

(2014) 12 MAD CK 0361

In the Madras High Court

Case No : M.P. No. 1 of 2014 in W.A. SR. No. 66359 of 2014

The State of Tamil Nadu

APPELLANT

Vs

V. Selvathai

RESPONDENT

Date of Decision : 08-12-2014

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2014) 12 MAD CK 0361

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

Bench : Division Bench

Judgement

1. This is an application to condone the delay of 696 days in filing the intra-Court appeal challenging the order dated 18.11.2013 in W.P.No. 20693 of 2012.

2. The affidavit filed in support of the miscellaneous petition is sworn to by the third petitioner. There is no reason much less justifiable reason shown by the petitioners for condoning the delay of 696 days in filing the writ appeal. The petitioners have simply stated that there is a delay of 696 days in filing the writ appeal and that it is neither wilful nor wanton but due to administrative reasons.

3. The petitioners in a matter of this nature must demonstrate that there is a genuine reason for belated submission of writ appeal. The petitioners have shown the alleged administrative delay as a cause for submission of writ appeal beyond the period of limitation.

4. In Commissioner of Wealth Tax - Amateur Riders Club (1994 Supp(2) 603), Special Leave petition was filed with a delay of 264 days. While refusing to condone the delay, the Supreme Court observed:

" 3..... Having regard to the law of limitation which binds everybody, we cannot find any way of granting relief. It is true that the Government should not be treated as any other private litigant as, indeed, in the case of the former the decisions to present and prosecute appeals are not individual but are institutional decisions necessarily bogged down by the proverbial red tape. But there are

limits to this also. Even with all this latitude, the explanation offered for the delay in this case merely serves to aggravate the attitude of indifference of the Revenue in protecting its common interests. The affidavit is again one of the stereotyped affidavits making it susceptible to the criticism that the Revenue does not seem to attach any importance to the need for promptitude even where it affects its own interest."

5. In *Pundlik Jalam Patil (D) by Lrs. Vs. Exe. Eng. Jalgaon Medium Project and Another*, , the Supreme Court refused to condone the delay in filing the appeal and observed that Court cannot enquire into belated and stale claims on the ground of equity. The Supreme Court further observed that the Court helps those who are vigilant and "do not slumber over their rights".

6. The Supreme Court, in *Office of The Chief Post Master General and Others Vs. Living Media India Ltd. and Another*, , reminded the Government bodies that unexplained delay would not be condoned as a matter of course. The Supreme Court said:

"In our view, it is the right time to inform all the Government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The Government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the Government Departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few."

7. The Supreme Court, in *Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai*, , considered the expression "sufficient cause" within the meaning of Section 5 of the Limitation Act and observed thus:

" (14) We have considered the respective arguments/submissions and carefully scrutinised the record. The law of limitation is founded on public policy. The Limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that they approach the court for vindication of their rights without unreasonable delay. The idea underlying the concept of limitation is that every remedy should remain alive only till the expiry of the period fixed by the legislature. At the same time, the courts are empowered to condone the delay provided that sufficient cause is shown by the applicant for not availing the remedy within the prescribed period of limitation.

..(23). What needs to be emphasised is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the Courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is

consumed at various stages of litigation apart from the cost.

(24). What colour the expression "" sufficient cause"" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.

(25). In cases involving the State and its agencies/ instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision-making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and/or its agencies/ instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest."

8. The petitioners have not shown sufficient reasons for condoning the delay. We are constrained to dismiss the miscellaneous petition. However, it is made clear that the order dismissing the miscellaneous petition for condoning the delay should not be construed as an expression of opinion on the merits of the matter.

9. In the result, the miscellaneous petition is dismissed. Consequently, W.A.SR.No. 66359 of 2014 is rejected.