

**Petitioner Vs. Respondent**

**Petitioner Vs. Respondent**

**SooperKanoon Citation :** [sooperkanoon.com/1191856](http://sooperkanoon.com/1191856)

**Court :** Chennai Madurai

**Decided On :** Mar-24-2016

**Judge :** S. Manikumar & C.T. Selvam

**Appeal No. :** MP(MD)No. 2 of 2013 in W.A.(MD)Sr.No. 52857 of 2012

**Appellant :** Petitioner

**Respondent :** Respondent

**Judgement :**

**S. Manikumar, J.**

1. Challenge in this Writ Appeal is to an order made in W.P(MD)No.13613 of 2009, dated 24.02.2010 by which, the Writ Court, while setting aside the proceedings in R.P.No.11/06/D2, dated 10.11.2009 of the Commissioner, H.R.andC.E (Admin.), Department, Chennai, has permitted the writ petitioner therein, to participate in the adjudication process of O.A.No.21 of 2002.

2. Writ Appeal is filed with a delay of 935 days. Reasons assigned in paragraph Nos.8 and 9 are as follows:-

8. I submit that, from the inception I was entrusted with the responsibility of conducting proceedings before HR and CE department and this Honourable Court on behalf of other petitioners. During the pendency of the writ petition and

subsequently, two of the original petitioners in O.A. No. 21 of 2002 who were arrayed as respondents 6 and 10 in W.P. No. 13613 of 2009 died. This and allowing of writ petition demoralized the other petitioners who were illiterate. I also fell ill around this time and was incapacitated for nearly six months. Due to this, I was not in a position to go to Chennai and get legal opinion as contemplated earlier. Subsequent to my recovery, I was not in a position to travel due to my weak physical state. Hence the relevant papers were sent back to me by my relative in Chennai. Due to my weak physical condition I was not in a position to do tasks in an organized manner. The papers in my possession were kept in a cover for safe custody. But unfortunately during January 2011, when my house was cleared and whitewashed on the festive occasion of pongal, the entire set of papers along with the original order copy got misplaced. Despite hectic efforts I was unable to trace the misplaced papers.

9. I submit that, during first week of October 2012 when the old papers and books were taken out for selling to old paper vendor, while sorting the said books and papers, the cover containing the case papers was found concealed in old newspaper bunch. After retrieving the same, I have taken steps to file the Writ Appeal expeditiously. We ought to have file the Writ Appeal on or before 24.03.2010. But due to the aforestated reasons I could not file the Writ Appeal in time. The reasons stated for the delay in filing Writ Appeal are genuine and bonafide ones. Hence the delay of 935 days incurred in filing the Writ Appeal against the order dated 24.02.2010, passed in W.P.No.13613 of 2009 by this Honourable Court ought to be condoned. If the delay is not condoned we will be greatly prejudiced and our legal rights will be affected. Hence in the interests of justice it is hereby prayed that this Honourable Court may be pleased to pass an order condoning the delay of 935 days in filing a Writ Appeal against the order dated 24.02.2010 passed in W.P. No.13613 of 2009 by this Honourable Court.

3. On the aspect of bonafides, diligence in prosecuting the case, it is useful to refer few decisions of the Hon'ble Supreme Court:-

(i) In Dilbagh Rai Jarry v. Union of India, reported in (1974) 3 SCC 554, the Hon'ble Supreme Court considered the question of condoning delay of an application filed

beyond the statutory period of limitation and on the aspect of delay, the Hon'ble Supreme Court observed thus:-

.the Authority is competent to devise, consistently with the provisions of the Act and the Rules made thereunder, its own procedure based on general principles of justice, equity and good conscience. One of such principles is that delay defeats equity. The Authority found that the applicant was guilty of gross negligence. He took no steps whatever to carry out the amendment for several months after the order permitting the amendment, and thereafter, when the case was at the final stage, he suddenly woke up, as it were, from slumber, and sought to amend his application. In the circumstances, the Authority rightly refused to put a premium on this delay and laxity on the part of the appellant.

(ii) In *G.C.Gupta v. N.K. Pandey*, reported in (1988) 1 SCC 316, the Hon'ble Supreme Court at paragraph 16, held as follows:-

16. Inordinate delay is not merely a factor for the court to refuse appropriate relief but also a relevant consideration it be so minded not to unsettle settled things.

(iii) In *Hameed Joharan v. Abdul Salem*, reported in (2001) 7 SCC 573, the Hon'ble Supreme Court considered the enforceability of a decree, and the limitation thereof. In the said judgment, the Supreme Court after taking note of the Latin maxim *vigilantibus et non dormientibus jura subveniunt*, explained the use of legal diligence and as to how lapse of time is species for forfeiture of right. In the words of Supreme Court, the above principle is explained hereunder:-

14. It cannot but be the general policy of our law to use the legal diligence and this has been the consistent legal theory from the ancient times: even the doctrine of prescription in Roman law prescribes such a concept of legal diligence and since its incorporation therein, the doctrine has always been favoured rather than claiming disfavour. Law courts never tolerate an indolent litigant since delay defeats equity the Latin maxim *vigilantibus et non dormientibus jura subveniunt* (the law assists those who are vigilant and not those who are indolent). As a matter of fact, lapse of time is a species for forfeiture of right. Wood, V.C. in *Manby v. Bewicke*, reported in 1857 (3) KandJ 342 = 69 ER 1140 (KandJ at p. 352)

stated: (ER p. 1144)

The legislature has in this, as in every civilized country that has ever existed, thought fit to prescribe certain limitations of time after which persons may suppose themselves to be in peaceful possession of their property, and capable of transmitting the estates of which they are in possession, without any apprehension of the title being impugned by litigation in respect of transactions which occurred at a distant period, when evidence in support of their own title may be most difficult to obtain.

(iv) In Board of Secondary Education of Assam v. Mohd. Sarifuz Zaman, reported in (2003) 12 SCC 408, the Hon'ble Supreme Court has observed as follows:-

12.Delay defeats discretion and loss of limitation destroys the remedy itself. Delay amounting to laches results in benefit of discretionary power being denied on principles of equity. Loss of limitation resulting into depriving of the remedy, is a principle based on public policy and utility and not equity alone .

(v) In Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project, reported in (2008) 17 SCC 448, the Hon'ble Supreme Court considered the question of extension of limitation, in matters pertaining to land acquisition proceedings. The Hon'ble Apex Court explained the meaning of the word limitation scope rationale and the object in the enactments. While explaining limitation and exercise of power of condonation by courts, at paragraph 14, the Hon'ble Supreme Court held as follows:-

14.It is true that the power to condone the delay rests with the court in which the application was filed beyond time and decide whether there is sufficient cause for condoning the delay and ordinarily the superior court may not interfere with such discretion even if some error is to be found in the discretion so exercised by the court but where there is no sufficient cause for condoning the delay but the delay was condoned, it is a case of discretion not being exercised judicially and the order becomes vulnerable and susceptible for its correction by the superior court. The High Court having found that the respondent in its application made incorrect submission that it had no knowledge of the award passed by the Reference Court

ought to have refused to exercise its discretion. The High Court exercised its discretion on wrong principles. In that view of the matter we cannot sustain the exercise of discretion in the manner done by the High Court.

Holding that laws of limitation are founded on public policy, the Hon'ble Supreme Court extracted Halsbury s Laws of England, at paragraph 26:-

26. Basically, the laws of limitation are founded on public policy. In Halsbury s Laws of England, 4th Edn., Vol. 28, p. 266, Para 605, the policy of the Limitation Acts is laid down as follows:

605. Policy of the Limitation Acts. The courts have expressed at least three differing reasons supporting the existence of statutes of limitation, namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove the stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence.

Again, while referring to statutes of limitation, the Supreme Court described them as statutes of peace. Paragraphs 27 to 29 would be relevant for the purpose of understanding the rationale behind fixing time limit, under the statutes and also as to how the courts have to exercise their jurisdiction of condonation of delay. Though the Hon'ble Apex Court referred to statutory limitations, yet the principles are applicable to writ jurisdiction also, for the reason that delay defeats equity, due to negligence of the parties or laches.

27. 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. This Court in *Rajender Singh v. Santa Singh*, reported in 1973 (2) SCC 705, has observed: (SCC p. 712, para 18)

18. The object of law of limitation is to prevent disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party s own inaction, negligence or laches.

28. In *Tilokchand Motichand v. H.B. Munshi*, reported in 1969 (1) SCC 110, this Court observed that this 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.

29.It needs no restatement at our hands that the object for fixing time-limit 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.

(vi) In S.S. Balu v. State of Kerala, (2009) 2 SCC 479, the Hon'ble Supreme Court considered a case, where the appellant therein, approached the court, with an inordinate delay, claiming right to appointment. The proposition of law held by the Hon'ble Apex Court is that there is no indefeasible right to appointment. A candidate included in rank list cannot obtain a mandamus, unless arbitrariness or discrimination is established. While addressing the aspect of delay, the Hon'ble Supreme Court, at paragraph 17, held as follows:-

17.It is also well-settled principle of law that delay defeats equity . The Government Order was issued on 15-1-2002. The appellants did not file any writ application questioning the legality and validity thereof. Only after the writ petitions filed by others were allowed and the State of Kerala preferred an appeal there against, they impleaded themselves as party-respondents. It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment. It is, thus, not possible for us to issue any direction to the State of Kerala or the Commission to appoint the appellants at this stage.

(vii) In Ghulam Rasool Lone v. State of JandK, reported in (2009) 15 SCC 321, the Hon'ble Supreme Court, while considering the scope of equitable relief, considered the following decisions, at paragraphs 14 and 15, which are as follows:-

14. It is now well settled that who claims equity must enforce his claim within a reasonable time. For the said proposition, amongst others, we may notice a decision of a three-Judge Bench of this Court in Govt. of W.B. v. Tarun K. Roy, reported in 2004 (1) SCC 347 = 2004 SCC (LandS) 225, wherein it has been opined: (SCC pp. 359-60, para 34)

34. The respondents furthermore are not even entitled to any relief on the ground of gross delay and laches on their part in filing the writ petition. The first two writ petitions were filed in the year 1976 wherein the respondents herein approached the High Court in 1992. In between 1976 and 1992 not only two writ petitions had been decided, but one way or the other, even the matter had been considered by this Court in Debdas Kumar, reported in 1991 Supp (1) SCC 138 = 1991 SCC (LandS) 841. The plea of delay, which Mr Krishnamani states, should be a ground for denying the relief to the other persons similarly situated would operate against the respondents. Furthermore, the other employees not being before this Court although they are ventilating their grievances before appropriate courts of law, no order should be passed which would prejudice their cause. In such a situation, we are not prepared to make any observation only for the purpose of grant of some relief to the respondents to which they are not legally entitled to so as to deprive others therefrom who may be found to be entitled thereto by a court of law.

(emphasis supplied)

15. The question yet again came up for consideration before this Court in NDMC v. Pan Singh, reported in 2007 (9) scc 278 wherein it has been observed: (SCC p. 283, para 16)

16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if

they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction

4. In a recent decision of the Hon'ble Supreme Court in H.Dohil Constructions Co.(P).LTD. v. Nahar Exports LTD reported in (2015) 1 SCC 680, the Apex Court considered as to how the application filed to condone the representation has to be considered, at paragraphs 19 to 21 and 24 and same are reproduced hereunder:-

19. Having considered the respective submissions, on this question, we find that the submissions made on behalf of the appellant(s) are forceful. It is true that the delay in filing the appeals was only of 9 days and that the longer delay was only relating to the refiling of the appeal papers. But even if it is related to refiling of the appeals, the net result is that the appeals could be taken into records only when such a delay in refiling is condoned. Therefore, if the refiling had been made within the time granted by the Registry of the High Court, no fault can be found with anyone much less with the party concerned or whomsoever was entrusted with the filing of the papers into Registry. But when an enormous delay of nearly five years occurred in matter of refiling, it definitely calls for a closer scrutiny as to what was the cause which prevented the party concerned from refiling the papers in time to enable the Registry to process the papers and ascertain whether the papers were in order for the purpose of numbering the appeals.

20. In the case on hand, the delay in refiling was on 1727 days. As rightly pointed out by the learned Senior Counsel for the appellant(s), the respondents paid the scrutiny charges on 11.04.2008 as disclosed in Receipt No.73 issued by the High Court of that date. When the appeal papers were filed on 06-09-2007 and the scrutiny charges were paid on 11-4-2008, it was quite apparent that the processing of papers of the appeals for its registration did commence in the month of April 2008. Thereafter, if rectification of whatever defects were not carried out by the respondents or its counsel between April 2008 and May 2012, it is the bounden duty of the respondents to have satisfactorily explained such a long delay in refiling. When we refer to the applications filed on behalf of the appellant(s), we find that there was no convincing explanation as to how the respondents were

disabled from rectifying the defects pointed out by the Registry and refiling the appeal papers within time. The respondents only attempted to throw the blame on the previous counsel to whom appeal papers were entrusted for filing in September 2007. As pointed out by the learned Senior Counsel for the appellant(s), there were no details as to whom it was entrusted and what were the steps taken to ensure that the appeals filed were duly registered for pursuing further remedy as against the said judgment of the trial Court. As a matter of fact the appeal papers were filed without payment of any court fee. This only affirms the stand of the appellant(s) that there was no bona fide in the respondents' claim and that they were seriously interested in challenging the judgment of the trial Court as against the non-grant of relief of specific performance. We also fail to see as to how Respondent 1 which is a limited company involved in the business of exports, which would certainly have its own legal department, can plead that after entrusting the papers to some counsel whose name was not disclosed even before this Court did not even bother to take any follow-up action to ensure that its appeals were duly registered in the High Court. In this context the maxim *vigilantibus non dormientibus jura subveniunt* (law assists those who are vigilant and not those who sleep over their rights) aptly applies to the case on hand. The respondents simply by throwing the blame on the previous counsel whose identity was not disclosed claimed that irrespective of the enormous delay of 1727 days in refiling the same should be condoned as a matter of course as there was only 9 days' delay involved in filing the appeals.

21. We express our total disinclination to countenance such a stand made on behalf of the respondents. In this respect, the claim of the appellant(s) that serious prejudice would be caused to the appellant(s) merits acceptance. In the rejoinder filed by the appellant(s) to the respondents' counter, the appellant(s) has explained as to how they had to spend a huge amount to upkeep the property by approaching the authorities of Delhi Municipal Corporation, the enormous amount spent to the tune of Rs.28,00,000 by way of house tax from the year 2004 up to this date and various other improvements made in the property during the period wherein the delay in the matter of filing of the appeals and refiling was made by the respondents. Therefore, the principle that the law of limitation is based on a sound public policy and therefore in the absence of bona fide reasons the

applications for condonation of delay should be strictly construed assumes significance.

24. When we apply those principles of Bhattacharjee case to the case on hand, it has to be stated that the failure of the respondents in not showing due diligence in filing of the appeals and the enormous time taken in the refiling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bona fides as displayed on the part of the respondents. Further, when the respondents have not come forward with proper details as regards the date when the papers were returned for refiling, the non-furnishing of satisfactory reasons for not refiling of papers in time and the failure to pay the Court fee at the time of the filing of appeal papers on 06-09-2007, the reasons which prevented the respondents from not paying the Court fee along with the appeal papers and the failure to furnish the details as to who was their counsel who was previously entrusted with the filing of the appeals cumulatively considered, disclose that there was total lack of bonafides in its approach. It also requires to be stated that in the case on hand, not refiling the appeal papers within the time prescribed and by allowing the delay to the extent of nearly 1727 days, definitely calls for a stringent scrutiny and cannot be accepted as having been explained without proper reasons. As has been laid down by this Court, Courts are required to weigh the scale of balance of justice in respect of both the parties and the same principle cannot be given a go-by under the guise of liberal approach even if it pertains to refiling. The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the respondents not deserving any indulgence by the Court in the matter of condonation of delay. The respondents had filed the suit for specific performance and when the trial Court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered.

In H.Dohil's case, delay in refiling was 1727 days. The Hon'ble Apex Court found that there was lack of bonafides and reasons are assigned in a casual manner and not accepted.

ii) Though the decision of the Hon'ble Apex Court in Esha Bhattacharjee v. Raghunathpur Nafar Academy, reported in (2013) 12 SCC 649, has been rendered with reference to an application filed for condoning the delay, principles culled out by the Hon'ble Apex Court are extracted hereunder:-

21. From the aforesaid authorities the principles that can broadly be culled out are:

i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

ii) The terms sufficient cause should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it

may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional

motto.

d) The increasing tendency to perceive delay as a non- serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.

23. Presently to the assertions made in the application for condonation of delay and the asseverations in oppugnation of the same. It may be stated here that the Division Bench while dealing with the application for condonation of delay has also adverted to the legal tenability of the interim order in a matter of appointment and approval of a teacher, and condoned the delay. It does not require Solomon s wisdom to perceive that the delay was colossal. In the application for condonation of delay the appellant before the High Court had stated about the circumstances in which the order came to be passed by the learned single Judge, the order in the earlier contempt petition and the second petition for contempt, the extinction of right of the respondent employee to continue in the post and thereafter proceeded to state the grounds for condonation of delay. We think it apposite to reproduce the grounds: -

14. That from the record it appears that the order impugned was communicated to the then managing committee including the head master in question and the said fact is totally unknown to the newly elected managing committee as they have been elected on 20.9.2009 and they have been handed over charge on 21.11.09 and to the teacher in charge who has been handed over charge on 1.3.10. It is pertinent to mention in this context that after having received the notice and the contempt application the applicants entrusted the Ld. Advocate for taking appropriate steps and they have been advised to defend the case but due to miscommunication the applicant herein again handed over the brief from Mr. Banik, Ld. Advocate to Mr. Baidya, Ld. Advocate. After having received the said papers and after perusing all the records he opined to prefer an appeal before the appeal court or to prefer an application for vacating the interim order and ultimately the same was filed on 07.06.2010 after several pursuance in spite of taking the application for vacating the interim order the court below day to day is proceeding with the contempt application.

15. Having got no other alternative applicant have been advised to prefer an appeal without certified copy and the leave has been prayed for and the same was allowed.

The photocopy of the receipt for application of Xerox certified copy is annexed herewith and marked with letter A .

24. That the delay occasioned in presenting the said mandamus appeal has taken place due to the aforesaid reasons which was beyond the control of the applicants and was completely unintentional.

4. In the light of the discussion and taking note of the decisions cited supra, this Court is not inclined to condone the inordinate delay of 935 days. The reasons assigned, do not satisfy the guiding principles of law. Hence, this petition is dismissed.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**