

(2009) 02 MAD CK 0018

In the Madras High Court

Case No : C.R.P. (NPD) (MD) No's. 1049 and 1050 of 2008

The Superintending Engineer, Tamil Nadu Electricity Board,
The Assistant Executive Engineer, Teppakulam Distribution,
Tamil Nadu Electricity Board and The Executive Engineer,
Tamil Nadu Electricity Board, Distribution, North/MEUAC, K.
Pudur

APPELLANT

Vs

K. Ganesan and S. Kathirvel

RESPONDENT

Date of Decision : 16-02-2009

Acts Referred:

Citation : (2009) 02 MAD CK 0018

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : M. Sureshkumar, for the Appellant; No Appearance, for the Respondent

Final Decision : Allowed

Judgement

N. Paul Vasanthakumar, J.—In these Civil Revision Petitions, private notice was ordered and even though the respondents in these Civil

Revision Petitions were served on 16.07.2008, no one entered appearance and the respondents also are not present to oppose the prayer.

2. These Civil Revision Petitions are filed challenging the Order dated 04.12.2007 made in I.A. Nos. 322 and 320 of 2006 in unnumbered Appeal

Suits, on the file of the Sub Court, Madurai, refusing to condone the delay of 246 days in filing appeals against the Judgments and Decrees made in

O.S. Nos. 365 and 345 of 2002, respectively dated 10.11.2005.

3. The Civil Suits were filed by the respondents herein praying for declaration to declare the show cause notice as invalid and the consequential

assessment orders as well as injunction and the Suits were decreed. Against the

said Judgments and Decrees, appeals were filed with a delay of 246 days.

4. The reason stated by the Tamil Nadu Electricity Board to condone the delay of 246 days is that the above Civil Suits filed by the respective respondents herein, who are the plaintiffs in O.S. Nos. 365 and 345 of 2002, were decreed on 10.11.2005 and the then Government Pleader informed about the Judgments and decrees, and consequently, copy applications were filed on 28.11.2005. The stamp papers were called for on 07.12.2005 and the same were deposited on 08.12.2005. After getting Judgments and Decrees, the Superintending Engineer received legal opinion from the then Government Pleader and forwarded the same to the Higher Officials for getting approval to prefer appeals. When the matter was pending before the Higher Officials, the then Government Pleader was relieved from service due to change of Government of Tamil Nadu and the present Government Pleader took charge. As per the instructions of the Superior Officers, the Superintending Engineer received the Court bundles from the then Government Pleader and handed over the same to the present Government Pleader, and thereafter, the present Government Pleader filed appeals on 21.08.2006. As such, the delay of 246 days in filing appeals against the Judgments and Decrees in O.S. Nos. 365 and 345 of 2002, dated 10.11.2005 has happened.

5. The said applications in filing appeals were dismissed by the learned Subordinate Judge, Madurai, by stating that to prove the averments contained in the affidavit, no document or evidence was produced, and therefore, the reasons stated in the affidavit are only stated for the purpose of filing petition.

6. The fact about the change of Government and the consequential change of Government Pleader is not in dispute. The petitioners as defendants in the Suit even questioned the maintainability of the suits in the Written Statements filed before the Trial Court.

7. A similar issue was considered by the Hon''ble Supreme Court in State (NCT of Delhi) v. Ahmed Jaan reported in 2008 AIR SCW 5692, wherein, in paragraph 12, it is held as follows:

Experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the Judgment sought to be

subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing and passing-on-the-buck ethos, delay

on its part is less difficult to understand through more difficult to approve. The State which represents collective cause of the community, does not

deserve a litigant-non-grata status. The Courts, therefore, have to be informed with the spirit and philosophy of the provision in the course of the

interpretation of the expression of sufficient cause. Merit is preferred to scuttle a decision on merits in turning down the case on technicalities of

delay in presenting the appeal. Delay as accordingly condoned, the order was set aside and the matter was remitted to the High Court for disposal

on merits after affording opportunity of hearing to the parties. In *Prabha v. Ram Parkash Kalra* 1987 Supp SCC 339, this Court had held that the

Court should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. The appeal was allowed, the delay

was condoned and the matter was remitted for expeditious disposal in accordance with law.

8. Here, in this case, the Superintending Engineer was vigilant in submitting application for supply of copies of Judgments and Decrees and there

was no delay in getting legal opinion. Thereafter, the change of Government and the Counsel has caused the said delay. The delay having been

sufficiently explained, the petitioners have proved sufficient cause to condone the delay of 246 days.

9. In the light of the above, the Orders dated 04.12.2007 made in I.A. No. 322 and 320 of 2006 in unnumbered Appeal Suits, on the file of the

Sub Court, Madurai, are set aside and the delay in filing the appeals are condoned.

These Civil Revision Petitions are allowed on the above terms. No costs.