

(1992) 02 MAD CK 0055

In the Madras High Court

Case No : C.M.P. No. 15518 of 1991 in Appeal S.R. No. 28772 of 1987

The Land Acquisition Officer

APPELLANT

Vs

Kannan Pillai and 4 others

RESPONDENT

Date of Decision : 25-02-1992

Acts Referred:

Limitation Act, 1963 — Section 12, 5

Tamil Nadu Court Fees and Suits Valuation Act, 1955 — Section 66(2)

Citation : (1992) 02 MAD CK 0055

Hon'ble Judges : Venkataswami, J;Abdul Hadi, J

Bench : Division Bench

Advocate : M.A. Sadanand, Government Pleader, for the Appellant; T.V. Balakrishnan for 2nd Respondent, for the Respondent

Judgement

Abdul Hadi, J.—This petition is for excusing the delay of 640 days in filing the appeal against the judgment and decree in L.A.O.P.No.29 of 1981 on the file of Sub Court, Salem. In the original affidavit filed in support of this petition inter alia there was no explanation at all as to why the copy of application was made only on 5-8-1985 that is after about 8 months from the date of the judgment and decree namely 7-12-1984. However, since the Learned Counsel for the petitioner requested we gave an opportunity to file an additional affidavit. But in the additional affidavit all that is stated regarding the said delay is:

I state that the copy application was made ready by the Government pleader, Salem on 7.12.84 itself. Our office was on the impression that the copy application was represented before the Subordinate Judge, Salem on the day itself. I state that we have not received the above copies even though we have sent repeated reminders to the Government Pleader. Salem. Subsequently we came to understand that no application has been filed in the Court by the then clerk of the Government Pleader's office. Our office came to understand that the clerk of the Government Pleader's Office has failed to file in the Court due to misplacement of the copy application. Hence fresh copy application was filed for

obtaining the printed copies of order and certified copy of the decree on 5-8-85.

But not even one of the abovesaid alleged repeated reminders has been produced before us and there is also no affidavit filed by the Government Pleader, Salem or even by his alleged clerk. It is also not stated as to when the petitioner's office came to understand that the abovesaid clerk has failed to file the copy application. In the circumstances we are unable to accept the abovesaid averments in the additional affidavit.

2. Under the Article 116(a) of the Limitation Act 1963, a period of 90 days is prescribed for preferring a further appeal to this Court and the time commences to run from the date of the decree. As per S. 5 of the said Act, this appeal may be admitted after the prescribed period if the appellant petitioner satisfied this Court that he had sufficient cause for not preferring the appeal within such period. The Supreme Court has also held in *Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd.*, as follows:-

The context seems to suggest that within such period, means within the period which ends with the last day of limitation prescribed. In other words in all cases falling under S. 5 what the party has to show is why he did not file an appeal on the last day of limitation prescribed. That may inevitably mean that the party will have to show sufficient cause not only for not filing the appeal on the last day but to explain the delay made thereafter day by day. In other words in showing sufficient cause for condoning the delay the party may be called upon to explain for the whole of the delay covered by the period between the last day prescribed for filing the appeal and the day on which the appeal is filed.

So, in the present case the petitioner has to explain as to why he did not file on the said 90th day and thereafter. Thus out of the abovesaid about 8 months, that is, from 7-12-1984 to 5-8-1985 we may exclude the first 89 days and the balance period of about 5 months remains first of all, unexplained.

3. Further as per the affidavits filed though on 23-12-1986 the letter of the Commissioner. Land Administration was stated to have been received in the petitioner's office the relevant papers were handed over by the said office to the Government Pleader's Office, High Court only on 20-3-1987. Here again there is a delay of about 3 months. For this also there is no explanation at all either in the original affidavit or in the additional affidavit.

(4A) That apart, it has also been held in *Ramalingam Pillai v. Arunachalam Pillai* 1988 2 MIJ 139 that on the principles laid down in *Panjam V. Thirumala Reddi Vs. C.K. Anavema Reddi and Others, Avasarala Kamaraju Pantulu and Another Vs. Balla Saramma, and A.D. Partha Sarathy Vs. State of Andhra Pradesh*, . If the application for copy of the judgment and decree itself was made after the expiry of the period of limitation there is no scope at all under S. 12 of the Limitation Act for exclusion of the time taken for obtaining the said copy while computing the period of limitation. The following observation in the above-referred-to *A.D. Partha Sarathy Vs. State of Andhra Pradesh*, relied on in the above referred to

Ramalingam Pillai Vs. Arunachalam Pillai and Others, is significant:-

In computing or calculating the period of limitation from particular point the sub-Section enables the exclusion of a time from that period caused by an event that intervened between the commencement and the termination of the said period. It has no concern with any events anterior to the commencement of the period of limitation or posterior to the said period.

So, the delay in the present case is not simply 640 days but more by about 105 days (that is between the date of the copy application 5-8-1985 and the date when the copy was made already 20-11-1985) and the said delay of about 105 days also stands unexplained. Even in the abovesaid Ramalingam Pillai Vs. Arunachalam Pillai and Others, , it was pointed out that since the copy application there also was made after the expiry of the period of limitation the delay was not really 84 days as stated by the petitioner therein but, actually 159 days that is more by 75 days the period between 16-11-1987 the date of filing the copy application therein and 29-1-1988 the date when the copy was made ready therein. In the above circumstances the following view was finally expressed in the abovesaid decision Ramalingam Pillai Vs. Arunachalam Pillai and Others, :-

S. 5 of the Limitation Act contemplates cases where a party having obtained all the required copies well before the expiry of the period of limitation prescribed for preferring an appeal has been unable to do so even on the last day owing to circumstances beyond his control and thus viewed, the petitioner cannot be permitted to approach this Court and ask for the condonation of the delay of 159 days.

We also concur with the above said view.

4. In the result, this civil miscellaneous petition is dismissed A.S.S.R. No. 282 of 1987 will stand rejected. Under S. 66 (2) of the Tamil Nadu Court Fees and Suits Valuation Act, the appellant will be entitled to a refund of half the court fee paid on the memorandum of appeal. We may also point out that in the present appeal originally on the date of filing the appeal viz. 26-3-1987 only a court fee of Rs.2/- was paid on the memorandum of grounds though the court fee payable is as much as Rs.85,181 and the delay of 85 days in payment of the deficit on 19-6-1987 was later condoned. On the whole we regret very much that even though the subject matter of the appeal is very heavy where a court fee of Rs.85,181/- has to be paid for the appeal, the officers concerned in the petitioner, Government and their abovesaid Government pleader, Salem have not at all shown the diligence expected of them.