



2023/KER/64994

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 18TH DAY OF OCTOBER 2023 / 26TH ASWINA, 1945

RSA NO. 643 OF 2022

THE JUDGMENT AND DECREE DATED 09.11.2012 IN OS 183/2008 OF MUNSIF

COURT, KALPETTA

AGAINST THE JUDGMENT AND DECREE DATED 23.07.2022 IN AS 2/2022 AND

THE ORDER IN I.A.NO.1/2022 IN A.S.NO.2/2022 OF SUB COURT,

SULTHANBATHERY

APPELLANTS/APPELLANTS/DEFENDANTS:

1 RAMACHANDRAN,
 AGED 76 YEARS

2 SIVAN,
 AGED 51 YEARS

3 M.SIVAN,
 AGED 50 YEARS

4 DEVAKI,
 AGED 64 YEARS

BY ADVS.
B. PREMNATH
SARATH M.S.

RESPONDENT/RESPONDENT/PLAINTIFF:

HARRISONS MALAYALAM LIMITED,
CHUNDALE ESTATE, CHUNDALE.P.O.,
WAYANAD DISTRICT 673 123.



2023/KER/64994

RSA NO. 643 OF 2022

2

BY ADVS.
GOPIKRISHNAN NAMBIAR M
K. JOHN MATHAI
JOSON MANAVALAN
KURYAN THOMAS
PAULOSE C. ABRAHAM
RAJA KANNAN

THIS REGULAR SECOND APPEAL HAVING COME UP FOR
ADMISSION ON 18.10.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**CR****JUDGMENT**

Dated this the 18th day of October, 2023

This regular second appeal has been filed under Section 100 r/w Order XLII Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC' for short), challenging dismissal of AS No.2/2022 on the files of the Sub Court, Sulthanbathery, dated 23.07.2023, which arose out of decree and judgment in OS No.183/2008 on the files of the Munsiff Court, Kalpetta, dated 09.11.2012. The appellants herein are defendants 1 to 4 in the above suit. The respondent in this second appeal is the plaintiff in the above suit.

2. Heard the learned counsel for the appellants/defendants and the respondent/plaintiff on admission.

3. I shall refer the parties in this regular second appeal as 'plaintiff' and 'defendant' for convenience.

4. In this matter, AS No.2/2022 was dismissed by the Sub Court, as barred by limitation, after dismissing IA No.1/2022,



a petition filed to condone delay of 3366 days in filing the appeal. Therefore, this Court is inclined to look into the legality of the order passed in IA No.1/2022 in AS No.2/2022. In the affidavit, in support of the petition, sworn by one 'Ramachandran', who is the first defendant in OS No.183/2008, reasons raised to condone the long delay have been stated. The relevant portions of the affidavit are extracted as under:

- “5. Since I sold some parts of the plaint scheduled property, to the remaining appellants No.2 and 3 they orally entrusted me to conduct and manage the case. Moreover appellant 4 is my wife who is a housewife and pardanashin lady and I was looking after case for the appellant No.4 also. Appellant No.2 to 4 were under the bonafide belief that I was conducting the case.
6. It is submitted that I am an age old person, suffering from various age related ailments. I was also suffering from serious mental health disorders including Psychosis and recently achieved stable mental state. Since due to my ailments, I could not contact physically my counsel and proceed with the case, and to entrust the case filling appeal against the judgment and decree passed by the Hon'ble Munsiff court, kalpetta in OS 183/2008 dated



09/11/2012.

7. The non filing of the appeal suit in time against the order of Munsiff court Kalpetta in OS 138/2008 is not wilful and not deliberate. In this context, there is a delay of 3366 days has caused in filing the appeal before this Hon'ble court. If the delay is not condoned by this Hon'ble court, appellants will be put to irreparable loss and injury.”

5. A detailed objection was filed by the respondent/plaintiff, mainly contending that this appeal has been filed challenging the decree and judgment passed in the year 2012 and the reasons stated in the affidavit in support of the petition are quite insufficient to condone the long delay of more than ten years. Hence, for want of sufficient reasons, the delay petition is to be dismissed.

6. The learned Sub Judge meticulously analysed the rival contentions and finally, dismissed the application, relying on the decision of the Apex Court in **Basawaraj & Another v. Special Land Acquisition Officer** reported in **AIR 2014 SC 746**, wherein the Apex court held that *the law on the issue can*



be summarized to the effect that where a case has been presented in the court beyond the limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case, a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court would be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case, there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting in condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.

7. Though the learned counsel for the appellants



reiterated the contentions urged before the First Appellate Court, with a view to get 3366 days delay condoned, on perusal of the affidavit in support of the petition as well as the evidence given by PW1 and PW2, it could be gathered that 'no sufficient reasons' stated to condone the long delay in filing the appeal. In this context, it is apposite to extract Section 5 of the Limitation Act, 1963 and the same is as follows:

“5. Extension of prescribed period in certain cases

Any appeal or any application, other than an application under any of the provisions or Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.”

8. It is true that “sufficient cause” is the decisive factor while condoning the delay. Though it has been settled that liberal view should be taken while condoning delay, it is equally settled that when the delay sought to be condoned on account of



any dilatory tactics without bonafides, with deliberate inaction or negligence, such a concession also is not possible. In this connection, the learned counsel for the plaintiff placed the latest decision of the Apex Court in **Majji Sannemma alias Sanyasirao v. Reddy Sridevi and Others** reported in **AIR 2022 SC 332**, wherein the Apex Court considered condonation of delay of 1011 days. In the said judgment, the Apex Court relied on the decision in **P.Ramachandran v. State of Kerala and Anr.** reported in **(1997) 7 SCC 556**, wherein condonation of delay of 565 days was refused and held in paragraph No.7 to 8 are as under:

“7. At this stage, a few decisions of this Court on delay in filing the appeal are referred to and considered as under:

7.1 In the case of Ramlal, Motilal and Chhotelal v. Rewa Coalfields Ltd. (AIR 1962 SC 361), it is observed and held as under:-

In construing s. 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between



the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in Krishna v. Chattappan, (1890) J.L.R. 13 Mad. 269, "s. 5 gives the Court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant."

- 7.2 In the case of P.K. Ramachandran v. State of Kerala and Anr. (AIR 1998 SC 2276), while refusing to condone the delay of 565 days, it is observed that in the absence of reasonable, satisfactory or even appropriate explanation for seeking condonation of delay, the same is not to be condoned lightly. It is further observed that the law of limitation may harshly affect a particular party but it has to be applied with all



its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds. It is further observed that while exercising discretion for condoning the delay, the court has to exercise discretion judiciously.

- 7.3 In the case of Pundlik Jalam Patil V. Executive Engineer [(2008) 17 SCC 448], it is observed as under: "The laws of limitation are founded on public policy. Statutes of limitation are sometimes described as "statutes of peace". An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. The principle is based on the maxim "interest reipublicae ut sit finis litium", that is, the interest of the State requires that there should be end to litigation but at the same time laws of limitation are a means to ensure private justice suppressing fraud and perjury, quickening diligence and preventing oppression. The object for fixing timelimit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy".
- 7.4 In the case of Basawaraj and Anr V. Special Land Acquisition Officer (AIR 2014 SC 746), it is observed and held by this Court that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case. It is further



observed that the expression "sufficient cause" cannot be liberally interpreted if negligence, inaction or lack of bona fides is attributed to the party. It is further observed that even though limitation may harshly affect rights of a party but it has to be applied with all its rigour when prescribed by statute. It is further observed that in case a party has acted with negligence, lack of bona fides or there is inaction then there cannot be any justified ground for condoning the delay even by imposing conditions. It is observed that each application for condonation of delay has to be decided within the framework laid down by this Court. It is further observed that if courts start condoning delay where no sufficient cause is made out by imposing conditions then that would amount to violation of statutory principles and showing utter disregard to legislature.

- 7.5 In the case of Pundlik Jalam Patil (supra), it is observed by this Court that the court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The Courts help those who are vigilant and "do not slumber over their rights".
8. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the averments in the application for condonation of delay, we are of the opinion that as such no explanation much less a sufficient or a satisfactory explanation had been offered by respondent Nos.1 and 2 herein - appellants before the High Court for condonation of huge delay of 1011 days



in preferring the Second Appeal. The High Court is not at all justified in exercising its discretion to condone such a huge delay. The High Court has not exercised the discretion judiciously. The reasoning given by the High Court while condoning huge delay of 1011 days is germane. Therefore, the High Court has erred in condoning the huge delay of 1011 days in preferring the appeal by respondent Nos. 1 and 2 herein-original defendants. Impugned order passed by the High Court is unsustainable both, on law as well as on facts.”

9. In this matter, the ailments of the first defendant not at all established by convincing evidence, apart from producing one original OP book dated 13.08.2018 and two OP tickets dated 21.12.2018 and 12.08.2017. No doctors were examined to prove the infirmity of the petitioner for a long period of 10 years. Apart from the first defendant, defendants 2 to 4 also suffered decree and their inability to file the appeal in time not at all explained. According to the first defendant, they entrusted him to file the appeal and the said version is not believable where defendants 2 to 4 slept over their rights to challenge the same. In the instant case, no sufficient reasons shown to condone the



long delay of 3366 days. In view of the matter, it has to be held that the learned Sub Judge rightly dismissed the petition, seeking condonation of delay of 3366 days and the said order does not require any interference at the hands of this Court to put the plaintiff in trouble after ten years.

10. Since the dismissal of I.A.No.1/2022 in A.S.No.2/2022 by the First Appellate Court found to be in order, the challenge against the decree and judgment in AS No.2/2022, for want of condonation of delay, does not require any interference at the instance of this Court and no substantial question of law also arose in the facts and circumstances of the case.

Accordingly, this regular second appeal is dismissed refusing admission.

All interlocutory applications pending in this regular second appeal stand dismissed.

Registry shall inform this matter to the trial court as well as the appellate court forthwith.

**Sd/-
A. BADHARUDEEN
JUDGE**