

2022 LiveLaw (SC) 227

**IN THE SUPREME COURT OF INDIA
EXTRA-ORDINARY APPELLATE JURISDICTION**

M.R. SHAH; B.V. NAGARATHNA, JJ.

SPECIAL LEAVE TO APPEAL (C) NOS.2054-2055/2022; FEBRUARY 25, 2022

LINGESWARAN ETC. *VERSUS* THIRUNAGALINGAM

Limitation Act, 1963 - Section 5 - Delay Condonation - When it is found that the delay is not properly explained, the application to condone delay is required to be dismissed - the Court has no power to extend the period of limitation on equitable grounds - Still to condone the delay would be giving a premium to a person who fails to explain the delay and who is guilty of delay and laches. (Para 5)

Summary: SLP Against High Court order which set aside the Trial Court order condoning delay of 465 days even after finding that delay has not been properly explained - Dismissed - Once it was found even by the trial Court that delay has not been properly explained and even there are no merits in the application for condonation of delay, thereafter, the matter should rest there and the condonation of delay application was required to be dismissed.

(Arising out of impugned final judgment and order dated 09-11-2021 in CRPMD No. 1688/2019 09-11-2021 in CRPMD No. 1689/2019 passed by the High Court Of Judicature At Madras At Madurai)

For Petitioner(s) Mr. K.V. Sriwas Narayanan, Adv. Mr. K.V. Vijayakumar, AOR

ORDER

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 09.11.2021 passed by the High Court of Judicature at Madras, Bench at Madurai in C.R.P. (MD) Nos. 1688 & 1689 of 2019, by which the High Court has set aside the order passed by the learned trial Court condoning the huge delay of 467 days in preferring the application for setting aside the ex-parte decree, the original defendants have preferred the present special leave petitions.

2. We have heard Mr. K.V. Vijayakumar, learned counsel appearing on behalf of the petitioners at length.

3. We have gone through the impugned judgment and order passed by the High Court as well as the order passed by the learned trial Court by which the learned trial Court condoned the huge delay of 467 days.

4. Having gone through the order passed by the learned trial Court, even the learned trial Court also specifically observed that, in the absence of material evidence, it cannot be said that the delay has been explained. The trial Court has also observed

that the Court feels that there are no merits in the application. Still the trial Court condoned the delay by observing that an opportunity of fair trial should be given to both the parties to put-forth their case on merits. The trial Court also observed that, on allowing the application for condonation of delay, no prejudice will be caused to the plaintiff and, therefore, the delay can be condoned by compensating the plaintiff by way of heavy costs. The said order has been set aside by the High Court by the impugned judgment and order.

5. We are in complete agreement with the view taken by the High Court. Once it was found even by the learned trial Court that delay has not been properly explained and even there are no merits in the application for condonation of delay, thereafter, the matter should rest there and the condonation of delay application was required to be dismissed. The approach adopted by the learned trial Court that, even after finding that, in absence of any material evidence it cannot be said that the delay has been explained and that there are no merits in the application, still to condone the delay would be giving a premium to a person who fails to explain the delay and who is guilty of delay and laches. At this stage, the decision of this Court in the case of **Popat Bahiru Goverdhane v. Land Acquisition Officer**, reported in **(2013) 10 SCC 765** is required to be referred to. In the said decision, it is observed and held 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. The Court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same.

5.1 In the case of **Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai**, **(2012) 5 SCC 157**, in paragraph 14, it is observed and held as under:

“The law of limitation is founded on public policy. The limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that they approach the court for vindication of their rights without unreasonable delay. The idea underlying the concept of limitation is that every remedy should remain alive only till the expiry of the period fixed by the legislature. At the same time, the courts are empowered to condone the delay provided that sufficient cause is shown by the applicant for not availing the remedy within the prescribed period of limitation.”

6. In view of the above and for the reasons stated above, we are in complete agreement with the view taken by the High Court. The Special 4 Leave Petitions stand dismissed. Pending application, if any, also stands disposed of.