

**(2013) 11 MAD CK 0145**

**Madras High Court**

**Case No:** C.R.P. 1814 of 2010 and M.P. No. 1 of 2010

A. Yasotha

APPELLANT

Vs

K. Arumugham

RESPONDENT

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**Date of Decision:** Nov. 8, 2013

**Hon'ble Judges:** K. Kalyanasundaram, J

**Bench:** Single Bench

**Advocate:** V. Nicholas, for the Appellant; P.T. Asha for M/s. Sarvabhauman Associates, for the Respondent

**Final Decision:** Disposed Off

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### **Judgement**

@JUDGMENTTAG-ORDER

K. Kalyanasundaram, J.

This civil revision petition is directed against the order dated 8.7.009 passed by the Principal District Judge, Coimbatore, in I.A. No. 1846 of 2008 in A.S. (CFR) No. 21496 of 2008. The brief facts of the case are that the petitioner is the owner of the land to an extent of 1040 sq. ft. and she entered into an agreement on 15.4.1998 to sell the property for Rs. 2,10,000. The respondent paid Rs. 2,00,000/- towards advance on the date of agreement, but later the petitioner failed to perform her obligation. Hence the respondent filed a suit O.S. No. 579 of 1999 for specific performance of the agreement.

2. The petitioner in her written statement had denied the agreement of sale and contended that the respondent is a money lender and while she borrowed money of Rs. 1,00,000/-, the respondent received the original documents from her and by committing fraud, he entered into a sale agreement.

3. Upon considering the materials and evidence, the trial Court decreed the suit, as against which, the petitioner filed an appeal before the Principal District Court, Coimbatore. Since there was a delay of 595 days in filing the appeal, the petitioner filed an I.A. No. 1846 of 2008 seeking to condone the delay.

4. The petitioner has stated in the affidavit that she had undergone a surgery and as such, she could not meet her counsel and give particulars for filing the appeal. She further stated that due to her age and ailment, the Doctor advised her not to move anywhere for certain period. The petitioner has also produced a medical certificate to substantiate her case.

5. The respondent filed his counter denying the allegations in the affidavit.

6. The learned Principal District Judge, Coimbatore, dismissed the I.A. holding that the medical certificate dated 17.9.2008 was obtained one week before filing of the petition, which does not disclose as to when the petitioner underwent the surgery and her treatment as inpatient in the hospital; that the petitioner did not examine the Doctor who gave her treatment and each and every day delay was not explained by the petitioner to condone the delay of 595 days.

7. Aggrieved by the said order, the petitioner has filed the above revision.

8. Mr. V. Nicholas, the learned counsel for the petitioner submitted that the petitioner is an aged lady and only due to her ailment, she could not file the appeal in time. She has also produced the medial certificate to substantiate her claim, but the learned Judge took too technical view and dismissed the petition. Further he contended that even on merits, the petitioner is having good case.

9. On the other hand, Ms. P.T. Asha-the learned counsel for the respondent contended that the averments in the affidavit are very vague and bald in nature. The petitioner did not show sufficient cause to condone the enormous delay. The learned counsel further submitted that the learned District Judge considered the entire aspect and dismissed the petition, which does not require any interference by this Court.

10. Admittedly the petitioner is the owner of the land to an extent of 1040 sq. feet along with the building constructed thereon. The petitioner submits that she is residing in the premises. She filed a detailed written statement, disputing the agreement of sale and contended that the respondent is a money lender and she borrowed a sum of Rs. 1,00,000/- and at that time, the respondent received all the original documents and her signatures and filed the suit.

11. The Hon''ble Apex Court has time and again held that the Courts have to adopt liberal approach while considering the application for condoning the delay, especially in cases where rights of the parties in immovable property is involved.

12. At this juncture, I would like to refer to the following decisions of the Honourable Apex Court:

(i) [Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and Another](#), and an excerpt from it would run thus:

8....The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and other similar statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate [Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others](#), , [N. Balakrishnan Vs. M. Krishnamurthy](#), and [Vedabai @ Vijayanatabai Baburao Pateil Vs. Shantaram Baburao Patil and Others](#), ....

(ii) [Ram Nath Sao @ Ram Nath Sahu and Others Vs. Gobardhan Sao and Others](#), also could fruitfully be cited; certain excerpts from it would run thus:

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the Court should lean against acceptance of the explanation. While condoning the delay, the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses.

(emphasis added)

13. Though the petitioner has not satisfactorily explained the delay in filing the appeal, there is no material to show that the delay was deliberate and there is lack of bona fides on the part of the petitioner. But the Principal District Judge dismissed the petition on technicalities holding that each and every day delay was not explained by the petitioner.

14. Considering the facts and circumstances of the case, I am of the view that the petitioner has to be given an opportunity to pursue her appeal. So, the order dated 8.7.009 passed by the Principal District Judge, Coimbatore, in I.A. No. 1846 of 2008 in A.S. (CFR) No. 21496 of 2008 is set aside and the delay in filing the appeal is condoned, however, subject to payment of cost of Rs. 5,000/- (rupees five thousand). The petitioner is directed to pay the cost of Rs. 5000/- (Rupees five thousand) to the

counsel for the respondent in this revision within fifteen days from today. The learned Principal District Judge, Coimbatore, is directed to number the appeal on satisfying the payment of cost and dispose of the same in accordance with law, within a period of six months therefrom. The civil revision petition is disposed of accordingly. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.