

Soni vs Vasu

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Court : Kerala

Decided On : Apr-06-2022

Judge : Honourable Mr. Justice Anil K.Narendran,Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : FAO/15/2022

Appellant : SONI

Respondent : VASU

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR WEDNESDAY, THE 6TH DAY OF APRIL 2022 / 16TH CHAITHRA, 1944 FAO NO. 15 OF 2022 AGAINST THE ORDERS DATED 20.12.2021 IN I.A.NOS.3239 AND 3240 OF 2013 IN O.S.NO.185 OF 2012 OF ADDITIONAL SUB COURT, NORTH PARAVUR APPELLANTS/PETITIONERS/LRs.OF DEFENDANT:

1 SONI AGED 40 YEARS, W/O.LATE MURALEEDHARAN, RESIDING AT MUTTATHU HOUSE, ELANGAVAM, VARAPPETTY VILLAGE,

KOTHAMANGALAM TALUK, VARAPPETTY P.O., PIN - 686 691. 2
KEERTHANA, AGED 11 YEARS, D/O.MURALEEDHARAN, RESIDING
AT MUTTATHU HOUSE, ELANGAVAM, VARAPPETTY VILLAGE,
KOTHAMANGALAM TALUK, A MINOR REPRESENTED BY HER NEXT
FRIEND AND MOTHER SONI, AGED 32, W/O.LATE
MURALEEDHARAN, RESIDING AT MUTTATHU HOUSE,
ELANGAVAM, VARAPPETTY VILLAGE, KOTHAMANGALAM TALUK,
VARAPPETTY P.O., PIN - 686 691. BY ADVS. AJITH VISWANATHAN
SHIBU JOSEPH JAYASANKAR.G

RESPONDENT/RESPONDENT/PLAINTIFF: VASU S/O.RAMAN,
MANGADATHU HOUSE, VADAKKUMBHAGOM KARA, MANJAPRA
VILLAGE, MANJAPRA P.O., PIN - 683 581. BY ADVS. PAUL
K.VARGHESE SHEBIN K MATHEWS THIS FIRST APPEAL FROM
ORDERS HAVING COME UP FOR FINAL HEARING ON 24.03.2022,
THE COURT ON 06.04.2022 DELIVERED THE FOLLOWING:

JUDGMENT

Ajithkumar, J.

Interlocutory application Nos.3239 and 3240 of 2013 filed by the appellants in
O.S.No.185 of 2012 on the file of the Additional Sub Court, North Paravur, were
dismissed as per

order dated 20.12.2021. The appellants challenge the said

common order in this appeal filed under Order XLIII, Rule 1(d) of the Code of Civil
Procedure, 1908.

2. The respondent filed the suit for specific

performance of a contract for sale said to have been executed by
Sri.Muraleedharan, who is the husband of the 1 st appellant and father of the
minor 2nd appellant. Rs.8,10,000/- was agreed to be the sale consideration and

Rs.8 lakhs was paid to

Sri.Muraleedharan towards advance sale consideration. Sri.Muraleedharan entered appearance in the suit through a counsel, but he did not file any written statement. Resultantly, the suit was decreed exparte on 10.10.2012. While so, on 14.07.2013, Sri.Muraleedharan died. The appellants would contend that they received notice on I.A.No.1077 of 2013 filed

by the respondent under Section 28(3) of the Specific Relief Act, 1963, on 25.10.2013 and only then they came to know about the suit. Immediately, they filed I.A.Nos.3239 and 3240 of 2013, seeking to condone the delay of 407 days and to set aside the exparte decree.

3. The respondent filed objections to the said

applications. He contended that Sri.Muraleedharan was aware of all the proceedings in the suit and there was no reason whatsoever justifying his failure to file a written statement in the suit. It is incorrect that the appellants knew regarding the suit only on receipt of notice in I.A.No.1077 of 2013. Property involved in the suit was attached and the order of attachment was served by the Amin as early on 31.05.2012. By that time itself, the 1st appellant came to know regarding the suit. In the said circumstances, the reason set forth by the appellants for condonation of delay and setting aside the decree dated 10.10.2012 is not sufficient or sustainable.

4. These applications were initially allowed by the Additional Sub Court, North Paravur, as per order dated

05.07.2016. The respondent filed O.P.(C) No.1768 of 2016 before this Court challenging the said common order. This Court as per judgment dated 05.10.2021 set aside the said

order and remitted the matter to the Additional Sub Court,

North Paravur for a fresh consideration. The Additional Sub Court, while considering the matter, admitted Ext.A1, A1(a), A1(b) and B1 in evidence. No oral

evidence was adduced by either side.

5. The learned Sub Judge considered sufficiency and

reliability of the reason set forth by the appellants for the delay and also non-appearance of Sri.Muraleedharan in O.S.No.185 of 2012. After detailed discussion, the Sub Court found that the reason stated by the appellants is insufficient, especially in the absence of any evidence to prove the alleged mental depression of Sri.Muraleedharan. It was further observed that there is nothing on record to probabalize even prima facie that the agreement for sale on which the suit was instituted is a forged one and to show that execution of such an agreement by Sri.Muraleedharan was improbable.

6. On 04.02.2022, this appeal was admitted and notice was ordered to be served on the respondent. Further proceedings in the suit was stayed for a period of one month.

Order of stay has been extended from time to time.

7. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondent.

8. The agreement said to have been executed by

Sri.Muraleedharan was for sale of half right in the plaint schedule property to the respondent for an amount of Rs.8,10,000/-, out of which, Rs.8 lakhs was paid as advance sale consideration. The learned counsel appearing for the appellants would contend that son of the respondent and Sri.Muraleedharan were conducting joint business of 'Rent a

Car' and there were financial dealings between them. Sri.Muraleedharan had a C-class shop and a driving school. It is averred that his businesses ended up in loss and that resulted in his mental depression and eventually to his death on 14.07.2013. His death was due to cardiac arrest. In the

affidavit filed in support of I.A.No.3239 of 2013, the 1 st appellant averred that she did not have much contact with Sri.Muraleedharan during his last days as she along with the 2nd appellant, aged only three years at that time, was at her parental home. However, she was very much aware that he was under much stress on account of the financial crisis and the consequent mental depression. That was the reason why, despite his engaging a lawyer, he could not file the written

statement in time and defend the suit properly. The

submission of the learned counsel appearing for the respondent is that even on accepting the said assertions of the 1st appellant, she could not resort to a plea of ignorance regarding the suit altogether; since the order of attachment was served by the Amin on 31.5.2012 at the residence of Sri.Muraleedharan, where the appellants were also residing.

9. There cannot be any doubt that the summons in

the suit was served on Sri.Muraleedharan. He entered appearance in the suit also. He failed to file written statement, the reason best known to him. When the appellants assert that Sri.Muraleedharan was under mental depression during the fag end of his life, it was her obligation to adduce evidence before court to prove that fact. She failed. However, it has to be looked into whether the said contention is probable in the light of the circumstances pointed out by the appellants.

10. While Rs.8,10,000/- was the sale consideration,

Rs.8 lakhs was claimed paid as advance to Sri.Muraleedharan. That nature of the transaction is not a usual one. It was half right of the property that was agreed to be purchased. The respondent has no claim that he was put in possession of the property. In that context, the contention of the appellants that the agreement for sale would have been a fabricated one requires consideration.

11. The learned Counsel for the respondent would

submit that such equitable grounds cannot be a ground for setting aside ex parte decree or to condone delay. The learned Counsel placed before us the decision of the Apex Court in Lingeswaran etc. v. Thirunagalingam [2022 Livelaw

(SC) 227] in which the aforesaid principle was laid down. The

suspicious nature of the agreement is pointed out not to apply any equitable principle, but to understand the events that lead to filing of I.A.Nos.3239 and 3240 of 2013 by the appellants.

12. Although Sri.Muraleedharan entered appearance in

the suit, he did not file written statement. It is seen that he through his counsel obtained time to file written statement, but he did not choose to file the written statement. It is seen that on a few occasions, upto 21.08.2012, adjournments were sought to file written statement and the court gave time till 13.09.2012. It was thereafter he failed to turn up, resulting in the suit decreeing ex parte on 10.10.2012. Without much delay, the respondent filed I.A.No.1077 of 2013 under Section 28(3) of the Specific Relief Act for getting the sale deed executed. During that period, Sri.Muraleedharan died. Only after his death, notice on I.A.No.1077 of 2013 was served on the 1st appellant. The definite case of the appellants is that the property, which is the subject matter of the agreement, is the only property belonging to Sri.Muraleedharan and after his

death, to the appellants. It is quite relevant to note that Sri.Muraleedharan died on 14.07.2013. It was stated that the death was on account of cardiac arrest. A person having a number of businesses had received Rs.8 lakhs under such an agreement for sale. Eventually, he fell ill and succumbed to such illness. Since all such things happened in a short period, the preponderance is quite in favour of the probability that he was not in good health both physically and mentally. On an indepth assimilation of those aspects, we are of the view that the case put forth by the appellants that Sri.Muraleedharan was incapacitated to appear in court and contest O.S.No.185 of 2012 stands probalilized.

13. It is a fact that notice regarding attachment of the

property was served at the residence of Sri.Muraleedharan as evidence by Ext.B1. There is nothing on record to show that during that period the appellants were also available in that house. Of course, the 1st appellant averred that if the alleged agreement for sale was really executed, Sri.Muraleedharan would have told her about that. That statement of the 1 st

appellant cannot be interpreted to understand that she has been available in her matrimonial home during the relevant period.

14. The Limitation Act, 1963 was enacted by the

Parliament to consolidate and amend the law for the limitation of suits and other proceedings and for purposes connected therewith. Section 5 of the Act deals with extension of prescribed period in certain cases. As per Section 5, any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 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. As per Explanation to Section 5, the fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this Section.

15. It is well settled that the Law of Limitation is

founded on public policy to ensure that the parties to a litigation do not resort to dilatory tactics and seek legal remedy without delay. In an application filed under Section 5 of the Limitation Act, the court has to condone the delay if sufficient cause is shown. Adopting a liberal approach in condoning the delay is one of the guiding principles, but such liberal approach cannot be equated with a licence to approach the court-at-will disregarding the time limit fixed by the relevant statute. The acts of negligence or inaction on the part of a litigant do not constitute sufficient cause for condonation of delay. Therefore, in the matter of condonation of delay, sufficient cause is required to be shown, thereby explaining the sequence of events and the circumstances that led to the delay.

16. In Collector, Land Acquisition v. Katiji [(1987)

2 SCC 107], in the context of Section 5 of the limitation Act, 1963, the Apex Court held that, the expression sufficient cause employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner, which subserves the ends of justice, that being the life- purpose for the existence of the institution of courts.

17. In Esha Bhattacharjee v. Raghunathpur Nafar

Academy [(2013) 12 SCC 649] the Apex Court while summerising the principles applicable while dealing with an application for condonation of delay held that, the concept of

liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play. The Apex Court held further that, 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. Para.21 of the judgment

reads thus;

21. From the aforesaid authorities the principles that can broadly be culled out are: 21.1 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.

21.2 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. 21.3 Substantial justice being paramount and pivotal the technical considerations should not be given undue and

uncalled for emphasis. 21.4 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. 21.5 Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact. 21.6 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. 21.7 The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play. 21.8 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. 21.9 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. 21.10 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. 21.11 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. 21.12 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. 21.13 The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

18. In *Esha Bhattacharjee*, after summerising the principles applicable while dealing with an application for condonation of delay, the Apex Court added some more

guidelines taking note of the present day scenario, that an

application for condonation of delay should be drafted with careful concern and not in a haphazard 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. An application for condonation of delay should not be dealt with in a routine manner on the basis of individual philosophy which is basically subjective. Para.22 of the judgment reads thus;

22. To the aforesaid principles we may add some more

guidelines taking note of the present day scenario. They

are:- 22.1 An application for condonation of delay should be drafted with careful concern and not in a haphazard 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. 22.2 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. 22.3 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. 22.4 The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.

19. In Rafeek and another v. K. Kamarudeen and

another [2021 (4) KHC 34 : (2021) 2 RCR (Rent) 223 : 2021 AIR CC 2752] a Division Bench of this Court in which one among us [Anil K. Narendran, J] was a party held that, though the expression sufficient cause employed in Section 5 of

the Limitation Act, 1963 is adequately elastic to enable the courts to apply the law in a meaningful manner, which subserves the ends of justice, as held by the Apex Court in Katiji [(1987) 2 SCC 107], the concept of liberal approach has to encapsulate the conception of reasonableness and it

cannot be allowed a totally unfettered free play. As held by the Apex Court in Esha Bhattacharjee [(2013) 12 SCC 649], inordinate delay, which attracts doctrine of prejudice, warrants strict approach, whereas, a delay of short duration or few days, which may not attract doctrine of prejudice, calls for a liberal delineation.

20. Viewed in the light of the above principles of law, the delay of 407 days occurred in filing the application under

Order IX Rule 13 of the Code is justified by the facts adverted

to above.

21. A hapless widow and her minor child are on appeal

before this Court. Their version that they came to know regarding the suit only when notice on I.A.No.1077 of 2013 was served is established. In the said circumstances, we are of the view that the findings entered into by the Additional Sub Court, North Paravur, while dismissing I.A.Nos.3239 and 3240 of 2013 are unsustainable in law or on facts. Therefore, in reversal of the said findings, we allow I.A.No.3239 of 2013 in O.S.No.185 of 2012.

22. On account of the delay occasioned in filing the

said applications, much inconvenience was caused to the respondent. That has to be remedied. Therefore, we are of the view that while allowing this appeal, the appellants have to pay a cost of Rs.10,000/- to the respondent.

23. The appeal is accordingly allowed. I.A.Nos.3239

and 3240 of 2013 in O.S.No.185 of 2012 on the file of the Additional Sub Judge, North Paravur are allowed on condition of payment of a cost of Rs.10,000/- (Rupees ten thousand only) by the appellants to the respondent. Costs shall be

paid within a period of three weeks of getting a certified copy of this judgment. Both parties will appear before the Additional Sub Court, North Paravur on 23.05.2022.

Sd/- ANIL K. NARENDRAN, JUDGE Sd/- P.G. AJITHKUMAR, JUDGE dkr

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