

IN THE COURT OF THE III ADDITIONAL DISTRICT COURT, SALEM.

Present: Tmt. L.Kalaivani, BA.,B.L.,

III Additional District Judge, Salem.

Wednesday, the 29th day of January, 2025.

I.A.No.1/2022

in

O.S.No.68/2019

V. Dhanalakshmi

...

Petitioner/ defendant

-Vs-

P. Saravanan

...

Respondent/Plaintiff

This petition is coming on 07.01.2025 before me for final hearing in the presence of Thiru.D.R.Sivakumar, learned counsel for the Petitioners and Thiru.N,Pandiaraj, learned counsel for the Respondent, upon hearing the arguments of both and having stood over for consideration till date, this court delivered the following:-

ORDER

This petition has been filed Under Sec.5 of the Limitation Act to condone the delay of 214 days in filing the petition under Order 9 Rule 13 CPC.

1. Brief case of the petitioner is as follows:-

The petitioner is the defendant in the suit and the suit has been filed by the respondent seeking the relief of specific performance and permanent injunction. The petitioner was appeared in the suit through her counsel. However, she was affected by jaundice in the 2nd week of September 2021. Therefore, the petitioner has taken treatment with a country doctor at

Kollapatti and he advised to take complete bed rest for 3 months. The petitioner has got cure in the last week of February-2022 and after that due to the critical situation prevailed in her family she was unable to contact her counsel. While so, the petitioner met her counsel and asked about the suit and then only she came to know about the exparte decree passed on 29.09.2021. The non filing of written statement on the specified day is neither willful nor wanton. The petitioner has got good case to succeed. Unless the delay is condoned the petitioner will be put into reparable loss and hardship. Hence, the petitioner has come forward with the present petition.

2. Nutshell of the counter filed by the respondent is as follows:-

The respondent had denied the averments stated in the petition except that those are specifically admitted by him. It is false to state that in the 2nd week of September-2021 the petitioner was affected by jaundice and taken country treatment. The petitioner has not stated the name of the doctor who has given treatment and not produced any documents to prove the illness. The respondent got decree and he has filed execution petition in REP.No.97/2022. However, the petitioner has not received the notice from the court. In order to prevent the respondent from enjoyment the fruits of decree, the present petition has been filed. There are no merits in this petition. Hence, it is prayed for dismissal.

3. Point for consideration is:

Whether this petition is liable to be allowed or not?

4. Answer to the point:

This petition has been filed under section 5 of limitation Act to condone the delay in filing petition under order 9 rule 13 of CPC. The petitioner would contend that the petitioner was appeared in the suit through her counsel. However, she was affected by jaundice in the 2nd week of September 2021. Therefore, the petitioner has taken treatment with a country doctor at

Kollapatti and he advised to take complete bed rest for 3 months. The petitioner has got cure in the last week of February-2022 and after that due to the critical situation prevailed in her family she was unable to contact her counsel. While so, the petitioner met her counsel and asked about the suit and then only she came to know about the exparte decree passed on 29.09.2021. Hence, she has come forward with the present petition to condone the delay in filing petition under Order 9 rule 13 CPC. Per contra, the respondent would contend that the petitioner has not given proper reason for the delay occasioned and for the same this petition is liable to be dismissed.

5. Considering the submissions made by the both parties this court wants to rely upon the judgments reported in **Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation and Another(2010)2 Supreme 115:LNIND 2010 SC 205:(2010) 4 MLJ 141** and an excerpt from it would run thus:

“The law of limitation is found on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribed a period within which legal remedy can be availed for redress of the legal injury. At the same time, the Courts are bestowed with the power to condone the delay, if sufficient causer is shown for not availing the remedy within the stipulated time. The expression “sufficient cause” employed in Section 5 of the Indian Limitation Act, 1963 and other similar statutes is elastic enough to enable the Courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal

approach in condoning the delay of short duration and a stricter approach where the delay is inordinate”.

6. Further in the case of **Ram Nath Sao alias Ram Nath Sahu and Others v. Gobardhan Sao and Others AIR 2002 SC 1201:(2002) 3 SCC 195 :(2002)2 MLJ 85**, it has been held that:

“It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of malafides”.

7. From the light of the aforesaid precedents would clinchingly and manifestly enlightened the fact that no straight jacket formula can be had for condoning the delay and the Court has to follow the adoption of a liberal approach in condoning the delay of short duration. In this case on hand there is a delay of 214 days in filing petition.

8. Moreover, this court wants to emphasize that the litigants should not be shut down from conducting their case by refusing to condone delay in filing application to restore the suit even if the petitioners had contributed to such a delay. In this regard, this court also relied upon the judgment reported **2009 vol 4 CTC page 722 Janaki vs. Swetha Associates**. The petitioner would contend that she was affected by jaundice and thus, she could not able to file written statement on the specified day. It is true that the petitioner has not mentioned the doctor who has given treatment to her. However, the above said reason stated by the petitioner for the delay is convincing. Considering the same in the interest of justice and in order to provide an opportunity to the petitioner this petition is liable to be allowed and on the same time sufferance caused to the respondent also taken into consideration.

In the result, the petition is allowed subject to the payment of cost Rs.1500/- to the respondent on or before 19.02.2025 filing which the petition will be dismissed.

Dictated by me, to the Steno Typist, transcribed and computerized by her, corrected by me and pronounced in the open court, on this 29th day of January 2025.

(Sd/-L.Kalaivani)
III Additional District Judge,
Salem.

**Draft /Fair Order
in
I.A.No.1/2022
in OS.No. 68/2019
Dated: 29.01.2025**