf of the Government of India. We are not sure whether such lapses of the persons responsible for conduct of the case on behalf of the Government are - deliberate or inadvertent but they are certainly culpable which need to be investigated by the concerned authorities to identify the delinquents and punish them in public interest. It is time that the derelicts are also held accountable and liable for the loss of public money due to their lapses.

As observed by the Supreme Court, if the lapses are deliberate, then the concerned official cannot be permitted to enjoy the office without any punishment. The Government is directed to complete the enquiry with regard to the lapses on the part of the officers and submit a report before this court within three months from the date of receipt of the copy of this order. Post this Civil Revision Petition after three months. The Government Pleader who appeared for the petitioners is also directed to suitably instruct the Government in this regard.