

**(1988) 12 MAD CK 0020**

**Madras High Court**

**Case No:** Civil Revision Petition No. 1600 of 1988

Sagayam Engineering Works

APPELLANT

Vs

Srivatsa Tube Corporation

RESPONDENT

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**Date of Decision:** Dec. 14, 1988

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 13, 35B
- Limitation Act, 1963 - Section 5

**Citation:** AIR 1989 Mad 237 : (1989) 1 LW 27

**Hon'ble Judges:** K.M. Natarajan, J

**Bench:** Single Bench

**Advocate:** C. Lakshmi Narain, for the Appellant; E. Srinivasalu, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

K.M. Natarajan, J.

This revision is directed against order passed by the court below refusing to condone the delay of 730 days in filing the

petition to set aside the ex parte decree passed against the petitioner.

2. The facts which are necessary for disposal of this revision can be stated as follows : The respondent herein filed a suit for recovery of money in

respect of goods sold and delivered and the suit was decreed ex parte on 3-12-1984. Neither the revision petitioner nor his counsel appeared nor

filed a written statement. According to the revision petitioner he had engaged one Kannathasan, Advocate and also signed the written statement

and gave it to him and he was expecting communication from the advocate but no communication was received and he was under the impression

that the suit was pending. But he came to know of the ex parte decree only on 21-11-1986 when he received the notice in the execution petition

filed on the basis of the ex parte decree. According to him, it is only because of the trust he imposed on his counsel he could not fear and so he did

not appear in the court and the ex parte ; decree was passed. As such the delay must be condoned.

3. Opposing the said petition the respondent decree holder contended that there is no reason for condoning the delay and the reason alleged is

false and it is the duty of the petitioner to approach the counsel and to ascertain the stage of the suit. Further since there is no acceptable reason,

the delay ought not to have been condoned.

4. On the side of the petitioner he examined himself as PW 1 and Exs. P1 to P4 were marked and on the side of the respondent no evidence was

adduced.

5. The learned trial Judge for the reasons assigned in his order dismissed the petition. Hence this revision.

6. The learned counsel for the petitioner Mr. Lakshmi Narain submitted that the petitioner should not be penalised for the fault of his counsel and

further, even after the ex parte decree, the respondent/decreeholder wrote four letters which are marked as Exs. P1 to P4 and no mention is made

about the passing of the ex parte-decree and it is too much to expect him to examine his I counsel as the revision petitioner himself had found fault

with him for not informing him the stage of the case. On the other hand, the learned counsel for the respondent submitted that the mere fact that the

respondent has not mentioned in the letters is not a ground for excusing the delay and it is for the petitioner to explain the delay and except his ipse

dixit there is absolutely nothing to show that he gave a written statement to the counsel and the counsel failed to file it or inform him about the

hearing date.

7. The learned counsel for the petitioner, Mr. Lakshmi Narain, drew my attention to the following decisions for the proposition that the Courts

should be liberal in the matter of condoning the delay and further the party should not be penalised for the fault of his advocate and in any event an opportunity should be given to the petitioner to defend the suit;

1) R. Subbarayan Vs. Ravaimani Ammal, where it was held as follows (at pp. 228-229) :

It is well-settled principle of law that the judicial discretion vested with the Court in considering the question of delay however small or however

large and "enormous it may be, rests in the Court's discretion and it is that discretion that matters at the end. However much evidence may be

available explaining each day's delay it is one which may stand or may not stand judicial scrutiny. The background against which the question of

delay has to be approached is whether an opportunity has to be granted or not to the one who knocks at the doors of the temple of justice for

adjudications of the matter that had already been decided ex parte and a conclusion has to be arrived at This backdrop should always be available

in the area of judicial scrutiny, with this background alone, a court has to approach the question whether the delay is to be condoned or not".

2) V.C. Rangadurai Vs. D. Gopalan and Others, where their Lordships of the Supreme Court have observed (at p. 288) :

The relation between a lawyer and his client is highly judicial in its nature and of a very delicate, exacting, and confidential character, requiring a

high degree of fidelity and good faith. It is purely a personal relationship, involving the highest personal trust and confidence which cannot be

delegated without consent. A lawyer when entrusted with a brief, is expected to follow the norms of professional ethics and try to protect the

interests of his clients, in relation to whom he occupies a position of trust. The appellant completely betrayed the trust reposed in him by the

complainants.

3) Smt. Sandhya Rani Sarkar Vs. Smt. Sudha Rani Debi and Others, where it was held thus (at p. 542):

However, it is not possible to lay down precisely as to what facts of matters would constitute "sufficient cause" u/s 5, But those words should be

liberally construed so as to advance substantial justice when no negligence or any inaction or want of bona fides is imputable to a party, i.e., the

delay in filing an appeal should not have been for reasons which indicate the party's negligence in not taking necessary steps which he would have or should have taken. What would be such necessary steps will again depend upon the circumstances of a particular case.

4) Nivrutti Nana Waghmare Vs. Narayan Mahadeo Mokal and Others, wherein it was held , as follows:--

If the petitioner was not aware of the date of the hearing of the suit, there is no reason why it should be assumed that he was aware of the date of the ex parte decree, and if he was not aware of the date of the ex parte decree, for no fault of his, it is impossible for me to conclude that he had no sufficient ground for condonation of delay".

5) Smt. Pari Bai and Others Vs. Bhagat Ram and Others, where their Lordships have observed thus (para 4):

A person, coming to the court after the prescribed period is required to explain the ; delay and he can succeed in getting the delay condoned only when he satisfactorily explains it; But, a court of law cannot require such a " person to explain the delay with mathematical precision".

8. The learned counsel for the respondent I submits that the above decisions are not applicable to the facts of this case However, it is clear from

the above decisions that the " discretion is with the Court in respect of each i case regarding the condonation of delay. The mere fact that there is

730 days (sic) it cannot be read delay cannot be condoned (sic), once it is accepted that the petitioner has come forward with some bona fide

reasons and that he should be given an opportunity to defend the suit, certainly, the court can exercise its discretion to condone the delay Having

regard to the facts and circumstances of the case I fee that in the interests of justice that the petitioner should be given an opportunity to defend the

suit, but should be on heavy terms and at the same time some safeguards to be given to dispose of the case early when the respondent has taken execution proceedings.

9. In the result, the revision petition is allowed and the order of the court is set aside and further it is hereby ordered that the application, I. A. No.

23588 of 1986 is allowed on condition of the petitioner paying or depositing a day (sic) costs of Rs. 1000/- within the four weeks to the

respondent failing which the petition will stand dismissed automatically. However, on such deposit the court below is directed to take the petition to set aside the ex parte decree on file and dispose of the same according to law and expeditiously. Any observation made here will not prejudice the court below to dispose of the petitioner to set aside the ex parte decree under Order IX, Rule 13, C.P.C. and it is open to them to raise all tenable pleas. The parties are at liberty to adduce the evidence and the court below is directed to strictly take into consideration the evidence and dispose the petition on merits uninfluenced by the observations made in this order.