

**S. Rajaram Vs. S. Seenivasan**

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**Court :** Chennai

**Decided On :** Apr-12-2007

**Reported in :** I(2008)BC656

**Judge :** P. Murgesen, J.

**Acts :** [Negotiable Instruments Act, 1881](#) - Sections 138 and 142; Limitation Act - Sections 5; Code of Civil Procedure (CPC) - Order 22, Rule 9

**Appeal No. :** Crl. Revn. No. 130 of 2006

**Appellant :** S. Rajaram

**Respondent :** S. Seenivasan

**Advocate for Def. :** M. Sureshkumar, Adv.

**Advocate for Pet/Ap. :** S. Pon Senthilkumaran, Adv.

**Disposition :** Petition allowed

**Judgement :**

ORDER

**P. Murgesen, J.**

1. The revision is directed against the order dated 5.12.2005 passed by the learned Judicial Magistrate No. 1, Kovilapatti in Crl. M.P. No. 7350 of 2005.

2. The petitioner/complainant's case is briefly as follows:

The petitioner herein is the complainant. The respondent/accused borrowed a sum of Rs. one lakh from the complainant and issued a post-dated cheque for the said sum. Since he had not repaid the amount borrowed, the complainant sent the cheque for collection, the same was dishonoured. Therefore, on 3.6.2004, the complainant sent a legal notice to the accused and the said notice was received by the accused on 4.6.2004. Even after receipt of the legal notice, the accused had not repaid the amount within fifteen days. Therefore, the complainant preferred the complaint under Section 142 for the offence punishable under Section 138 of the Negotiable Instruments Act.

3. The complainant ought to have filed the petition within the stipulated time. But he preferred the petition with the delay of thirteen months. The reason adduced by the learned Counsel for the complainant is that since negotiations were going on between the complainant and the accused, which was mediated by one Gurusamy, who was the Ex-President of the Kammavur Sangam and on believing the words of the accused that he would settle the cheque amount within six or seven months, the complainant could not file the petition in time.

4. However, the learned Judicial Magistrate dismissed the case of the complainant on the ground the Court was not satisfied with the reasons adduced by the complainant and he refused to entertain the petition. The learned Magistrate has also not accepted the plea of the complainant about the compromise between the parties.

5. But, as per Section 142 of the [Negotiable Instruments Act, 1881](#), if the complaint is not filed within the time prescribed under the Act, the complainant must satisfy the Court that he had 'sufficient cause' for not making the complaint within such period.

6. In support of his contention, the learned Counsel for the revision petitioner/complainant relied upon the case in Ram Nath Sao v. Gobardhan Sai A.I.R. 2002 S.C. 1201, wherein it has been held as follows:

The expression 'sufficient cause' within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to party. In a particular case, whether explanation furnished would constitute 'sufficient cause' or not will be dependant upon facts of each case. There cannot be a strait-jacket formula for accepting or rejecting the explanation furnished for the delay caused in taking steps. But one thing is clear that the Court should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal an exception more so when no negligence or inaction or want of bona fide can be imputed to the defaulting party. On the other hand, while considering the matter the Court should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning the delay in a routine like manner. However, by taking a pedantic and hypertechnical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, Courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way.

7. The learned Counsel also relied on the case in *Mohamad Batcha v. Andi Amholam* 2000 1 M.L.J. 81, wherein it has been observed as follows:

The Court is armed with power to condone the delay. The judicial power and the discretion are given to the Court to advance substantial justice. If the spirit behind the empowerment of the discretionary power on the Court is taken note of it would be dear that the Court is required to adopt liberal approach in the matter of interpretation of the phrase 'sufficient cause' as mentioned in Section 5 of the Limitation Act. This concept is adequately elastic to enable the Court to apply the law in a meaningful manner. The requirement of explanation of every day's delay does not mean that the Courts shall take a pedantic approach but they are

required to adopt rational, common sense and pragmatic approach. The substantial justice alone is to be preferred against technical flaws. Section 5 of the Limitation Act does not say that the discretion can be exercised only if the delay is within a certain limit. Length of delay is not a matter but acceptability of the explanation alone is the criterion. It shall be remembered that in every case of delay there may be some lapse on the part of the litigant concerned. That alone is not enough to put down his plea and to shut the door against him. If the explanation does not show any mala fide or the same is not put forth as dilatory part of tactics, then the Court should show utmost consideration to the applicant. When there are reasonable grounds to think that the delay was occasioned by the applicant deliberately to gain time, then the Court should lean against acceptance of the explanation. While condoning the delay, the Court should not forget the case of opposite party altogether.

8. The learned Counsel further relied on the decision of the Division Bench of our High Court in Kathamuthu v. Balammal 1987 Cri. L.J. 360, wherein it has been held that the power to condone the delay should be exercised only if the Court is satisfied that the delay is properly explained or it is in the interest of justice to exercise the power.

9. In the case on hand, admittedly there is a delay of thirteen months. The reason adduced by the complainant is that compromise talk was going on between the parties. It is also not in dispute that the accused borrowed a sum of rupees one lakh from the complainant. So, his stake is heavy. Only a person who lent such a huge amount could not be kept silent for a long time and, accordingly, the complainant took steps by serving legal notice to the accused/respondent after receipt of intimation of dishonour of cheque from the Bank. So, at this juncture, the complainant cannot be found fault with and he was not negligent and he had taken sufficient steps.

10. I have carefully analysed the case of the complainant in the light of the decisions of the Hon'ble Supreme Court and our High Court and it is clear that the complainant had not adopted any dilatory tactics. I find that the petitioner has given sufficient reasons for condoning the delay and he had also taken steps to

settle the matter in the presence of one Gurusamy who was the Ex-President of Kammavur Sangam. So, I am of the view that opportunity must be given to the petitioner/complainant herein to contest his case before the trial Court.

Therefore, in the interest of justice, the criminal revision case is to be allowed and the petitioner is directed to pay a cost of Rs. 1,000/- to the respondent within a period of two weeks from the date of receipt of a copy of this order. With the above observation, the criminal revision case is allowed.

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