2025:KER:30216

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

TUESDAY, THE 8TH DAY OF APRIL 2025 / 18TH CHAITHRA, 1947

OP(C) NO. 197 OF 2019

(AGAINST JUDGMENT DATED 13.12.2018 IN CMA NO.74 OF 2017 OF ADDITIONAL DISTRICT COURT-I, MAVELIKKARA, I.A.NOS.1108 & 1109 OF 2014 IN OS NO.190 OF 2006 OF THE SUB COURT, MAVELIKKARA)

PETITIONER/PLAINTIFF:

C.G.VARGHESE, AGED 63 YEARS, S/O. MATHAI,
CHERUVALLAIL PUTHENVEEDU, KARUVATTA P.O.,
KUMARAPURAM VILLAGE, KARTHIKAPPALLI TALUK,
HARIPPAD.

BY ADVS.SRI.JACOB P.ALEX
SRI.JOSEPH P.ALEX
SHRI.MANU SANKAR P.

RESPONDENT/DEFENDANT:

ALIAS THOMAS, AGED ABOUT 56 YEARS
S/O.JACOB THOMAS, EDATHUMPRAYIL VEEDU,
PENSION HILL, RSPO, THIRUVALLA, PIN-689 111.

BY ADVS.SRI.SRI.M.K.DILEEPAN
SRI.DEEPAK T.NEDUNGADAN

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 08.04.2025, ALONG WITH OP(C).201/2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

TUESDAY, THE 8TH DAY OF APRIL 2025 / 18TH CHAITHRA, 1947

OP(C) NO. 201 OF 2019

(AGAINST THE JUDGMENT DATED 13.12.2018 IN CMA NO.4 OF 2018 OF ADDITIONAL DISTRICT COURT-I, MAVELIKKARA, I.A.NOS.1103 & 1104 OF 2014 IN OS NO.190 OF 2006 OF THE SUB COURT, MAVELIKKARA)

PETITIONER/PLAINTIFF:

C.G.VARGHESE, AGED 63 YEARS, S/O.MATHAI,
CHERUVALLAILPUTHENVEEDU, KARUVATTA PO,
KUMARAPURAM VILLAGE, KARTHIKAPALLI TALUK,HARIPPAD.

BY ADVS.SRI.JACOB P.ALEX
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SRI.DEEPAK T.NEDUNGADAN

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 08.04.2025, ALONG WITH OP(C).197/2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"C.R."

JUDGMENT

These Original Petitions are disposed of by way of a common judgment as the questions involved are the same. The original petitions arise from O.S.No.190 of 2006 on the file of the Subordinate Judge's Court, Mavelikkara. The petitioner is the plaintiff in the suit, and the respondent is the defendant.

2. The Original Suit was filed for specific performance of a contract. The defendant, along with the written statement, had filed a counter claim. The suit was listed for trial on 6.11.2011. On the day scheduled for trial the plaintiff did not appear. Therefore, the Court dismissed the suit for default and adjourned the case to 30.11.2011 to consider the counterclaim. On that day, the defendant did not appear. The Court decreed the counterclaim.

3. The plaintiff filed I.A.No.1108 of 2014 under Order 9 Rule 9 of the Code of Civil Procedure (CPC), for setting aside the dismissal of the suit along with I.A.No.1109 of 2014 for condonation of the delay of

1221 days in filing the application. He also filed I.A.No.1103/2014 under Order 9 Rule 13 to set aside the ex parte decree in the counter claim along with I.A.No.1104 of 2014 to condone the delay of 974 days in filing the petition. The trial Court dismissed the applications. The plaintiff challenged the orders passed by the trial Court by filing CMA.Nos.74/2017 & 4/2018 before the Additional District Court-I, Mavelikkara, which confirmed the orders passed by the trial Court. These orders are under challenge in these original petitions.

4. The common pleading set up by the plaintiff is that the plaintiff was undergoing treatment for heart complaints. He had to undergo a bypass surgery. Therefore, he failed to contact his counsel and give necessary instructions. The non-appearance of the plaintiff before the Court on the day scheduled for trial of the case was not due to his willful laches or negligence. The plaintiff has serious contentions in the original suit as well as in the counter claim.

5. The defendant resisted the applications, contending as follows:-

The averment of the plaintiff that he was undergoing treatment

for cardiac complaint is false. Defendant No.1 died before the disposal of the case, and hence, the suit against him had already been abated. After the dismissal of the suit and passing of the ex parte decree in the counterclaim, the defendant filed an execution petition to execute the decree. Notice was served on the plaintiff on the execution petition. After getting notice of the execution petition, the plaintiff appeared in the execution petition through a lawyer. Subsequently, on 17.9.2012, the Court set him ex parte and passed an order for delivery of the property. The Amin reached the property on 30.5.2014 to effect the delivery. The defendant obtained possession of the property on 30.05.2014 itself. The present applications had been filed three months after the date of delivery of the property. The plaintiff did not undergo bypass surgery as pleaded. He was fully aware of the decree passed against him and the dismissal of the suit.

6. The plaintiff gave evidence as PW1. Exts.A1 to A3 were marked on his side. The trial Court held that the plaintiff failed to prove Exts.A1 to A3 medical prescriptions and adduce any evidence to suggest that he had undergone bypass surgery in 2011. Consequently, the trial

Court held that the plaintiff failed to establish sufficient cause for condoning the delay. Yet another observation of the trial Court is that the plaintiff had not even taken steps to implead the legal representatives of the deceased on record within the time prescribed. The trial Court had taken note of the fact that the plaintiff had filed vakalath before the execution court in E.P.No.119/2012, and he was present at the time when the Amin effected delivery of the property. The trial Court further observed that the plaintiff received notice in the petition seeking delivery in 2012. But, he did not take steps to set aside the ex parte decree in the counter-claim till 2014.

7. The District Court confirmed the findings of the trial Court, holding that there is deliberate laches and inaction on the part of the plaintiff.

8. I have heard the learned counsel for the petitioner and the learned counsel for the respondent.

9. The following facts are not in dispute:

The suit was scheduled for trial on 6.11.2011. The plaintiff did not appear before the Court. The suit was adjourned to 30.11.2011 for

considering the counterclaim. On that day also the plaintiff did not appear. The plaintiff received notice regarding the petition for delivery of the property in the execution petition in 2012. The delivery was effected in the presence of the plaintiff. He filed the applications seeking to set aside the order of dismissal of the suit and the ex parte decree in the counter claim in 2014.

10. The questions that arise for consideration are; (1) Whether the plaintiff had established sufficient cause for not preferring the application to set aside the ex parte decree and the application to restore the Original Suit within the statutory period. (2) If sufficient cause is shown, has the plaintiff established the grounds for establishing the discretion in condoning the delay ?

11. It is profitable to extract Section 5 of the Limitation Act, 1963.

> "**5. Extension of prescribed period in certain cases.**— Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 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.

> *Explanation*.—The fact that the appellant or the applicant was missed 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."

The expression "sufficient cause" contained in Section 5 of the Limitation Act is elastic enough to yield different results depending upon the circumstances of the case. The criteria to be applied in condoning the delay in different claims may be different. For example, in the case of beneficial legislations a liberal interpretation must be given to the expression "sufficient cause" to serve its object. The concept of reasonableness demands that the courts, while taking a liberal approach, must also consider the rights and obligations of both the parties. When a right has accrued in favour of one party due to gross negligence of the other, the Court shall refrain from exercising the discretionary relief. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the Statute mandates so. The Court has no power to extend the period of limitation on equitable grounds.

12. The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. (Vide: **Basawaraj and Another v. Special Land Acquisition Officcer [(2013) 14 SCC 81]**)

13. In *Halsbury's Laws of England (Fourth Edition*, Vol. 28, p. 407) the learned author comments thus:

> "805. *Policy of the Limitation Acts*.—The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence."

14. An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches. (See Popat and Kotecha Property v. SBI Staff Assn. [(2005) 7 SCC 510], Rajender Singh v. Santa Singh

[(1973) 2 SCC 705] : AIR 1973 SC 2537] and Pundlik Jalam Patil v. Jalgaon Medium Project [(2008) 17 SCC 448 : (2009) 5 SCC (Civ) 907]). (Vide: **Basawaraj and Another v. Special Land Acquisition Officcer [(2013) 14 SCC 81]**).

15. In **P.Ramachandra Rao** v. **State of Karnataka [(2002) 4 SCC 578 : 2002 SCC (Cri) 830]**, the Supreme Court held that judicially engrafting principles of limitation amounts to legislating and would fly in the face of law laid down by the Constitution Bench in **Abdul Rehman Antulay** v. **R.S.Nayak [(1992) 1 SCC 225]**.

16. The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide: Madanlal v. Shyamlal [(2002) 1 SCC 535 : AIR 2002 SC 100], Ram Nath Sao v. Gobardhan Sao [(2002) 3 SCC 195 : AIR 2002 SC 1201]) and Basawaraj and Another v. Special Land Acquisition Officcer [(2013) 14 SCC 81]).

17. In **Basawaraj** (supra), the Supreme Court held that 'sufficient cause' means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has not acted diligently or remained inactive. The Supreme Court further held that the applicant must satisfy the court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The Court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose, the Supreme Court added.

18. In **Basawaraj**, the Supreme Court summarised the law on the issue in the following way:-

> "15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in

> condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."

19. In **Ramlal, Motilal and Chhotelal** v. **Rewa Coalfields Ltd. [(1962) 2 SCR 762 : AIR 1962 SC 361]**, the Supreme Court observed thus:-

> "In construing Section 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decreeholder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the court to condone delay and admit the appeal. This discretion has been deliberately conferred on the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in Krishna v. Chathappan [(1890) ILR 13 Mad 269] "Section 5 gives the court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal

> construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant."

20. The laws of limitation are founded on public policy. Statutes of limitation are sometimes described as "statutes of peace". An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. The principle is based on the maxim "interest reipublicae ut sit finis litium", that is, the interest of the State requires that there should be end to litigation but at the same time laws of limitation are a means to ensure private justice suppressing fraud and perjury, quickening diligence and preventing oppression. The object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resolt to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy. (Vide: **Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project [(2008) 17 SCC 448]**).

21. It is important to note that even after sufficient cause has been shown a party may not be entitled to the condonation of delay as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the Court by Section 5. When sufficient cause is established the application for condonation of delay has to be dismissed on that ground alone. However, if sufficient cause is shown, then the Court has to enquire whether in its discretion it should condone the delay. In such circumstances, the Court considers all relevant facts especially diligence of the parties or its bona fides. However, the scope of enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the Court may regard as relevant. The Court is not expected to enquire into why the party was sitting idle by all the time available to it. (Vide: **Ramlal, Motilal and Chhotelal v. Rewa Coalfields Ltd. [(1962) 2 SCR 762 : AIR 1962 SC 361]**).

22. In **Union of India** v. **Jahangir Byramji Jeejeebhoy (D) through his legal heir (2024 SC OnLine 489),** the Supreme

Court, in unequivocal terms, observed that delay should not be excused as a matter of generosity and rendering substantial justice is not to cause prejudice to the opposite party.

23. In **Mool Chandra** v. **Union of India (2024 KHC OnLine 8294)**, the Supreme Court held that no litigant stands to benefit in approaching the Courts belatedly. It is not the length of delay that would be required to be considered while examining the plea for condonation of delay, it is the cause for delay which has been propounded will have to be examined.

24. In **Guruswami H.** v. **A.Krishnaiah Since Deceased By Lrs. (2025 KHC OnLine 6036),** the Supreme Court held that the High Court while considering the plea for condonation of delay, must not start with the merits of the main matter. The Court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation and it is only if sufficient cause is assigned by the litigant and the opposition of the other side is equally balanced that the Court may bring into aid the merits of the matter for the purpose of condoning the delay. The Supreme Court observed that no court should

keep the `Sword of Damocles' hanging over the head of a litigant for an indefinite period of time. It is further observed that High Court cannot condone such inordinate delay by merely invoking substantial justice without examining reasons for rejection by Trial Court.

25. Now, I shall analyse the facts of the case on the touchstone of the principles mentioned above. The Original Suit was instituted in 2006. The suit was dismissed for default on 6.11.2011, and the ex parte decree in the counter claim was passed on 30.11.2011. In the Execution Petition, delivery was ordered. The plaintiff had knowledge regarding the filing of the Execution Petition. He appeared before the executing Court through a lawyer. He filed applications seeking restoration of suit and setting aside the ex parte decree along with applications for condoning the delay, on expiry of three months after the delivery was effected. The reason pleaded by the plaintiff for causing the delay was that he was undergoing treatment for heart complaints. In the trial Court, he relied on Exts.A1 to A3. On the evidence adduced for establishing the cause of delay by the plaintiff, the District Court, after re-appreciating the materials, observed

thus:-

> "…. From the records, it is discernible that, even after receiving notice in the execution petition, the petitioner did not approach the Court below with a petition to set aside the ex parte decree passed in the counter claim and to set aside the order of dismissal of the suit, in time. Though the petitioner is having a case that, he had undergone a bypass surgery in connection with his cardiac problems, no documents has been produced from his side to substantiate the same. It is true that, the petitioner had produced 3 documents from his side and they were marked as Exts.A1 to A3. Out of the said documents, Ext.A1 is an out-patient summary issued from Sree Sathya Sai Institute of Higher Medial Sciences, Bangalore. The said certificate is dated 29.06.2012. Ext.A2 is a certificate issued from Pushpagiri Medical College. Ext.A2 would go to show that, on 25.09.2011, the petitioner had undergone an electro cardiogram test. Ext.A3 is a certificate issued from a scan centre. The same is dated 28.07.2014. Anyhow, none of the above documents will help the petitioner to show that, he had undergone a bypass surgery for cardiac related problems. Moreover, the date on which this case was listed for trial is 06.11.2011. None of the document mentioned above will help the petitioner to show that, he was undergoing any treatment on the above date. Therefore, I am of the view that, the petitioner had miserably failed to prove that, the cause stated by him for his non-appearance on the listed day is true. Moreover, no evidence, whatsoever, is seen produced from the side of the petitioner to show that, he was totally bedridden or was undergoing inpatient treatment during the relevant period for condoning the long delay occurred in preferring the petition to restore the suit, which is dismissed for default."

The petitioner relied on Exts.A1 to A3 medical prescriptions to substantiate his contentions. Those documents also do not reveal that

he was incapacitated to appear before the Court and prosecute the matter, and he had undergone any bypass surgery as pleaded. I am of the considered view that the plaintiff failed to establish sufficient cause for not preferring the applications under Order 9 Rule 9 and Order 9 Rule 13 CPC within the statutory period. He also failed to establish any ground for exercising the discretion in condoning the delay.

The Original Petitions lack merits, and therefore, they stand dismissed.

Sd/-
K.BABU
Judge

TKS

APPENDIX OF OP(C) 197/2019

PETITIONER EXHIBITS

EXHIBIT P1 **TRUE COPY OF THE PLAINT OS NO.190/2006 BEFORE SUB COURT, MAVELIKARA.**

EXHIBIT P2 **TRUE COPY OF THE ORDERS DATED 08.11.2017 IN IA NOS.1108/2014 & 1109/2014 IN OS NO.190/2006**

EXHIBIT P3 **TRUE COPY OF THE MEMORANDUM OF CMA NO.74 OF 2017 BEFORE THE ADDITIONAL DISTRICT COURT, MAVELIKARA**

EXHIBIT P4 **TRUE COPY OF THE JUDGMENT DATED 13.12.2018 IN CMA NO.74 OF 2917 BEFORE THE ADDITIONAL DISTRICT COURT, MAVELIKARA**

EXHIBIT P5 **TRUE COPY OF THE DISCHARGE SUMMARY DATED 28.11.2017 FROM PUSHPAGIRI HEART INSTITUTE**

EXHIBIT P6 **TRUE COPY OF THE OUTPATIENT SUMMARY DATED 29.06.2012 ISSUED FROM THE SRI.SATHYA SAI INSTITUTE OF HIGHER MEDICAL SCIENCES, BANGALORE**

EXHIBIT P7 **TRUE COPY OF THE SUMMARY REPORT DATED 29.10.2011 FROM PUSHPAGIRI MEDICAL COLLEGE HOSPITAL, THIRUVALLA**

EXHIBIT P8 **TRUE COPY OF THE IP FINAL BILL DATED 29.09.2011 FROM PUSHPAGIRI MEDICAL COLLEGE HOSPITAL**

APPENDIX OF OP(C) 201/2019

PETITIONER EXHIBITS

EXHIBIT P1 **TRUE COPY OF THE ORDER DATED 08.11.2017 IN IA NO.1104/2014 IN OS NO.190/2006.**

EXHIBIT P2 **TRUE COPY OF THE ORDER DATED 08.11.2017 IN IA NO.1103/2014 IN OS NO.190/2006.**

EXHIBIT P3 **TRUE COPY OF THE MEMORANDUM OF CMA NO.4 OF 2018 BEFORE THE ADDITIONAL DISTRICT COURT, MAVELIKARA.**

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EXHIBIT P8 **TRUE COPY OF THE IP FINAL BILL DATED 29.09.2011 FROM PUSHPAGIRI MEDICAL COLLEGE HOSPITAL.**

Exhibit P9	**TRUE COPY OF THE COUNTER CLAIM DATED 11-12-2006 IN OS NO. 190 OF 2006 BEFORE THE SUB-COURT, MAVELIKARA**
Exhibit P10	**TRUE COPY OF THE JUDGMENT (EX-PARTE) DATED 30-11-2011 IN COUNTER CLAIM IN OS NO. 190 OF 2006 BEFORE THE SUB-COURT, MAVELIKARA**
Exhibit P11	**TRUE COPY OF THE SURVEY PLAN DATED 26-09-2011 PREPARED BY TALUK SURVEYOR AND MARKED AS EXHIBIT C1(B) IN EXHIBIT P10.**

RESPONDENT EXHIBITS:

Exhibit R1(a)	**True copy of the delivery Kaichiet dated 30-05-2014**
Exhibit R1(b)	**True copy of the delivery report dated 31-05-2014**